Max Weber

ECONOMY AND SOCIETY

AN OUTLINE OF INTERPRETIVE SOCIOLOGY

Edited by Guenther Roth
and Claus Wittich

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List of Abbreviations

Some of the extant translations were extensively annotated by the original translators. This annotation was to the largest part retained, and in some cases complemented by the editors; we also used some of the annotation provided for the 4th German edition of *Wirtschaft und Gesellschaft* by Johannes Winckelmann. The unsigned notes in Part One, chs. I–III are by Talcott Parsons, in Part Two, chs. VII–VIII by Max Rheinstein, and elsewhere by one of the editors as identified at the head of each section of notes. The following abbreviations were used to identify the authors of other notes:

(GM): Hans Gerth and C. Wright Mills
(R): Guenther Roth
(Rh): Max Rheinstein
(W): Johannes Winckelmann
(Wi): Claus Wittich

In the editorial notes, a number of abbreviations were used for works (or translations of works) by Max Weber; these are listed below. A group of further bibliographical abbreviations used only in Max Rheinstein's annotation to the "Sociology of Law" is given in Part Two, ch. VIII:*i*, n. 1 (pp. 658–661 below).

AfS or *Archiv*
: *Archiv für Sozialwissenschaft und Sozialpolitik.* Tübingen: J. C. B. Mohr (Paul Siebeck). (A scholarly periodical edited by Max Weber, Edgar Jaffé and Werner Sombart from 1904 on.)

Agrargeschichte
: *Die römische Agrargeschichte in ihrer Bedeutung für das Staats- und Privatrecht.* Stuttgart: Ferdinand Enke, 1891. (Weber's second dissertation.)

"Agrarverhältnisse"
: "Agrarverhältnisse im Altertum," in *Handwörterbuch der Staats-*

wissenschaften, 3rd ed., I (1909), 52–188. Reprinted in *GAzSW*, 1–288. (Page references are to this reprint.)

Ancient Judaism or *AJ*

Ancient Judaism. Translated and edited by Hans H. Gerth and Don Martindale. Glencoe, Ill.: The Free Press, 1952. (A translation of "Das antike Judentum," Part III of "Die Wirtschaftsethik der Weltreligionen," first published in *AfS*, 1917–19, and of a posthumously published study, "Die Pharisäer," both in *GAzRS*, III.)

Economic History

General Economic History. Translated by Frank H. Knight. London and New York: Allen & Unwin, 1927; paperback re-issue, New York: Collier Books, 1961. (A translation of *Wirtschaftsgeschichte*. Page references in ch. VIII are to the 1927 edition, elsewhere to the 1961 paperback.)

Fischoff

The Sociology of Religion. Translated by Ephraim Fischoff, with an introduction by Talcott Parsons. Boston: Beacon Press, 1963.

GAzRS

Gesammelte Aufsätze zur Religionssoziologie. 3 vols. Tübingen: J. C. B. Mohr (Paul Siebeck), 1920–21; unchanged re-issue 1922–23.

GAzSS

Gesammelte Aufsätze zur Soziologie und Sozialpolitik. Tübingen: J. C. B. Mohr (Paul Siebeck), 1924.

GAzSW

Gesammelte Aufsätze zur Sozial- und Wirtschaftsgeschichte. Tübingen: J. C. B. Mohr (Paul Siebeck), 1924.

GAzW

Gesammelte Aufsätze zur Wissenschaftslehre. 2nd ed. revised and expanded by Johannes Winckelmann. Tübingen: J. C. B. Mohr (Paul Siebeck), 1951. (1st ed. 1922.)

Gerth and Mills

From Max Weber: Essays in Sociology. Translated and edited by Hans H. Gerth and C. Wright Mills. New York: Oxford University Press, 1946.

GPS

Gesammelte Politische Schriften. 2nd ed. revised and expanded by Johannes Winckelmann, with an introduction by Theodor Heuss. Tübingen: J. C. B. Mohr (Paul Siebeck), 1958. (1st ed. München: Drei Masken Verlag, 1921.)

Handelsgesellschaften

Zur Geschichte der Handelsgesellschaften in Mittelalter. (*Nach*

südeuropäischen Quellen). Stuttgart: Ferdinand Enke, 1889. Reprinted in *GAzSW*, 312–443. (Page references are to the reprint. This was Weber's first dissertation.)

Protestant Ethic

The Protestant Ethic and the Spirit of Capitalism. Translated by Talcott Parsons, with a foreword by R. H. Tawney. New York: Charles Scribner's Sons, 1958 (first publ. London, 1930). (A translation of "Die protestantische Ethik und der Geist des Kapitalismus," *GAzRS*, I, 1–206; first published in *AfS*, 1904–05.)

Rechtssoziologie

Rechtssoziologie. Newly edited from the manuscript with an introduction by Johannes Winckelmann. ("Soziologische Texte," vol. 2.) Neuwied: Hermann Luchterhand Verlag, 1960 (2nd rev. ed. 1967). (This is the German edition of the "Sociology of Law" underlying the revised translation in Part Two, ch. VIII, below.)

Religion of China

The Religion of China. Confucianism and Taoism. Translated and edited by Hans H. Gerth. New edition, with an introduction by C. K. Yang. New York: Macmillan, 1964 (1st ed. Free Press, 1951). (A translation of "Konfuzianismus und Taoismus," Part I of "Die Wirtschaftsethik der Weltreligionen," first published in *AfS*, 1916, reprinted in *GAzRS*, I, 276–536.)

Religion of India

The Religion of India. The Sociology of Hinduism and Buddhism. Translated and edited by Hans H. Gerth and Don Martindale. Glencoe, Ill.: The Free Press, 1958. (A translation of "Hinduismus und Buddhismus," Part II of "Die Wirtschaftsethik der Weltreligionen," first published in *AfS*, 1916–17, reprinted in *GAzRS*, II.)

Rheinstein and Shils

Max Weber on Law in Economy and Society. Translated by Edward Shils and Max Rheinstein, edited and annotated by Rheinstein. Cambridge, Mass.: Harvard University Press, 1954.

Shils and Finch

The Methodology of the Social Sciences. Translated and edited by Edward A. Shils and Henry A. Finch. Glencoe, Ill.: The Free Press, 1949. (A translation of three methodological essays, "Die 'Objektivität' sozialwissenschaftlicher und sozialpolitischer Erkenntnis," *AfS*, 1904; "Kritische Studien auf dem Gebiet kulturwissenschaftlicher Logik," *AfS*, 1906; "Der Sinn der 'Wertfreiheit' der soziologischen und ökonomischen Wissenschaften," *Logos*, 1917/18; reprinted in *GAzW*, 146–214, 215–290, 475–526.)

Theory
The Theory of Social and Economic Organization. Translated by A. M. Henderson and Talcott Parsons, edited with an introduction by Parsons. New York: The Free Press, 1964 (first publ. New York: Oxford University Press, 1947).

Wirtschaftsgeschichte or *Universalgeschichte*
Wirtschaftsgeschichte. Abriss der universalen Sozial- und Wirtschaftsgeschichte. Edited from lecture scripts by Siegmund Hellmann and Melchior Palyi. München: Duncker & Humblot, 1923. (2nd ed. 1924; 3rd rev. ed. by Johannes Winckelmann, 1958.)

WuG and *WuG*-Studienausgabe
Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie. 4th edition, revised and arranged by Johannes Winckelmann. 2 vols. Tübingen: J. C. B. Mohr (Paul Siebeck), 1956. *WuG*-Studienausgabe refers to the licensed paperback edition (2 vols.; Köln-Berlin: Kiepenheuer & Witsch, 1964) which already incorporates some of Winckelmann's further revisions for the forthcoming definitive 5th German edition.

Preface to the 1978 Re-issue

After several years of being out of print, during which time it rapidly attained the status of a bibliophilic rarity, *Economy and Society* is now for the first time available in this country and abroad as a hardcover and a paperback, thanks to the cooperation of the American publishers who have separately published segments of the work in older versions.

The present re-issue is identical with our 1968 ition, although some errata are eliminated. In the meantime, Professor Johannes Winckelmann, on whose fourth German edition of 1956 and 1964 our own ition is based, has completed his fifth and final ition with three hundred pages of annotations—a feat that only a member of his scholarly generation could have accomplished (Tübingen: Mohr-Siebeck, 1976). When the English itors prepared their own ition, they cooperated closely with Winckelmann in clarifying many dubious passages in the posthumously published work and in identifying literary and historical references, but unfortunately, the new annotations of the fifth edition could not be included in the present English re-issue.

Several important Weber translations have appeared since 1968. Edith E. Graber translated Weber's essay "On Some Categories of Interpretive Sociology" (M.A. thesis, Department of Sociology, University of Oklahoma, 1970). This essay, the most important definitions of w ich appear here in Appendix I, was a fragmentary first draft of the general conceptual underpinnings for the work, but Weber decided to publish it separately in 1913. Just before conceiving the idea of *Economy and Society* Weber finished his great encyclopedic essay on the economic and politi al history of antiquity, whi h Alfred Heuss, one of the most respected German classicists, has called "the most original and illuminating study yet made of the economic and social development of antiquity." This work, discussed here in relation to *Economy and Society* in the introdu tion (xlii–lvii), has now been translated by R. I. Frank under the title *The Agrarian Sociology of Ancient Civilizations* (London: New Left Books, 1976).

Most of Weber's methodological critiques, which prepared the way for the positive fonnulation of his sociology in *Economy and Society*, have now

been translated. Guy Oakes translated and edited *Roscher and Knies: The Logical Problems of Historical Economics* (New York: The Free Press, 1976) and *Critique of Stammler* (New York: The Free Press, 1977). An excursus on the Stammler critique is found in *Economy and Society*, pp. 325–32 below. Oakes has also translated and edited Georg Simmel's *The Problems of the Philosophy of History* (New York: The Free Press, 1977), to which Weber refers in his prefatory note to ch. I, p. 3 below. Louis Schneider translated "Marginal Utility Theory and the So-Called Fundamental Law of Psychophysics," *Social Science Quarterly*, 56: 4, 1975, 21–36. This leaves untranslated only Weber's demolition of the "energeticist" theories of culture of the famed chemist and natural philosopher Wilhelm Ostwald, and some scattered but important methodological observations in his substantive writings.

The 1968 introduction by Roth was intended in part as a supplement to Reinhard Bendix's *Max Weber: An Intellectual Portrait* (1960), which for the first time presented comprehensively the substance of Weber's comparative sociology of politics, law and religion as it is found in *Economy and Society* and the *Collected Essays in the Sociology of Religion* (containing the studies of the Protestant ethic and sects in relation to the spirit of capitalism and in contrast to the religious and social order of China, India and Ancient Judaism). This well-known study too was re-issued in 1978 by the University of California Press with a new introduction by Roth, which covers the Weber literature accumulated since 1960. One further yield from Bendix's and Roth's concern with Weber was a joint volume, *Scholarship and Partisanship*, also published by the University of California Press in 1971. Moreover, Roth has continued his methodological exploration of *Economy and Society* in three other essays, "Socio-Historical Model and Developmental Theory," *American Sociological Review*, 40:2, April 75, 148–57; "History and Sociology," *British Journal of Sociology*, 27:3, Sept. 76, 306–18; and "Religion and Revolutionary Beliefs," *Social Forces*, 55:2, Dec. 76, 257–72.

An up-to-date bibliography of the almost limitless secondary literature is Constans Seyfarth and Gert Schmidt, eds., *Max Weber Bibliographie: Eine Dokumentation der Sekundärliteratur* (Stuttgart: Enke, 1977), 208 pp. For the latest bibliography of Weber's own writings, see Dirk Käsler, "Max-Weber-Bibliographie," *Kölner Zeitschrift für Soziologie*, 27:4, 1975, 703–30.

For the present re-issue the editors are greatly indebted to the unflagging interest and efforts of Mr. Grant Barnes of the University of California Press and to the support of Mr. Georg Siebeck, of the firm of Mohr-Siebeck in Tübingen, the German publisher of Weber's works.

Finally, we dedicate with sorrow this edition to the memory of Carolyn Cain Roth (1934–1975), who for several years lived with the burden of our intense labors, showing great forebearance and retaining the salutary distance of an artistic vision, which should always balance the sober concerns of scholarship.

BAINBRIDGE ISLAND, WASHINGTON — *Guenther Roth*
Scarsdale, New York — *Claus Wittich*
February 1977

Preface

This is the first complete English edition of *Economy and Society*. All hitherto unavailable chapters and sections have been translated and the annotation has been considerably expanded. The Appendix contains a brief terminological supplement and one of Weber's major political essays. All previously translated parts used here have been thoroughly revised and many passages have been rewritten. The original translators of these chapters are absolved from all responsibility for the present version of their work. We would like to thank Ephraim Fischoff for going over our revision of his translation of the "Sociology of Religion" (Part Two, ch. VI) and for making further suggestions and offering other help. However, he too should not be held responsible for the final version.

A number of extant translations were completely replaced: in Part One, ch. IV, "Status Groups and Classes"; in Part Two, ch. III:3, "The Regulation of Sexual Relations in the Household," ch. IV:3, "The Oikos," ch. XIV:i–ii, "Charisma and Its Transformations," and ch. XVI, "The City." This last book-length chapter was newly translated by Wittich; all other new translations were first done by Roth. Our strategy of translation is explained in the Introduction.

The following earlier translations of sections of *Wirtschaft und Gesellschaft* have been used and revised with the permission of the publishers, which is gratefully acknowledged.

Ephraim Fischoff, trans., *The Sociology of Religion* (Boston: Beacon Press, 1963), pp. 1–274; now Part Two, ch. VI;

Hans Gerth and C. Wright Mills, trans. and eds., *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946), pp. 159–244, 253–262; now Part Two, chs. IX:3–6, XI, and XIV:*iii*;

Ferdinand Kolegar, trans., "The Household Community" and "Ethnic

Groups," in Talcott Parsons *et al.*, eds., *Theories of Society* (New York: The Free Press of Glencoe, 1961), vol. I, pp. 296–298, 302–309; now Part Two, ch. III:1, ch. IV:2, and ch. V:2;

Talcott Parsons, ed. (A. M. Henderson and T. Parsons, trans.), *The Theory of Social and Economic Organization* (New York: The Free Press of Glencoe, 1964; originally published by Oxford University Press, 1947), pp. 87–423; now Part One, chs. I–III;

Max Rheinstein, ed. (Edward Shils and Max Rheinstein, trans.), *Max Weber on Law in Economy and Society* (Cambridge, Mass.: Harvard University Press, 1954), pp. 11–348; now Part Two, ch. I, chs. VII–VIII, ch. IX:1–2, and ch. X.

Without the dedication and hard labor of the previous translators the present edition might never have been undertaken. Hans Gerth, who spent a singular amount of time on the translation of Weber's works, deserves special recognition. The broadest contribution to the reception of Weber's thought has clearly been made by Talcott Parsons' translations and writings.

Our special gratitude goes to Prof. Johannes Winckelmann, the German editor of Weber's works and head of the Max Weber Institute at the University of Munich, who gave us access to his text revisions for the forthcoming 5th edition of *Wirtschaft und Gesellschaft* and always freely shared his thoughts on textual and other problems.

Finally, we want to thank Hans L. Zetterberg, who combines scholarship and entrepreneurship; he held out the challenge, patiently waited for the manuscript, and then saw it through to its publication. We are also grateful to Mr. Robert Palmer for preparing the index and to Mr. Sidney Solomon of the Free Press for supervising the technical preparation of the work and for designing the volumes.

BERLIN AND NEW YORK
March 1968

Guenther Roth
Claus Wittich

INTRODUCTION

by Guenther Roth

We know of no scientifically ascertainable ideals. To be sure, that makes our efforts more arduous than those of the past, since we are expected to create our ideals from within our breast in the very age of subjectivist culture; but we must not and cannot promise a fool's paradise and an easy road to it, neither in thought nor in action. It is the stigma of our human dignity that the peace of our souls cannot be as great as the peace of one who dreams of such a paradise.

Weber in 1909

1. *A Claim*

This work is the sum of Max Weber's scholarly vision of society. It has become a constitutive part of the sociological imagination as it is understood today. *Economy and Society* was the first strictly empirical comparison of social structure and normative order in world-historical depth. In this manner it transcended the plenitude of "systems" that remained speculative even as they claimed to establish a science of society.

Decades have passed since the manuscript was begun and left unfinished, yet few works in the realm of social science have aged so little. Its impact has been considerable over the years, although in a fragmented and erratic fashion as the various parts became available only piecemeal to the English reader or remained altogether out of reach. Weber's ideas on social action and sociological typology, on instrumental and substantive rationality, on formal and material justice, on bureaucracy and charisma, on religious beliefs and economic conduct, have been gradually assimilated by social scientists—by way of accurate reception, imaginative adaptation and, not too infrequently, inventive misinterpretation.

The renaissance of comparative study in the nineteen-sixties has restored some of the original intellectual setting of *Economy and Society*.

This has given a new pertinency to the work and is one reason for the complete English edition; another is the hoped-for correction of the uneven influence exerted by the isolated parts. Now the work has a fair chance to be understood as a whole, and its readers have a better opportunity to comprehend it—this will be a test for both.

Economy and Society is Weber's only major didactic treatise. It was meant to be merely an introduction, but in its own way it is the most demanding "text" yet written by a sociologist. The precision of its definitions, the complexity of its typologies and the wealth of its historical content make the work, as it were, a continuous challenge at several levels of comprehension: for the advanced undergraduate who gropes for his sense of society, for the graduate student who must develop his own analytical skills, and for the scholar who must match wits with Weber.

Economy and Society is part of the body of knowledge on which Weber drew in his unwitting testament, his speeches on "Science as a Vocation" and "Politics as a Vocation," which he delivered shortly after the end of the first World War before a small number of politically bewildered students. By now thousands of students have read these two rhetorical masterpieces with their poignant synopsis of his philosophical and political outlook as well as of his scholarly animus. Yet the very compactness of the two speeches impedes easy comprehension. *Economy and Society* elaborates much that is barely visible in them. However, it minimizes the propagation of Weber's own philosophical and political views, since it wants to establish a common ground for empirical investigation on which men of different persuasions can stand; in contrast to some of the methodological polemics, *Economy and Society* is meant to set a positive example. Yet there is more to it than is readily apparent. The work contains a theory of the possibilities and limitations of political democracy in an industrialized and bureaucratized society, a theory that Weber considered not only empirically valid but politically realistic as against a host of political isms: romanticist nationalism, agrarianism, corporate statism, syndicalism, anarchism, and the Marxism of the time. Hence, there is in the work an irreducible element of what Weber considered political common sense, but this does not vitiate the relative value-neutrality of the conceptual structure. Moreover, the work is full of irony, sarcasm and the love of paradox; a dead-pan expression may imply a swipe at the *Kaiser*, status-conscious professors or pretentious *littérateurs*.[1] And finally, with all its seemingly static typologies, the

1. Ironic formulations and wordplays are hard to render in translation, and it would have been self-defeating pedantry to explain more than a fraction in the editorial notes.

work is a sociologist's world history, his way of reconstructing the paths of major civilizations.

2. *Sociological Theory, Comparative Study and Historical Explanation*

Economy and Society builds a sociological scaffolding for raising some of the big questions about the origins and the possible directions of the modern world. Weber set out to find more specific and empirically tenable answers to those questions than had been given previously. He belonged to the small number of concerned men who shared neither the wide-spread belief in Progress, which was about to be shattered by the first World War, nor the new philosophical irrationalism, which had begun to appeal to many younger men.

Weber's image of "economy and society" is so widely shared today among research-oriented students of society that in its *most general* formulation it no longer appears exceptional, unless we remember that it drew the lines against Social Darwinism, Marxism and other isms of the time. Weber rejected the prevalent evolutionary and mono-causal theories, whether idealist or materialist, mechanistic or organicist; he fought both the reductionism of social scientists and the surface approach of historians, both the persistent search for hidden "deeper" causes and the ingrained aversion against historically transcendent concepts. He took it for granted that the economic structure of a group was one of its major if variable determinants and that society was an arena for group conflicts. He did not believe, however, in the laws of class struggle, jungle or race; rather, he saw men struggle most of the time under created laws and within established organizations. Given the incomplete reception of his work, the roles he attributed to force and legitimacy have been overemphasized in isolation. *Economy and Society* clearly states that men act as they do because of belief in authority, enforcement by staffs, a calculus of self-interest, and a good dose of habit. However, Weber was not much interested in master-key statements on the nature of Society and was set against the "need for world-formulae" (*Weltformelbedürfnis*). Unlike Engels, he saw no grounds for assuming an "ultimately determining element in history." *Economy and Society* demonstrates the rather concrete level on which he wanted to approach sociological theory and historical generalization.

After 1903 Weber clarified his methodological position toward the cultural and social sciences in half a dozen essays.[2] But in *Economy and*

2. Cf. 1. *Roscher und Knies und die logischen Probleme der historischen Nationalökonomie* (1903/6), 145 pp.; 2. *Die "Objektivität" sozialwissenschaft-*

Society he focussed on those concepts and typologies that would directly aid the researcher. He developed his sociological theory—his *Kategorienlehre*, as he sometimes called it—as an open-ended, yet logically consistent formulation of fundamental aspects of social action, on the one hand, and of historical types of concerted action ("general ideal types") on the other. The construction of such trans-epochal and trans-cultural types as, for example, enterprise and *oikos* or bureaucracy and hierocracy, makes sociological theory historically comparative. In this way sociological theory provides the researcher with the dimensional concepts and empirical types that are prerequisites for the kind of comparative mental experiment and imaginative extrapolation without which causal explanation is impossible in history.

Weber's sociological theory, then, grew out of wide-ranging historical research and was meant to be applied again to history, past and in the making. In addition to theory in this generically historical sense, he employed substantive theories of differing degrees of historical specificity:

1. Theories explaining a relatively homogeneous historical configuration ("individual ideal type"), such as the spirit of capitalism;

2. Theories about relatively heterogeneous, but historically interrelated configurations, such as the "economic theory of the ancient states of the Mediterranean";

3. Theories ("rules of experience") that amount to a summary of a number of historical constellations, without being testable propositions in the strict sense: for example, the observation that foreign conquerors and native priests have formed alliances, or that reform-minded monks and secular rulers have at times cooperated in spite of their ineradicable antagonism. The occurrence of the former kind of collaboration, as in ancient Judaism, or its failure to come about in Hellas, due to the battle at Marathon,[3] may have far-reaching historical consequences—one reason for the scholar's interest in such historical "summaries."

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licher und sozialpolitischer Erkenntnis (1904), 68 pp.; 3. *Kritische Studien auf dem Gebiet der kulturwissenschaftlichen Logik* (1905), 75 pp.; 4. *Stammler's "Überwindung" der materialistischen Geschichtsauffassung* (1907), 68 pp., with a posthumously published postscript (20 pp.); 5. *Die Grenznutzlehre und das "psychophysische Grundgesetz"* (1908), 15 pp.; 6. *"Energetische" Kulturtheorien* (1909), 26 pp.; 7. *Über den Sinn der "Wertfreiheit" der soziologischen und ökonomischen Wissenschaften* (1917/18), prepared as a memorandum for a meeting of the *Verein für Sozialpolitik* in 1913. All are reprinted in *GAzW* (for this and other abbreviations used for Weber's works, see the list following this Introduction). For English versions of essays 2, 3, and 7, see Max Weber, *The Methodology of the Social Sciences* (Edward A. Shils and Henry A. Finch, trans. and eds.; Glencoe, Ill.: The Free Press, 1949).

3. On the battle of Marathon and the category of objective possibility, cf. Weber in Shils and Finch (eds.), *Methodology . . .*, 174.

Of course, the explanation of any specific historical event also remains "theoretical" in that it subsumes many discrete actions and is merely plausible, because unverifiable in the manner of the experimental sciences. Weber was acutely aware of this difficulty, which was exacerbated by the scarcity and unreliability of the sources in most areas of his investigations, ancient and modern.

Sociologists live, and suffer, from their dual task: to develop generalizations and to explain particular cases. This is the *raison d'être* of sociology as well as its inherent tension. It would be incompatible with the spirit of Weber's approach to value the transhistorical ("functionalist") generalizations of any formal sociological theory more highly than the competent analysis of a major historical phenomenon with the help of a fitting typology. The sociology of *Economy and Society* is "Clio's handmaiden"; the purpose of comparative study is the explanation of a given historical problem. Analogies and parallels, which at the time tended to be used for evolutionary and morphological constructions and spurious causal interpretations, had for Weber merely instrumental purpose:

> Whoever does not see the *exclusive* task of "history" in making itself superfluous through the demonstration that "everything has happened before" and that all, or almost all, differences are matters of *degree*—an obvious truth—will put the stress on the *changes* (*Verschiebungen*) that emerge in spite of all parallels, and will use the similarities only to establish the *distinctiveness* (*Eigenart*) vis-à-vis each other of the two orbits [i.e., the ancient and the medieval]. . . . A genuinely critical *comparison* of the developmental stages of the ancient polis and the medieval city . . . would be rewarding and fruitful—but only if such a comparison does *not* chase after "analogies" and "parallels" in the manner of the presently fashionable general schemes of development; in other words, it should be concerned with the *distinctiveness* of each of the two developments that were finally so different, and the purpose of the comparison must be the causal *explanation* of the difference. It remains true, of course, that this causal explanation requires as an indispensable preparation the isolation (that means, abstraction) of the individual components of the course of events, and for each component the orientation toward rules of experience and the formulation of *clear concepts* without which causal attribution is nowhere possible. This should be taken into account especially in the economic field in which inadequate conceptual precision can produce the most distorted evaluations.[4]

Weber had in mind men like Wilhelm Roscher, Ranke's pupil, for whom

4. "Agrarverhältnisse im Altertum," in *GAzSW*, 257, 288. (Cf. below, n. 27.)

peoples are "generic biological entities"—as Hintze put it quite adequately. Roscher has explicitly stated that for science the development of peoples is in principle *always the same*, and in spite of appearances to the contrary, in truth nothing new happens under the sun, but always the old with "random" and hence scientifically irrelevant admixtures. This obviously is a specifically "scientific" (*naturwissenschaftliche*) perspective.[5]

Weber's comparative approach was directed against theories of historical sameness as well as theories of universal stages. He opposed in particular the interpretation of Antiquity, including ancient capitalism, as a "modern" phenomenon; this interpretation was advanced by "realistic" historians reacting against the humanist tradition with its idealization of classic Greece and Rome. Weber equally rejected the contemporary stage theories of rural and urban economic development. He, too, believed in a "general cultural development," but he focussed on the dynamics of specific historical phenomena, their development as well as their decline. For this purpose he employed several comparative devices (which will be illustrated below, p. xliii): (a) the identification of similarities as a first step in causal explanation; (b) the negative comparison; (c) the illustrative analogy; (d) the metaphorical analogy.

The ideal type too has a comparative purpose. It was Weber's solution to the old issue of conceptual realism versus nominalism, but in the context of the time it was his primary answer to the scientific notion of law and to the evolutionary stage theories. Weber wrote much more on the logical status of the ideal type than on his comparative strategy. This imbalance is reflected in the literature; a great deal has been written about the ideal type, but very little that is pertinent to the art of comparative study. As historical "summaries" of varying degrees of specificity, ideal types are compared with slices of historical reality.[6] For the researcher the issue is not whether the ideal type is less "real" than other historical concepts; rather, his task consists in choosing the level of conceptual specificity appropriate for the problem at hand. Weber's ideal types, as the reader can himself see, involve a theory about the dynamics and alternative courses of the phenomena involved. They are not meant

5. "Roscher und Knies . . . ," in *GAzW*, 23.

6. "All expositions for example of the 'essence' of Christianity are ideal types enjoying only a necessarily very relative and problematic validity when they are intended . . . as the historical portrayal of facts. On the other hand, such presentations are of great value for research and of high systematic value for expository purposes when they are used as conceptual instruments for *comparison* and the *measurement* of reality. They are indispensable for this purpose." Weber in Shils and Finch (eds.), *Methodology . . .*, 97.

to fit an evolutionary scheme, but they do have a developmental dimension.

Ideal types are constructed with the help of historical rules of experience, which are used as heuristic propositions. For example, Weber's theory of monarchy includes the observation that monarchs throughout the ages, from ancient Mesopotamia up to Imperial Germany, have been welfare-minded because they needed the support of the lower strata against the higher; however, these higher strata, nobility and priesthood, usually remain important to the maintenance of monarchic power and legitimacy. Hence, the stability of monarchy rests in part on the ruler's ability to balance the two groups. It is from such observations, which permit the necessary specification, that the ideal type of patrimonialism (Part Two, ch. XII below) emerges.

Weber's comparative strategy was directed toward establishing, with the aid of his typologies, (1) the *differences* between modern and older conditions, and (2) the *causes* of the differences. This involved the exploration of secular phenomena that had "dropped out" of history (for example, ancient capitalism) but that were culturally important in themselves or useful for identifying modernity; it also involved the search for the "causal chains" of history.

In the absence of a reductionist one-factor scheme and of historical "one-way streets," the relationship of economy, society and polity became for Weber a multi-faceted set of problems encompassing the interplay of organization and technique of production, social stratification, civil and military administration, and religious and secular ideology. Apart from the issue of the uniqueness of Western civilization, this perspective too led Weber to a comparative interest in the workings of civilizations.

Such a comprehensive program of research required broad knowledge and expertise in several fields. The historical content of *Economy and Society* rests on a large body of scholarly literature, but also on Weber's previous research. In drawing on historical sources and secondary literature, Weber had an advantage over those historians whose training had been mainly philosophical and philological, partly because he was a trained jurist and economist, partly because he had developed a sociological framework within which he could address precise questions to the secondary literature.

An adequate understanding of *Economy and Society* should encompass Weber's previous research and writings and perceive the close links. Since Weber rendered no systematic account of his strategy of comparative study or of the intellectual development that led him

to the writing of *Economy and Society*, it appears worthwhile to trace here the methodological and substantive lines of reasoning that converge in the later work; since almost all of the earlier writings are untranslated, they will be quoted more extensively than would otherwise be desirable.[7]

3. *The Legal Forms of Medieval Trading Enterprises*

Even for a man of Weber's generation it was rare to gain competence as historian of both Antiquity and the Middle Ages, and then to combine this with the study of contemporary concerns—industrialization, bureaucratization, democratization. Weber began his career in legal and economic history as both a "Romanist" and "Germanist"; he transcended the ideological antagonism of the two schools that so sharply divided German jurisprudence in the 19th century. Weber wanted, first of all, a good grasp of the varieties of legal and economic arrangements; hence he emulated the tremendous learning of an Otto Gierke, but he was out of sympathy with the persistent inclination of the Germanists to reduce European history to the dichotomy of Romanized authoritarian organization (*Herrschaftsverband*) and Germanic egalitarian association (*Genossenschaft*).

From the beginning of his academic career Weber addressed himself to two broad historical questions: The origins and nature of (1) capitalism in Antiquity, the Middle Ages and modern times, (2) political domination and social stratification in the three ages. His dissertation of 1889 dealt with legal institutions of medieval capitalism, his *Habilitation* of 1891 (that is, the second doctorate required for academic teaching) with the relationship between Roman politics and capitalism.

The dissertation was a "Germanist" study, *On the History of the Medieval Trading Companies*, written under Levin Goldschmidt.[8] Based largely on printed Italian and Spanish sources, it dealt with various forms of limited and unlimited partnership that emerged with the revival of maritime and inland trade and urban craft production.

7. In the following, attention will be given particularly to those studies that were omitted in Reinhard Bendix, *Max Weber: An Intellectual Portrait* (New York: Doubleday, 1960), Anchor edition, xxiii; see chs. I and II on Weber's early activities, his scholarly and political response to the problems of industrialization in Germany, especially the agrarian issue in Prussia east of the Elbe river (East Elbia). The present introduction is an effort to supplement Bendix' work and the introduction by Hans Gerth and C. Wright Mills in *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1946).

8. *Zur Geschichte der Handelsgesellschaften im Mittelalter (Nach südeuropäischen Quellen)* (Stuttgart: Enke, 1889), reprinted in *GAzSW*, 312–443.

Medieval capitalism required legal institutions for implementing the sharing of risk and profit and defining the liabilities and responsibilities of the parties to a joint venture. Weber investigated the differences between the partnership forms originating from the institutions of overseas trade in cities like Genoa and Pisa and those that emerged from the family craft enterprises of inland cities like Florence. The former were typically *ad hoc* associations for trading ventures, the latter more commonly continuous households, with family and other members, often surviving several generations. The partnership forms of overseas trade (*commenda, societas maris*) were only concerned with delimiting responsibilities and benefits, but the household enterprises long combined capitalist and communist modes of operation, before internal closure set in and they disintegrated as units of commercial enterprise.

A few Weberian guidelines can already be perceived in this highly technical analysis. Economic and legal development are intertwined, yet "law follows criteria that are, from the economic viewpoint, frequently extraneous";[9] it may regulate economic conditions far removed from its own dogmatic and social origins—this was a critique of correspondence theories, especially of the economically determinist variety. The insistence on the importance of the legal order for economic action is also the starting point of the first chapter of *Economy and Society* (Ch. I:1 of the older Part Two). Here the consistency of Weber's basic perspectives over time is indicated. But the strength of the dissertation lay less in such a general position than in the vivid and detailed treatment and the ability to argue firmly with the historical opinions of renowned scholars such as Gierke and Rudolf Sohm. Yet Weber conceded his inability to arrive at novel overall conclusions. Already in the preparatory stage of the dissertation he commented in his ironic fashion:

> I had to learn Italian and Spanish well enough to work myself through books and to read hundreds of statutes . . . worst of all, statutes written in such ancient dreadful dialects that one can only be astonished by the ability of men at the time to understand such jargon. Well, I was kept busy, and if not much has come out of it, it is less my fault than that of the Italian and Spanish magistrates who failed to include in the statutes the very things I sought.[10]

Weber felt that he had not been able to answer a controversial question of the time: To what extent were the early forms of the capitalist partnership and firm shaped by Roman and Germanic legal influ-

9. *GAzSW*, 322.

10. Max Weber, *Jugendbriefe*, ed. Marianne Weber (Tübingen: Mohr, n.d.), 274.

ences? Conclusive answers to Gierke and Sohm appeared possible to him only after further comparative study, including also Germany. As it was, the dissertation limited itself to the differences among various forms of commercial institutions, in order to lay the groundwork for later research.

The dissertation shows that the exposition in *Economy and Society* of the open and closed relationships of household, family, kin-group and enterprise (esp. chs. II:2, III:1, and IV:2 of Part Two) rests on long-standing knowledge of historical specifics and early familiarity with the literature. The later treatment of the associations is a mere summary with a systematic place in a wider context, yet the illustrations, which at first sight seem to fill the "empty boxes" somewhat arbitrarily, are often based on careful consideration in those earlier studies.

Two years after the dissertation Weber completed a "Romanist" *Habilitation* on *The Roman Agrarian History in Its Bearing on Public and Private Law*,[11] which qualified him to read Roman, Germanic and commercial law. He became a law professor in Berlin in 1893 and almost immediately took over for the ailing Goldschmidt.

4. *Economic and Political Power in Ancient Germanic History*

Weber wrote his *Roman Agrarian History* with the encouragement of August Meitzen, who was then working on his monumental comparative study, *The Settlement and Agrarian-Structure of the Western and Eastern Germanic Tribes, Celts, Romans, Finns and Slaves* (3 vols., 1895). For his analysis of property forms and social structure Meitzen ingeniously used the ancient survey maps of the villages. Weber proceeded from Meitzen's chapter on the Roman land surveys. This undertaking was far more difficult than the study of the medieval trading companies; the findings were bound to be much more hypothetical because of the paucity and ambiguity of the sources. Weber believed he had shown that Roman agriculture could be analyzed adequately with concepts derived from other Indo-Germanic agrarian structures. However, seventeen years later, in his second major work on Antiquity, he wrote that he was still defending the work, but that it had indeed been full of "youthful sins" and particularly mistaken in its attempt "to apply Meitzen's categories to heterogeneous conditions."[12] Thus, in his early years Weber too had been influenced by evolutionary analogues, but by

11. *Die römische Agrargeschichte in ihrer Bedeutung für das Staats- und Privatrecht* (Stuttgart: Enke, 1891).

12. Cf. *Agrargeschichte*, 2; and "Agrarverhältnisse . . . ," *GAzSW*, 287.

1904, when he intervened in the dispute about ancient Germanic social structure,[13] he combatted them energetically. Together with the critique of his contemporaries' methodology, Weber elaborated his view of the historic relationship between political and economic power, a view that became important for the typology of domination in *Economy and Society*. At issue was the origin of manorial domination (*Grundherrschaft*), for decades the center of scholarly debate. There was a tendency to explain the whole political and economic history of Germany in terms of the *Grundherrschaft* and its variants.

The thesis of the predominance of manorial domination as early as the period of Caesar and Tacitus was upheld by Georg Friedrich Knapp and his school, especially by Werner Wittich; they rejected the older view according to which manorial domination resulted from the transformation of the Frankish levy into a cavalry of feudal vassals. As against the thesis of the Knapp school, Meitzen asserted the free status of the Germanic peasantry of late Antiquity and pointed to the equal parcelling of land in the communes. Meitzen did leave an opening to his adversaries by acknowledging the nomadic way of life of Germanic tribes in Caesar's time, but he interpreted the transition from nomadic stockbreeding to husbandry as an emancipation of "labor from property," a phrase reminiscent of Karl Rodbertus' views. For Meitzen the Germanic settlement was the creation of the drive for economic independence inherent in the equalitarian spirit of the people. Knapp's school, however, insisted that the free Germanic man of Caesar's day had been a cattle-owner who despised agriculture and those who tilled the soil. The origin of *Grundherrschaft* was seen then to lie in the rule of cattle-owners over peasants. Wittich, for one, buttressed his view with Richard Hildebrand's scheme of cultural and legal development. "This theory," Weber commented, "is one of the attempts, recently so numerous, to comprehend cultural development in the manner of biological processes as a lawful sequence of universal stages."[14] Hence the assertion of a universal nomadic stage, at least in the Occident. The theory worked with analogies from the contemporary nomadic life of Bedouins and

13. "Der Streit um den Charakter der altgermanischen Sozialverfassung in der deutschen Literatur des letzten Jahrzehnts," in *GAzSW*, 508–556; first published in *Jahrbücher für Nationalökonomie und Statistik*, 3d series, vol. 28 (1904).

14. *GAzSW*, 513. Cf. Richard Hildebrand, *Recht und Sitte auf den primitiveren wirtschaftlichen Kulturstufen* (Jena: Fischer, 1896); for Hildebrand's counterattack, which rejects Weber's interpretation of Germanic agriculture in Caesar's time, see the second edition of 1907, pp. 55f., 64f.; see also Werner Wittich's review essay on Hildebrand, "Die wirtschaftliche Kultur der Deutschen zur Zeit Caesar's," *Historische Zeitschrift*, vol. 79, 1897, 45–67.

Kirghiz, applying them to elucidate Germanic prehistory. If these nomads scorned agricultural labor, by inference the Germanic nomads must have done likewise. Weber objected:

> This procedure of a scholar whom I too hold in high esteem is a good example of the manner in which the concept of "cultural stages" should not be applied scientifically. Concepts such as "nomadic," "semi-nomadic," etc., are indispensable for descriptive purposes. For research, the continuous comparison of the developmental stages of peoples and the search for analogies are a heuristic means well suited, if cautiously used, to explain the causes of distinctiveness of each individual development. But it is a serious misunderstanding of the rationale of cultural history to consider the construction of stages as *more* than such a heuristic means, and the subsumption of historical events under such abstractions as the *purpose* of scholarly work—as Hildebrand does—; it is a violation of proper methodology to view a "cultural stage" as anything but a concept, to treat it as an entity in the manner of biological organisms, or an Hegelian "idea," from which the individual components "emanate," and hence to use the "stage" for arriving at *conclusions* by analogy: If the historic phenomenon y usually follows x, or if both tend to be co-existent, y_1 must follow x_1, or be co-existent, since x and x_1 are conceptual components of "analogous" stages of culture.
>
> The mental construct of a cultural stage merely means, analytically speaking, that the individual phenomena of which it is composed are "adequate" to one another, that they have—as we could say—a certain measure of inner "affinity," but not that they are related in any determinate way (*Gesetzmässigkeit*). . . .
>
> The belief in a universal "stage" of nomadic existence, through which all tribes passed and from which the settlement developed, can no longer be retained in view of our knowledge of the development of Asiatic peoples and after Hahn's investigations [*Die Haustiere*, 1896]. At any rate, the knowledge of a by no means primitive form of agriculture among the Indo-Germanic peoples goes back into the darkest past.[15]

In Weber's view the Germanic tribes of Caesar's day were not nomadic nor were the freemen a stratum of landlords (*Grundherren*) who left most work to slaves and women; slaves were not a substantial part of the workforce and the status differentiation between warrior and peasant did not exist at the beginning of recorded history; rather, the Germanic freemen were transformed very gradually into the politically disenfranchised and economically harassed peasants of the Middle Ages.

Weber accepted Meitzen's view that the German village with its land distribution was a product of legal autonomy, a monopolistic association of relative equals, not a product of manorial decree. However, in contrast

15. *GAzSW*, 517, 524.

to Meitzen's assumption of an equalitarian folk spirit, Weber took an economically more realistic line and reasoned persuasively that the equal parcelling out of land by a closed association pointed to the narrowing of economic opportunities (land shortage), similar to the monopolistic policies of medieval guilds.[16]

In examining the Roman sources, Weber pointed out that Caesar's report about the Suevi was no proof for a nomadic way of life of the Germanic tribes. The Suevi, a frontier people, had developed into a group of professional warriors, engaging in periodic raids on adjacent areas and neglecting agriculture. This brought Weber to the phenomenon of warrior communism and his most general point: the historical primacy of political over economic factors:

> If one wants at all to search for distant analogies such as might be offered by the Kirghiz and Bedouins, the traits of an "autarkous state" [an allusion to Fichte's collectivist utopia] found among the Suevi will remind one much more of the robber communism that existed in Antiquity on the Liparian islands or—if the expression be permitted—the "officers' mess communism" of the ancient Spartans, or of the grandiose booty communism of a Caliph Omar. In one phrase, these traits are the outcome of "warrior communism." They can easily be explained as a result of purely military interests. . . . They would scarcely be in tune with the living conditions of a tribe stagnant at the nomadic stage and ruled by great cattle-owners in a patriarchal manner. . . .
>
> The oldest social differentiation of Germanic and Mediterranean prehistory is, as far as we can see, determined primarily politically, in part religiously, *not*, however, primarily economically. Economic differentiation must be considered more as a consequence and epiphenomenon or, if you want it in the most fashionable terms, as a "function" of the former, rather than vice versa. . . .
>
> If the term may be applied to prehistory at all, a "knightly" life style . . . often goes together with a manorial position; in fact, this is the rule once private hereditary landownership has fully developed. . . . However, it is by no means generally true that this life style leads to, or is related to, manorial superordination over other freemen—in the age of Homer and Hesiod as little as in that of the Germanic epics. It means a reversal of the usual causal relationship to view the later manorial constitution not as a consequence but as the original basis of the priviliged position of the high-ranking families. The historical primacy of manorial domination appears highly unlikely, first of all, because in an age of land surplus mere land ownership could not very well be the basis of economic power.[17]

16. This is again the phenomenon of closed economic relationships treated in Part Two, ch. II: 2 below.

17. *GAzSW*, 523, 554f.

Weber concluded his essay with a reminder about the triviality inherent in correct scholarly results and anticipated that the older view would probably survive the recent challenges: "This may appear trivial. But unfortunately, trivial results, by their very quality, are often the correct ones."

It is from concrete historical issues such as these that Weber fashioned, in *Economy and Society*, his contrast between patrimonial domination and charismatic rule. The joining of these military with religious phenomena established the category of charismatic domination.[18]

5. *The Roman Empire and Imperial Germany*

Weber had an early interest in the comparison and comparability of Imperial Germany and Imperial Rome. On this score he was close to Theodor Mommsen, who described the Roman Republic in the terms of liberal political theory and polemicized against Imperial Germany with analogies from Antiquity. In the academic public Weber's comparative interest was at first not widely noticed. The *Roman Agrarian History* proved technically too difficult to be understood by more than a very small group of scholars. Alfred Heuss, today counted among the foremost Roman historians, has pointed out that Weber

> was the first to take the Roman agrarian writers (Cato, Varro, Columella) seriously, examining them in a matter-of-fact way . . . and uncovering the crass principles of Roman agrarian capitalism in its technical details. In this respect, the book, although generally neglected by the historians, became path-breaking, and subsequent research had to continue along its line of inquiry. . . . Who else among the historians of the time was capable of handling the legal sources and the technical language of land surveyors, both of which Weber combined in a virtuoso fashion? The book, hard to understand because of its dry and remote subject matter, is an ingenious work.[19]

Among the historians of the time the aged Mommsen was best qualified to judge Weber's work. He hailed its publication and welcomed its author onto his previously exclusive ground: the borderlines of Roman private and public law. As early as the occasion of Weber's doctoral defense Mommsen had said: "When the time comes for me to descend into the grave, there is no one to whom I would rather say: 'Son, here is my spear, it has become too heavy for my arm,' than Max

18. Specifically, booty and military communism is treated in Part Two, ch. XIV:6.

19. Alfred Heuss, "Max Webers Bedeutung für die Geschichte des griechisch-römischen Altertums," *Historische Zeitschrift*, vol. 201, 1965, 535.

Weber."[20] However, Weber did not become his successor and quickly moved beyond the confines of ancient history. In the early nineties he involved himself in a questionnaire study of the conditions of rural laborers conducted under the auspices of the *Verein für Sozialpolitik*, the most important association of professors, politicians and higher civil servants for the study of the Social Question in Imperial Germany. Between 1892 and 1894 Weber published extensively on farm labor, and, in contrast to the *Roman Agrarian History*, his new writings did attract considerable attention. Weber's turn of interest was acknowledged with the offer of an economics chair at the University of Freiburg, which he accepted in 1894; this was an extraordinary offer for a jurist—not even the usual "rehabilitation" (that is, the writing of a second *Habilitation* to qualify in a different academic field) was required.

In Freiburg Weber delivered a popular lecture on "The Social Causes of the Decay of Ancient Civilization" (1896).[21] The major political link between his studies of Antiquity and of East Elbia was the problem of the "rise and fall of empire." The common theme was the self-destruction of empire through the cleavage between the rich and the poor. In the *Roman Agrarian History* Weber had searched for the "social strata and economic interest groups" behind the expansionism of the Empire and the unparalleled capitalist exploitation: "It is likely that the political domination of a large polity has never been so lucrative."[22] The Roman state suffered from a "convulsive sickness of its social body." Weber freely stated his value judgment. The transition from the condition of the barrack slaves to that of hereditarily attached peasants, who were permitted families of their own and conditional land use, appeared to him a decisive change for the better:

> The moral significance of this development need scarcely be emphasized. One must remember that at the beginning of the Empire Bebel's ideal of legal marriage [i.e., freely contracted and dissoluble marriage] was realized *de facto* among the upper strata, *de jure* for citizens in general. The consequences are known. In this study it has not been possible to show the connection between the influence of the Christian ideal of marriage and this economic development, but it should be obvious that the separation of the slaves from the manorial household was an element of profound internal recovery (*Gesundung*), which

20. Marianne Weber, *Max Weber. Ein Lebensbild* (Tübingen: Mohr, 1926), 121—(henceforth cited as *Lebensbild*).

21. "Die sozialen Gründe des Untergangs der antiken Kultur," in *GAzSW*, 289–311; a translation by Christian Mackauer in *Journal of General Education*, V, 1950–51, 75–88.

22. *Agrargeschichte*, 6.

was by no means bought too dearly with the relapse of the "upper ten thousand" into centuries of barbarism.[23]

Weber saw the social developments in East Elbia against the background of Roman history. He observed with apprehension the proletarization of the peasants in the second half of the 19th century. The manorial *Junkers* gradually turned into capitalist entrepreneurs; they preferred cheap seasonal labor—little more than barrack slaves—from beyond the Russian frontier to a permanent and landowning German workforce. Weber foresaw grave dangers in the *Junkers'* labor and tariff policies and rejected their hollow claim to be the military pillars of the Empire even as they undermined it socially and economically. He warned his elders in the *Verein für Sozialpolitik* in 1893 that "the most horrible of all horrors is a landowning proletariat for whom the inherited land has become a curse."[24]

In his 1896 Freiburg address Weber repeated his judgments and cautioned his classically educated audience against its ready belief that the decline of the Roman Empire could provide lessons for the solution of modern social problems. He even went so far as to label the topic as "merely of historic interest." But this was primarily a didactic stricture. He did mean to teach his listeners something about the *relative* importance of the economic factor and of social changes in the lower strata. An intellectual and political culture should not be viewed in isolation from the economic and social structure, as the Humanists had done up to Jakob Burckhardt, and as the classical schools were still doing; basic shifts in the mode and division of labor, and especially economic and cultural changes within the lower strata, could be historically as significant as changes in the ruling groups and their culture. Imperial Germany faced such shifts with the growth of its industrial

23. *Ibid.*, 274f. Weber's view was later detailed by Marianne Weber, *Ehefrau und Mutter in der Rechtsentwicklung* (Tübingen: Mohr, 1907); on marriage in the Roman upper classes, 168–173, on slavery, marriage and Christianity, 177–187, on Bebel, 80. This voluminous comparative study, which Weber suggested to his wife and in which he took a hand, should be seen as the background for the cursory treatment of marriage and property rights in chs. III and IV of Part Two below.

The sudden ironic reference to August Bebel, after many highly technical pages, is to the most popular socialist book of the time, *Woman and Socialism* (1879), esp. ch. 28. In the 9th edition of 1891, Bebel popularized Friedrich Engels' *The Origin of the Family, Private Property and the State* (1884), the Marxist sequel to Lewis H. Morgan's *Ancient Society* (1877). Throughout his career Weber gave attention to the socialist theory of marriage and property. For the last statement (1919/20), see *Economic History*, 20.

24. "Die ländliche Arbeitsverfassung," *GAzSW*, 462.

and agrarian proletariat, although her specific troubles were largely the opposite of those that had brought down the Roman Empire.

Weber presented a simplified version of his explanation for the decline of the Roman Empire—later part of his economic theory of the ancient states: With the stabilization of the Empire the flow of new slaves, the chief capital good of ancient capitalism, began to dwindle. Commerce waned. Administering the vast conquered inland areas with the means of a maritime city state proved increasingly difficult. The latifundia established themselves as administrative units independent of the cities. Local troops replaced the standing army that had been largely self-perpetuating, up to one half of the recruits being the sons of soldiers. As economy and culture became rural, cosmopolitanism vanished. Thus the economic development of Antiquity, which had started out as a localized subsistence economy, came full circle. However, for Weber this circularity (*Kreislauf*) did not involve morphological assumptions in the mode of Oswald Spengler.

The disintegration of the Empire was a problem of super- and substructure: "In essence, the decline meant merely that the urban administrative apparatus disappeared, and with it the political superstructure dependent upon a money economy, since it was no longer adapted to the economic substructure with its natural economy."[25] What had been an urban substructure, the money economy and commerce, became a superstructure without sustaining basis as the shift occurred from a maritime to an inland economy. Thus Weber handled the relationship of super- and substructure in terms of geographical shift as well as time sequence.

Throughout the address, Weber used various comparative devices. He began with the similarities of the ancient and the medieval city in order to identify the causes for their difference; the more similarities he found, the more he could narrow down the area of crucial difference. In order to clarify the dissolution of the ancient municipalities, he resorted to a negative contemporary analogy, the resistance of the Prussian *Junkers* to the administrative incorporation of their estates into the rural "communes" (*Landgemeinden*),[26] and he contrasted the familiar medieval and modern flight from the land with the late Roman flight from the cities. He made the military discipline of the Roman slaves more understandable to his listeners by comparing it illustratively to an experience they knew: military service with its regimented barrack life

25. "Die sozialen Gründe . . . ," *GAzSW*, 308.

26. On the Prussian *Gutsbezirke*, the *Junker*-ruled "estate-districts," see below, ch. XVI:v, n. 9 (p. 1369).

for the unmarried recruits ("slaves"), who were drilled by married non-commissioned officers ("*villici*"). Comparing the slaves on the Roman latifundia with those on the Carolingian estates, Weber pointed to the decisive difference: the latter were permitted a family and the use of land upon their separation from the lord's *oikos*.

6. *The Economic Theory of Antiquity*

Weber's most comprehensive work on Antiquity was written shortly before *Economy and Society*. Behind the title "Agrarian Conditions in Antiquity"[27] was hidden nothing less than a comparative social and economic study of Mesopotamia, Egypt, Israel, Greece, the Hellenist realm, and Republican and Imperial Rome. Alfred Heuss called it "the most original, daring and persuasive analysis ever made of the economic and social development of Antiquity . . . the area in which Weber's judgment, especially in the details, was most sovereign and surefooted, . . . a claim that stands although he was even more 'original' in the sociology of religion."[28]

In contrast to *Economy and Society*, the study focussed on an economic and politico-military typology and did not yet include the categories of legitimate domination. It should be noted that in Weber's thinking the category of appropriation, both of economic and military resources, is older than that of legitimacy; furthermore, that differences in the mode of appropriation in both areas remained equally important to him:

> Whether a military constitution rests on the principle of self-equipment or that of provisioning by the warlord who supplies horses, arms and food, is as fundamental a distinction for social history as is

27. "Agrarverhältnisse im Altertum," *GAzSW*, 1–288; originally published in the *Handwörterbuch der Staatswissenschaften*, third ed. (1909), vol. I, 52–188. The restricted title was determined by the division of the handbook. The ten-page annotated bibliography should be consulted for *Economy and Society*. The book-length study was dashed off in four months in 1908, a feat made possible by the fact that Weber had done his thinking ahead of the period of writing and was thoroughly familiar with the literature.

Weber seems to have divided some of the subject matter with Rostovzeff, who contributed the handbook article on *coloni*. Rostovzeff, who in the United States became much better known than Weber as an ancient economic historian, was one of the few to utilize Weber's analysis. Other historians rediscovered some of Weber's results after the First World War—another instance of the discontinuity that plagues most scholarly disciplines. By and large, it still appears that Weber's ancient studies have not yet been followed through sufficiently.

28. Heuss, *loc. cit.*, 538.

another: whether the means of production are owned by the workers or appropriated by a capitalist entrepreneur.[29]

Given this perspective Weber set himself the task of relating the ancient economy to the major political structures. Almost incidentally, he further clarified his comparative approach. Two issues stood out: (1) If there are no universal evolutionary stages, at any rate, if they cannot be identified historically, what kind of typology is suitable for analysis? (2) If the categories of economic history appropriate for medieval and modern conditions are not applicable to Antiquity, which conceptual alternatives should be used?

As against evolutionary conceptions, Weber advanced a limited developmental scheme that left the actual historical sequences open and put in their stead logical "states" or "conditions"—a model-building device that became basic for *Economy and Society*. This was a "static" approach only in comparison with evolutionary sequences. Weber argued that ancient social history had no visible starting point, since most historical phenomena appeared to be secondary, militarily determined, developments, such as the phratries, phylae and *tribus*. Nothing reliable was known about the primeval rural structure. For Weber even the "plausible hypothesis" that the ruling families at least originated as nomadic conquerors was not generally acceptable, since the aristocratic polity developed at the Mediterranean coast and could be proven to have other origins; the starting points were lost in the darkness of prehistory. All that could be historically reconstructed were "certain organizational states, which apparently repeated themselves to some extent in all those ancient peoples, from the Seine to the Euphrates, that had at least some urban development."[30]

Weber began his analysis with a series of brief comparisons that linked up with his reasoning in "The Controversy About Ancient Germanic Social Structure." European and Asian agrarian history differed in a crucial category: land appropriation. Comparing the course of early settlement in Europe and Asia, Weber saw the former proceeding from initial nomadic livestock raising to mixed crop and livestock agriculture, the latter from nomadic crop raising to intensive agriculture of a gardening type. Hence the development in Europe, but relative absence in Asia, of communal property in grazing grounds.

Next, Weber compared ancient and medieval agriculture in the Occident. In both cases agriculture intensified with the narrowing of economic opportunities. Agricultural preoccupation made the majority

29. Cf. *Economic History*, 237, for a slightly different wording.
30. "Agrarverhältnisse . . . ," *GAzSW*, 35.

of men economically unavailable for military service. Thus arose the professional warriors who exploited the masses. Weber defined feudalism in a manner transcending the medieval case. This enabled him to point to the decisive difference between the ancient and the medieval conditions. Medieval feudalism dispersed the warriors over the countryside as manorial lords (*Grundherren*); ancient feudalism was urban: the warriors lived together in the polis.

In this development military technology was partly cause, partly epiphenomenon. Weber emphasized that in Antiquity, in contrast to the Middle Ages, both the diffusion of superior military techniques and the spread of commerce occurred by sea. Whereas central and western Europe became manorial and feudal at a time when trade by land had declined, "feudal" development in Antiquity led to the creation of the city state. This centralization had the consequence that citizenship was a much firmer bond than were the ties of personal loyalty typical of decentralized medieval feudalism.

At this point Weber cautioned again not to mistake analogy for identity:

> The relationship of ancient urban feudalism to the exchange economy is reminiscent of the rise of the free crafts in our medieval cities, the decline of patrician rule, the latent struggle between urban and manorial economy, and the disintegration of the feudal polity under the impact of the money economy. . . . But these ever present analogies with medieval and modern phenomena are frequently most unreliable and often outright detrimental to unbiassed comprehension. . . . Ancient civilization has specific characteristics that distinguish it sharply from the medieval and the modern.[31]

Weber listed a series of features: Ancient civilization centered on the coasts and the rivers; trade was widespread and highly profitable, but lacked the volume it had in the late Middle Ages; the great ancient empires were more mercantilist than the modern Mercantilist states; private trade was insufficiently developed to guarantee the politically crucial grain supply of the urban centers, which maintained a consumer proletariat of declassed citizens, not a working class; slavery was more important than in the Middle Ages.[32]

These comparisons led Weber to the issue, heatedly debated for many decades, whether the categories of modern and medieval economic history were appropriate for Antiquity. In the eighteen-sixties

31. *Ibid.*, 4.

32. Weber conceded that in earlier writings he had overestimated the importance of slavery relative to free labor, but insisted that in the classic period of the "free" polities slavery was especially important. Cf. *GAzSW*, 7–11, as against his older view, *ibid.*, 293.

Karl Rodbertus, himself a country squire, had investigated the master's extended household (the *oikos*) as the dominant unit of ancient economy; he also gave much attention to ancient capitalism. As a scholar of Antiquity, the conservative socialist Rodbertus surpassed Marx, who had labelled the agrarian developments the "secret history of the Romans." Karl Bücher, whose work proceeded from Rodbertus, Marx, Engels and Schmoller, accepted the *oikos* as one stage within his influential scheme of economic development—household, urban and national economy.[33] Bücher, who believed in the "lawful course of economic development" (Preface, *iii*), was criticized by Eduard Meyer, who denied the need for particular economic concepts in the study of Antiquity. Weber, in turn, warned of the futility of Meyer's approach: "Nothing could be more dangerous than to conceive of ancient conditions as 'modern.' Whoever does it underestimates, as so often happens, the structural differences. . . ."[34]

Weber recognized the importance of the *oikos*, but viewed it, within the Roman context, as the "developmental product" of the Imperial period and as the transition to medieval feudalism; by contrast, the Oriental *oikos* had existed from the beginning of history. As against Rodbertus, who saw the *oikos* developing directly out of the self-sufficient household, Weber pointed for the Orient to its origins in the irrigation economy and trade profit. The early military chieftains were also merchants.

Weber affirmed that Antiquity had a capitalist economy "to a degree relevant for cultural history." He opposed the view that there had been no capitalism because the large-scale enterprise with free and differentiated labor was absent. Such an approach focussed too narrowly, he thought, on the social problems of modern capitalism. Instead, he insisted on a purely economic concept of capitalism: "If the terminology is to have any classificatory value at all," capital must mean private acquisitive capital (*Erwerbskapital*) used for profit in an exchange economy.[35] In this sense the "greatest" periods of Antiquity did have capitalism. The ancient polis began with ground rents and tributes collected by the ruler and the patriciate; its economic prosperity was

33. Cf. Karl Rodbertus, "Zur Geschichte der römischen Tributsteuern seit Augustus," *Jahrbücher für Nationalökonomie und Statistik*, V, 1865, 241–315; "Zur Frage des Sachwerts des Geldes im Altertum," *loc. cit.*, XIV, 1870, 341–420; Karl Marx, *Das Kapital*, in *Werke*, vol. 23 (Berlin: Dietz, 1962), 96; Karl Bücher, *Die Entstehung der Volkswirtschaft* (14th ed.; Tübingen: Laupp, 1920), 83–160—first published in 1893 as a collection of older articles; an English edition s.t. *Industrial Evolution* (New York: Holt, 1901).

34. *GAzSW*, 19.

35. *Ibid.*, 13.

politically determined. However, the mere rendering of tributes to personal rulers lay outside the realm of capitalism and the exchange economy. In this case neither the rent-yielding land nor the retainers could be considered "capital," since domination had a traditional, not a market basis: it was manorial domination (*Grundherrschaft*). When the landowners leased land in an exchange economy, ownership became a capitalist rent fund. But the capitalist enterprise proper came into existence only when both land and slaves became transferrable on the market. The classic cities did not have large-scale private enterprise for any length of time. There was no qualitative division of labor; instead of machinery, debt serfs and purchased slaves were used; the crafts played a secondary role, and the guilds remained unimportant. Much of the ancient economy, then, was a "mixed economy," partly manorial, partly capitalist.

Weber considered the political and administrative structure of the ancient states decisive for the fate of capitalism. The state administration, especially public finance, constituted the biggest enterprise. Only in the city state, which lacked a bureaucratic apparatus for the administration of its territories, could public finances act as a pacemaker for private capital formation—because the polity was for its financing dependent upon the private tax farmer. Weber pointed to a major difference between monarchic and republican states: Ancient capitalism culminated in the Roman Republic, where the public lands became the object of the crassest form of private exploitation. The monarchies constricted capitalism; in the interest of dynastic continuity they were concerned with the subjects' loyalty. In the city republic the primary goal was capitalist exploitation, in the monarchy it was political stability. "In republics tax-farming is always at the ready to turn the state into an enterprise of the state creditors and tax-farmers in the manner of medieval Genoa." Whereas the city state allowed private capital accumulation of a highly unstable kind, the bureaucratic order of the monarchic state economy gradually destroyed the opportunities for private gain. "The monarchic order, so beneficial for the masses of the subjects, was the death of capitalist development and of everything dependent on it."[36]

7. *A Political Typology of Antiquity*

Beyond the contrast between republics and monarchies, well-known from ancient political theory, Weber elaborated a developmental scheme

36. *Ibid.*, 29 and 31.

with open historical direction. Apart from its classificatory uses, he hoped that it would remind the reader of the very different stages of development at which the polities entered the light of history—depending on the "accidental" availability of the sources. In contrast to Greece, Mesopotamia and Egypt had had some kind of urban culture many centuries before the first records were made.

Weber based his typology on the "military constitution" and distinguished:

I. the merely fortified location; II. the petty "castle kings"; III. the clan polity; IV. the bureaucratic urban principality; V. the liturgic monarchy; VI. the polis of privileged citizens; VII. the democratic polis; and outside the scheme, VIII. the military peasant confraternity.

I. The distant forerunner of the city is the walled settlement. Household and village constitute the organizational environment of the individual. Associations for blood revenge, cultic activities, and defense provide police, sacral and political protection, but nothing historically certain can be established about the functional division or overlap of these early associations which come out of prehistory. Free members share in the landed property; the extent of slavery seems to be moderate. Political chieftains, if they exist at all, have mainly arbitrational functions. "It depends on the political situation whether there are any joint political affairs."[37]

II. A closer forerunner of the city is the castle controlled by an owner of land, slaves, cattle and precious metals, that is, a ruler with a personal following. Almost nothing is known about the state of the countryside. The exploitation of the subjects seems to have varied greatly. Fertile land and trade profits led to the rise of these "castle kings"; their law was set against popular law. The separation of the followers from the rural population was important; according to tradition and fact, the following often consisted of bands of aliens and adventurers ("robber bands"). The ancient states originated in the victory of one "castle king" over others.

III. Another approximation to the classic polis is the clan polity (*Adelsstaat*). The nobility is made up of creditors who develop into a stratum of landed *rentiers*. The peasants become first debt serfs and then hereditary dependents. A group of noble families that have accumulated enough land and retainers to equip and train themselves as professional warriors rules the countryside from an acropolis. The "king" loses influence and becomes *primus inter pares* in a militarily organized urban community (in contrast to the feudal-manorial development of the

37. *Ibid.*, 36. Weber deals here with the relatively "universal groups" to which he returned again below, in Part Two, chs. III–VI and VIII.

continental Middle Ages). There is no bureaucracy; at most there are elected officials. The peasants may be legally separate from the status group of free men, but ancient trial and debt procedures as well as the manipulation of the courts by the ruling class are sufficient to maintain the social distance without formal barriers.

IV. From state II (the "castle kingship") development may proceed in a direction contrary to state III: The king may succeed in effectively subordinating his following and in establishing an officialdom through which he governs the "subjects." In this case the city is not autonomous (witness Egypt, Assur and Babylon). The economy may approach "state socialism" or an exchange economy, depending on the mode of want satisfaction of the royal household. Under condition III and IV the extent of the direct utilization of the labor force by the rulers is inversely correlated with the development of the private exchange economy. Insofar as domination rests on taxation, free transfer of real estate may be tolerated. However, the bureaucratic king tends to oppose land accumulation by the aristocracy, whereas he may permit land fragmentation. Witness the Greek tyrants—and Napoleon I.

V. With the rationalization of royal want satisfaction the bureaucratic city or river kingdom may develop into the authoritarian liturgy state, which meets its demands through "an artful system of compulsory services and treats the subjects as mere objects."[38] Even in such a state there may be free trade and geographical mobility, as long as they produce revenue. In fact, the state may favor both, in the manner of the "enlightened despotism" of the 17th and 18th century—another illustrative analogy.

VI. This type emerges from state III, but not without the most heterogeneous transitions. It is the "polis of hoplites," in which the citizens form a heavily armed infantry. The rule of the noble kinship groups over the city and of the city over the countryside is broken. The citizens' army of hoplites comprises all owners of land; hence military service is relatively democratized.

VII. The democratic polis proper is a further development of condition VI. Military service and even citizenship are emancipated from the requirement of landownership, and there is an inconsistent trend to formally qualify for office-holding everyone who has served in the navy, a military branch not requiring self-equipment.

VIII. A major case outside this typology is the association of peasants organized as hoplites, which in some instances made history, from ancient Israel to the medieval Swiss confederation.

38. *Ibid.*, 40.

One important dimension cuts across this typology of military-political organization: "the manifest and latent struggle of the secular-political and the theocratic powers, a struggle that affects the whole structure of social life."[39] Functional specialization separated the primeval linkage of princely and priestly power. The priests became powerful through their control of economic resources, their hold over the religious anxieties of the masses, their possession of early "science" and, especially, their control of education in the bureaucratized states. This struggle led to the historical ups and downs of secularization and restoration in the "substantive development of culture," with usurpers ultimately striving for legitimacy and hence restoration.

Thus did Weber assemble the elements that went into the making of his Sociology of Domination in *Economy and Society*: patrimonialism, feudalism, charisma (as military communism), the city and hierocracy. In sum, Weber's ancient and medieval studies contain not only much of the historical substance of the later work, but also its gradual conceptualization.

8. *Weber's Vision of the Future and His Academic Politics*

Weber did not hesitate to draw political lessons from academic studies, but the relationship must be properly understood. He believed that scholars should unflinchingly face the arduous work of fact-finding and only then express political views. He insisted on detachment in order to gain a hearing for his views—the basic strategy in his academic politics. Sociology became for him a weapon in the struggle against the predominant views in the *Verein für Sozialpolitik* and the founding of the German Sociological Association a vehicle for the same purpose. The two great issues, closely related, were the social dynamics and future of German society and the feasibility and desirability of value-neutrality in social science.[40]

In warning of the political dangers he foresaw, Weber used historical parallels, although he rejected the use of analogies for historical explanation. Thus he appended one page of warnings to his 1908 study of Antiquity in order to impress his readers with vivid parallels. Without

39. *Ibid.*, 44.

40. On the tensions between politics and scholarship in the men of the *Verein für Sozialpolitik*, see Dieter Lindenlaub, *Richtungskämpfe im Verein für Sozialpolitik. Wissenschaft und Sozialpolitik im Kaiserreich* (Wiesbaden: Steiner, 1967). This massive study will be the standard work on the politics of German academic men during the period; the present introduction was still written independently of it.

implying any historical inevitability he upheld—at least didactically—the maxim: "If it has happened before, it may happen again." At issue were the effects of bureaucratization:

> The paralysis of private economic initiative through bureaucracy is not limited to Antiquity. Every bureaucracy, including ours, has the same tendency by virtue of its expansionism. In Antiquity the policies of the city state paved the way for capitalism; today capitalism is the pacemaker for the bureaucratization of the economy. Let us imagine coal, iron and mining products, metallurgy, distilleries, sugar, tobacco, matches—in short, all mass products that are already highly cartellized—taken over by state-owned or state-controlled enterprises; let the crown domains, entailed estates, and state-controlled resettlement holdings (*Rentengüter*) proliferate and let the "Kanitz motion" be passed and executed with all its consequences;[41] let all military and civilian needs of the state administration be met by state-operated workshops and cooperatives; let shipping operations on inland waterways be compelled to use state tugs [as partly realized in 1913], put the merchant marine under state supervision, have all railroads etc. nationalized, and perhaps subject cotton imports to international agreements; let all these enterprises be managed in bureaucratic "order," introduce state-supervised syndicates, and let the rest of the economy be regulated on the guild principle with innumerable certificates of competency, academic and otherwise; let the citizenry in general be of the *rentier paisible* type—then, under a militarist-dynastic regime, the condition of the late Roman Empire will have been reached, albeit on a technologically more elaborate basis. After all, the German burgher of today has retained scarcely more of his ancestors' qualities from the medieval Town Leagues than the Athenean in Caesar's time had preserved those of the fighters at Marathon. "Order" is the motto of the German burgher—even, in most cases, if he calls himself a Social Democrat. It is very likely that the bureaucratization of society will one day subdue capitalism just as it did in Antiquity. Then the "anarchy of production" will be replaced by that "order" which, in a very similar way, characterized the late Roman Empire and, even more, the New Kingdom and the rule of the Ptolemies in Egypt. Let no one believe that the citizens' service in a barracked army, bureaucratically equipped, clothed, fed, drilled and commanded, can provide a countervailing force to such bureaucratization or, more generally, that

41. *Rentengüter* were small holdings, indivisible and inalienable except with government permission, created for the "inner colonization" (Germanization) of the eastern part of the *Reich*, first under the Prussian resettlement act of 1886.—Count Kanitz, a Conservative *Reichstag* deputy, in 1894 demanded the institution of a state monopoly for grain imports in the interest of price supports for the output of the grain-producing *Junker* estates of eastern Germany. The so-called "Kanitz motion" failed, but was thereafter resubmitted year after year by the agrarian groups.

> modern conscription in dynastic states has any inner affinity with the spirit of the citizenry-in-arms of the distant past. However, these perspectives do not belong here.[42]

It is, of course, significant that Weber added these perspectives in spite of his disclaimer. In the fall of 1909 the Weber brothers, Max and Alfred, clashed with an older generation of scholars at the Vienna meeting of the *Verein für Sozialpolitik*. Some younger members were critical of the state metaphysics of men like Gustav von Schmoller and were ready to go beyond their elders in matters of social reform, against them with regard to democratization. The two Webers attacked the belief of the older reform generation that strengthening the power of the state and extending the economic functions of its bureaucracy would lead to greater social harmony. Opposing the conservative State Socialism of the aged Adolf Wagner, they pointed to the dangers of bureaucratization. *Economy and Society* later demonstrated how the bureaucratic phenomenon could be studied comparatively in a non-ideological way. But at Vienna Weber expressed his sentiments and convictions, which should be seen not only as the counterpoint, but as one of the motives, for the Sociology of Domination. Weber granted to the older view of bureaucracy—perhaps in part as a tactical concession—that

> no machinery in the world functions so precisely as this apparatus of men and, moreover, so cheaply. . . . When the *Verein für Sozialpolitik* was founded [in 1872], the generation of Privy Councillor Wagner called for more than purely technical yardsticks in economic affairs; at the time this group was just as small as we who think differently are today in relation to you. Gentlemen, you then had to fight the salvo of applause for the purely technological accomplishments of industrial mechanization emanating from the laissez-faire doctrine. It appears to me that today you are in danger of providing such cheap applause to mechanical efficiency as an administrative and political criterion. . . . Rational calculation . . . reduces every worker to a cog in this [bureaucratic] machine and, seeing himself in this light, he will merely ask how to transform himself from a little into a somewhat bigger cog, . . . an attitude you find, just as in the Egyptian *papyri*, increasingly among our civil servants and especially their successors, our students. The passion for bureaucratization at this meeting drives us to despair.[43]

Weber was not opposed to the *Verein für Sozialpolitik* as a propaganda association, as he called it, but its academic activities were unduly handicapped, he felt, by its ideological preoccupations. Hence, after the

42. *GAzSW*, 277f.
43. *GAzSS*, 413f.

Vienna meeting, he proposed the founding of the German Sociological Association—to be an instrument of collective empirical research and "purely scientific discussions." In the winter of 1909/10 he suggested team projects on the press, voluntary associations, and the relationship of technology and culture. Weber apparently sustained most of the organizing effort. It was soon clear that his colleagues resisted project cooperation and only hesitantly accepted organizational responsibilities. And some men whose academic careers had suffered because of their novel sociological interests, Weber noted with chagrin, viewed the association as compensation for status deprivation—he spoke of a *salon des refusés*. The Sociological Association first met in the fall of 1910. Weber summarized the intent of the statutes: "The association rejects, in principle and definitely, all propaganda for action-oriented ideas from its midst." He immediately added that this had nothing to do with general nonpartisanship or the "popular middle-of-the-road line"; rather, it meant studying "what is, why something is the way it is, for what historical and social reasons."[44] Secondly, the association should not be an assembly of notables for whom membership in one or another committee was a matter of honor. Thirdly, the association should not engage in "empire-building" and arrogate to itself tasks better left to decentralized study.

Sociology, then, was to be disciplined discourse and information gathering, but sociologists should be politically articulate. Weber wanted to separate the organizational setting for research from political action. In the fall of 1912 he attempted to organize men from the left wing of the *Verein für Sozialpolitik;* a few met in Leipzig to arrange periodic meetings on the failures and the future of welfare legislation and social reform. Differences of opinion, however, proved too great and no further meetings took place.[45]

At the second annual gathering of the German Sociological Association Weber pleaded once more for the *raison d'être* of the association,

44. *Verhandlungen des Ersten Deutschen Soziologentages*, Frankfurt, 19.–22. Okt. 1910 (Tübingen: Mohr, 1911), 39f. On the contrast between scientific assessment and ideological judgment and the need for a technical terminology, see also Friedrich von Gottl-Ottlilienfeld, *Die Herrschaft des Wortes* (Jena: Fischer, 1901). Weber esteemed this neglected work and acknowledged it in the prefatory note to *Economy and Society*. Gottl was one of the first expositors and defenders of "jargon" in social science, that means, of terms removed from both common sense meanings and ideological preference. On the definition of value-neutrality (*Werturteilsfreiheit*) see Johannes Winckelmann's article in *Historisches Wörterbuch der Philosophie* (forthcoming).

45. See Weber's *post mortem* circular to the participants dated Nov. 15, 1912, in Bernhard Schäfer, ed., "Ein Rundschreiben Max Webers zur Sozialpolitik," *Soziale Welt*, XVIII, 1967, 261–271.

"somber discussion" and the study of "questions of fact," since the habit of value judgment persisted. As he later said: "Will the gentlemen, none of whom can manage to hold back his subjective 'valuations,' all infinitely uninteresting to me, please stay with their kind. I am absolutely tired of appearing time and again as the Don Quixote of an allegedly unworkable approach and of provoking embarrassing scenes."[46]

This aggressive stand for detachment must be seen in the institutional context of the time. Weber especially abhorred the misuse of the rostrum for the indoctrination of the students, who could neither answer nor argue. "The least tolerable of all prophecies is surely the professor's with its highly personal tinge."[47] However, many students indulged in "zoological nationalism." In that case Weber's postulate involved the attempt to face them with inconvenient facts. Weber also continued Mommsen's struggle for a "science without presuppositions"—Mommsen's war-cry against the repeated intrusion of religious criteria in academic appointments.

Weber's advocacy of field and survey research, a crucial part of his notion of "value-neutral" fact-finding,[48] put him ahead of most of his colleagues, but here he was also his own worst enemy. He was quite successful at raising funds and opening channels for the large-scale projects of the Sociological Association, yet he was not well-suited for the role of project or institute director who furthers research by diplomatically avoiding controversy with clients and colleagues. The press study did not materialize when Weber withdrew as director to avoid biassing the project: Early in 1911 he had begun a lawsuit to force a newspaper to reveal a slanderous source, a move that made him controversial in some press circles.[49] Weber was never content to be a mere student of law; in the nineties he had practiced law along with his teaching and writing. He considered the suit an honorable and pragmatic form of normatively controlled struggle—one of his major scholarly concerns.

46. Marianne Weber, *Lebensbild*, 430.

47. *Ibid.*, 335.

48. On the pioneering efforts of Weber and Tönnies, see Anthony R. Oberschall, *Empirical Social Research in Germany, 1848–1914* (The Hague: Mouton, 1965). Weber and Tönnies stood firmly together in their advocacy of field and survey research. Tönnies strongly backed Weber's notion of value-neutral sociology against Troeltsch. See Ferdinand Tönnies, "Troeltsch und die Philosophie der Geschichte," in his *Soziologische Studien und Kritiken* (Jena: Fischer, 1926), 419f.

49. For Weber's explanation see *Verhandlungen des Zweiten Deutschen Soziologentages*, Berlin, 20.–22. Okt. 1912 (Tübingen: Mohr, 1913), 75ff. On the background of the suit, see below, p. 354, n. 6.

His willingness to fight openly, and to sue if necessary, in academic and personal affairs made him a highly inconvenient man and tended to impair his effectiveness as an organizer of academic enterprises. Weber persistently criticized the corporate failings of the professorial estate. His articles and statements on academic improprieties, the general state of the universities and the need for university reform elicited the public counter-attack, at one time or another, of groups of professors and officials of the ministries of education.[50] In general, his intellectual, political and moral demands were beyond the capabilities of most of his colleagues.

At any rate, in 1912 Weber withdrew completely from his executive duties in the Sociological Association: "I must return now to my scientific work. Things can't go on this way; I am the only one to sacrifice personal scholarly interests, yet I have achieved no more than the bare running of a coasting machine."[51] The work to which he returned was *Economy and Society*.

9. *The Planning of* Economy and Society

Marianne Weber reminisced in her husband's biography that *Economy and Society* "unintendedly grew into the major work of his life."[52] The impetus came from Paul Siebeck, publisher of the famed *Archiv für Sozialwissenschaft und Sozialpolitik*, which Weber, Werner Sombart and Edgar Jaffé had taken over in 1904. In 1909 Siebeck proposed to replace the outdated *Handbuch der politischen Oekonomie* edited by Gustav Schönberg in the eighteen-eighties,[53] which among two dozen contributions contained Schönberg's theory of economic stages (2nd ed., I, 25–45; criticized below on p. 117) and August Meitzen's rationale for agrarian research from a liberal point of view (2nd ed., II, 149–224). Weber agreed to edit an entirely new series. However, the fact that this was a new venture did not prevent an acrimonious academic row, when a young professor who had failed to find contributors for a revised edition of the old handbook accused the publisher and, by implication, Weber of slighting the financial interests of Schönberg's impoverished heirs. Weber came to Siebeck's defense; the young man, in turn, mobilized a group of older professors and threatened a public

50. For an account, see Marianne Weber, *Lebensbild*, 413–17, 430–56.
51. *Ibid.*, 429.
52. *Ibid.*, 425.
53. Gustav Schönberg (ed.), *Handbuch der Politischen Oekonomie* (2 vols.; Tübingen: Laupp, 1882; 2nd revised and enlarged ed. in 3 vols., 1885–86).

scandal. In the ensuing morality play Weber's acute sense of honor and propriety was once again engaged.[54]

The old handbook was limited to the traditional topics of political economy. Weber titled his series *Outline of Social Economics* (*Grundriss der Sozialökonomik*); the term, wider than "institutional economics" and less inclusive than "sociology," enabled him to encompass all relationships of economy and society. He asked a number of men for contributions to be completed within two years. However, some failed in their promises, others produced disappointing manuscripts, still others were dismayed as their contributions were outdated by the resulting delays. The first volumes did not appear until 1914; then the war interrupted the venture. The series closed in 1930 with more than a dozen volumes published. Among contributors well-known in the United States were Robert Michels, Werner Sombart, Joseph Schumpeter, Emil Lederer, Karl Bücher and Alfred Weber. Some titles in the series were: *The Economy and the Science of Economics; Economic Theory; Economy and Nature; Modern Capitalist Economy; Social Stratification Under Capitalism; Welfare Politics Under Capitalism; Foreign Trade and Trade Policies;* there were also several volumes on primary, secondary and tertiary industries.

As the coordination troubles of the projected series mounted, Weber expanded his own contribution. Without this exigency, he might never have attempted a *summa* of his sociology, given his absorption in other interests and his conviction of the "futility of the idea . . . that it could be the goal of the cultural sciences, no matter how distant, to construct a closed system of concepts which can encompass and classify reality in some definitive manner and from which it can be deduced again."[55] Now, however, he was motivated to attempt his own historically open systematization: "Since it was impossible to find a substitute for some [promised but unwritten] contributions, I concluded that I should write a rather comprehensive sociological treatise for the section on *Economy and Society*, to provide an equivalent presentation and to improve the quality of the series. I had to sacrifice other projects much more important to me; in other circumstances I would never have taken on such a task." His wife saw through these complaints: "At last he was under the spell of a great unified task."[56]

In his 1914 introduction to the series Weber spelled out the rationale

54. Marianne Weber, *Lebensbild*, 446–453.
55. *GAzW*, 184; cf. Shils and Finch (eds.), *Methodology* . . . , 84.
56. Marianne Weber, *Lebensbild*, 424.

of the project: "The basic idea was to study economic development particularly as part of the general rationalization of life. In view of the systematic character of the work the addition of a general economic history has not been planned for the time being."[57]

Tracing the historical lines of rationalization was certainly one of Weber's intentions in *Economy and Society*, as is also indicated by scattered remarks in the text (for example, below, 333). However, the work is not primarily a study in the rationalization and the "disenchantment" of the world.[58] In a letter of June 21, 1914, Weber explained to the redoubtable medievalist Georg von Below his specifically sociological intention:

> This winter I will probably begin with the printing of a fairly voluminous contribution to the *Outline of Social Economics*. I am dealing with the structure of the political organizations in a comparative and systematic manner, at the risk of falling under the anathema: "dilettantes compare." We are absolutely in accord that history should establish what is specific to, say, the medieval city; but this is possible only if we first find what is missing in other cities (ancient, Chinese, Islamic). And so it is with every thing else. It is the subsequent task of history to find a causal explanation for these specific traits. I cannot believe that ultimately you think otherwise; some of your remarks speak more for than against my assumption. Sociology, as I understand it, can perform this very modest preparatory work. In this endeavor it is unfortunately almost inevitable to give offense to the researcher who *completely* masters *one* broad field, since it is, after all, impossible to be a specialist in *all* areas. But this does not convince me of the scientific futility of such work. Even my hastily written essay on ancient agrarian history (in the *Handwörterbuch der Staatswissenschaften*) has been useful, including those findings that have been superseded. This seems to me proven

57. In Karl Bücher *et al.*, *Wirtschaft und Wirtschaftswissenschaft*, Section I, Vol. 1 of *Grundriss der Sozialökonomik* (2nd ed.; Tübingen: Mohr, 1924), vii. Upon the urging of students, Weber turned to the task of a general economic history in the winter of 1919/20. This was his last completed lecture course. After his death the lectures were reconstructed from student notes and published as *Wirtschaftsgeschichte. Abriss der universalen Sozial- und Wirtschaftsgeschichte* (3rd ed.; Berlin: Duncker & Humblot, 1958), translated by Frank H. Knight as *General Economic History* (New York: Greenberg, 1927). The *Economic History* suffers from various gaps; the English edition also omits the terminological introduction. The work makes easier reading than *Economy and Society* insofar as it treats phenomena such as the household, neighborhood, kin-group, village, and manor in greater historical continuity; it is inferior in terminological and systematic respects.

58. For an interpretation merely along this line, see Günter Abramowski, *Das Geschichtsbild Max Webers. Universalgeschichte am Leitfaden des okzidentalen Rationalisierungsprozesses* (Stuttgart: Klett, 1966).

by the dissertations of Wilcken's pupils in Leipzig. But the essay was certainly no masterpiece.[59]

In the same year—1914—Weber published a projected table of contents for the *Outline of Social Economics*, including a detailed plan for the manuscript (Part Two) he had written between 1910 and 1914 —Part One was written years later. The table of contents shows that Section III of the *Outline* was titled "Economy and Society" and was to contain two parts, "The Evolution of Systems and Ideals in Economic Policy and Social Reform" by Eugen von Philippovich[60] and "The Economy and the Normative and De Facto Powers" (*Die Wirtschaft und die gesellschaftlichen Ordnungen und Mächte*) by Weber. *Economy and Society* is not, then, the original title of Weber's work. The title now used for Part Two of the work is the "true" one, if more cumbersome in English. However, its meaning is not obvious. Weber does not proceed from the national economy and its relation to society; rather he begins with social action, of which economic action is that rational case concerned with want-satisfaction under conditions of resource scarcity and a limited number of possible actions. The basic "economy" is the "household" in the archaic English sense; in common German parlance *Wirtschaft* may refer to a farm or an inn as well as to the national economy.

The "normative and de facto powers" are the laws and conventions, on the one hand, and the groups that sustain them on the other. The relationship between the normative and the merely coercive, between legitimacy and force, is ever varying in the flux of ideal and material interests and the vicissitudes of power struggle. There are no historically effective ideas and ideals without social interests backing them, and force is rarely used without at least the semblance of a rationale before the staff and the subjects. The formulation of the title expresses these dual forces that impinge on the individual's social action.

Weber's projected table of contents (of Part Two) compares with the chapters of the English edition (in parentheses) as follows:[61]

59. The letter is reprinted in the second edition of Georg von Below, *Der deutsche Staat des Mittelalters* (Leipzig: Quelle und Meyer, 1925), xxiv. The dictum "dilettantes compare" was coined by Goethe and hurled by Heinrich Brunner against representatives of the comparative method (cf. *ibid.*, 333).—Weber certainly addressed himself *ad hominem*, but more in emphasis than content.

60. Published in Karl Bücher *et al.*, *op. cit.*, 126–183.

61. The table of contents, which was included in the early volumes of the *Grundriss der Sozialökonomik*, is reprinted in Johannes Winckelmann, "Max Webers Opus Posthumum," *Zeitschrift für die gesamten Staatswissenschaften*, vol. 105, 1949, 370f. In this essay Winckelmann first proposed his reorganization

1. Categories of the Various Forms of Social Order (*partly contained in ch. I:1–2, but mostly in "On Some Categories of Interpretive Sociology"; cf. Appendix I, below*)
   The Most General Relationships Between Economy and Law (*ch. I:4*)
   The Economic Relationships of Organized Groups (*ch. II*)
2. Household, Oikos and Enterprise (*ch. IV*)
3. Neighborhood, Kin Group and Local Community (*ch. III*)
4. Ethnic Group Relationships (*ch. V*)
5. Religious Groups
   The Class Basis of the Religions; Complex Religions and Economic Orientation (*ch. VI*)
6. The Market (*ch. VII*)
7. The Political Association (*ch. IX*)
   The Social Determinants of Legal Development (*ch. VIII*)
   Status Groups, Classes, Parties (*ch. IX:6*)
   The Nation (*ch. IX:5*)
8. Domination
   a) The Three Types of Legitimate Domination (*ch. X–XIV*)
   b) Political and Hierocratic Domination (*ch. XV*)
   c) Non-Legitimate Domination. The Typology of Cities (*ch. XVI*)
   d) The Development of the Modern State
   e) The Modern Political Parties

Weber died in 1920 before finishing either Part Two or the later Part One. The last two sections on the modern state and the modern political parties remained unwritten. Weber's table of contents of Part Two was not followed in the two editions undertaken by Marianne Weber and Melchior Palyi (1922 and 1925) and the reprint of 1947 (third ed.). It was not until Johannes Winckelmann's edition of 1956 (fourth ed.) that the intended structure of the manuscript was largely restored.

10. *The Structure of* Economy and Society

The following remarks are not intended to summarize *Economy and Society*, but to elucidate some of Weber's underlying reasoning as well as

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of *Wirtschaft und Gesellschaft*. See also his introduction to the 1956 edition (*WuG*, xi–xvii); the preface for the 1964 paperback edition (*WuG*-Studienausgabe, xv–xvi) indicates some further changes.

some of the systematic connections among the chapters, irrespective of their length. Particular attention will be given to the previously untranslated chapters and sections and their relationship with the other parts.

I. PART TWO: THE EARLIER PART

CH. 1. THE ECONOMY AND SOCIAL NORMS: ON STAMMLER

Most books have a foil as well as a model. They are written to criticize some books and emulate others. One visible starting point of *Economy and Society* is the attempt at a positive statement of what Rudolf Stammler "should have meant," as Weber put it in the prefatory note to his essay "On Some Categories of Interpretive Sociology" (1913)."[62] This essay was part of a longer methodological introduction to the work and corresponds to the first section in the 1914 outline, "Categories of the Various Forms of Social Order."

Like his friends Jellinek, Simmel and Sombart, Weber wrote a critique of Stammler's *Economy and Law According to the Materialist Interpretation of History*.[63] Weber bluntly denied its "right to scientific existence,"[64] but his critique was not identical with his objections to historical materialism. Stammler, a neo-Kantian philosopher, claimed to have systematically deduced the feasibility of objectively correct social action and laid a new epistemological foundation for social science by demonstrating the identity of social ideal and social law. He discussed at great length the relations between legal and economic order and denied their causal relationship in favor of their correspondence as form and content, a position diametrically opposed to Weber's, who repeated in *Economy and Society* (below, 325ff. and 32f.) that his critique was directed against (a) the confusion of the normative with the empirical validity of an order, (b) the confusion of regularities of action due to normative orientation with merely factual regularities, (c) the contrast between convention and law in terms of free will—as if conventions

62. "Über einige Kategorien der verstehenden Soziologie," *Logos*, IV, 1913, reprinted in *GAzW*, 427. See also below, p. 4.

63. Cf. Rudolf Stammler, *Wirtschaft und Recht nach der materialistischen Geschichtsauffassung. Eine sozialphilosophische Untersuchung* (2nd improved ed.; Leipzig: Veit, 1906). For Stammler's definition of the task of the social sciences and a summary of his theory, see 574ff. Weber spoke on the difference between Marx and Stammler at the 1910 meeting of the Sociological Association; cf. *Verhandlungen des Ersten Deutschen Soziologentages*, 96.

64. "R. Stammler's 'Überwindung' der materialistischen Geschichtsauffassung" (1907), reprinted in *GAzW*, 291.

were not coercive—, and (d) the identification of law and convention as the "forms" of conduct as against its "substance."

As a trained jurist and economist Weber was faced with both the normative orientation of jurisprudence and the ethical components of laissez-faire and state-socialist economics. He could develop a sociological approach only by insisting on the separation of the normative and the empirical, a separation accomplished with his theory of social action. In the essay on interpretive sociology and in Part Two of *Economy and Society* he defined social action just as he did later in Part One: subjectively meaningful action oriented to the behavior of others—it is called *Gemeinschaftshandeln* in the older part and *soziales Handeln* in the newer. Normatively regulated action is only one variant of social action. "Sociology, insofar as it is concerned with law, deals not with the logically correct 'objective' content of legal norms but with action for which, *among other considerations*, the ideas of men about the meaning and validity of certain regulations may play a significant role as both determinants and resultants."[65]

Weber elaborated a continuous typology of social action along the line of increasing rational control, persistence and legal compulsion. This typology—partly presented in Appendix I—ranges from mere consensual action (*Einverständnishandeln*) and *ad hoc* agreement (*Gelegenheitsvergesellschaftung*), through various kinds of regulated action and enduring association (*Vergesellschaftung*), to the organization (*Verband*) and compulsory institution (*Anstalt*). These kinds of action differ from behavior that is not social or borderline: *Massenhandeln*, which may be rendered "mass action," "statistically frequent action" or "collective behavior."

In this scheme only men act, neither society nor individual groups. However, men acting in concert form groups (*Gemeinschaften*), and these persist only if they have a "constitution" in the sociological sense, that is, if their order is consensually accepted by members (or outsiders) for whatever reasons. Belief in legitimacy need not be the primary reason. Therefore, Weber deals in the first chapter with the consequences of the factual impact of law on economic conduct.

The economic order is made up of the actual control over goods and services insofar as it is consensually recognized. Sociological economics, then, deals with the actions of men insofar as they are conditioned "by the necessity to take into account the facts of economic life." However, instrumentally rational action must also take into account the fact of law, defined empirically as "guaranteed law": A legal order exists whenever an association is ready to enforce it. Weber makes it immediately

65. *GAzW*, 440. Emphasis added.

clear that law is by no means in all cases "guaranteed" by violence (*Gewalt*), and he rejects the view that "a state exists only if the coercive means of the political community are superior to all other communities" (below, 316).

The two basic categories of an order—convention and law—Weber defines in close proximity to Sumner and in contrast to Stammler. Although conventions are not safeguarded by men (a staff or apparatus) specifically associated to uphold them, they can be enforced just as effectively as law by psychological, and even physical, coercion on the part of the group members. Compliance with a conventional or legal order is frequently determined by a person's self-interest in the continuation of consensual action. Unreflecting habit is another universal reason for regular and regulated behavior. The beginnings of convention and law in habit, usage and custom lie in the realm of inaccessible prehistory. Yet, in view of these powers of persistence, the historian must be able to account for the innovating capacity of men. Rejecting older views of imitation, Weber prefers Hellpach's theory of innovation through inspiration and empathy—an anticipation of the theory of charisma in chs. VI and XIV.

Throughout his analysis, Weber combines his effort at terminological precision with an insistently realistic approach to human affairs: Men are creatures of habit, but they are also strongly motivated by their material and ideal interests to circumvent conventional and legal rules; in all societies the economically powerful tend to have a strong influence on the enactment and interpretation of the law. However, the presence of law, with its various forms of coercion, makes a great deal of difference for social action. On a general level more cannot be said. Here as elsewhere Weber carefully points out the limits of generalization: "The extent of the law's factual impact on economic conduct cannot be determined generally, but must be calculated for each particular case."

CH. II: ON MARX, MICHELS AND SOMBART

Weber's emphasis on the limits of generalization has here a critical thrust directed against historical materialism and economic functionalism (below, 341). A work on economy and society must sooner or later take a stand on historical materialism—Weber took his stand at the first appropriate moment. It would be wrong, however, to say that the critique of historical materialism occupies the dominant place in the work, above and beyond Weber's other polemical and positive interests. What may appear at first sight as "reaction" to, or "reflection" of, historical materialism—such as Weber's interest in ancient capitalism—more often stands in a tradition of economic and legal history of which Marxism was an

extreme offshoot. Weber recognized historical materialism as a political force but did not take its ultimate claims seriously. About the time this chapter was written, he told his peers at the first meeting of the Sociological Association:

> I would like to protest the statement by one of the speakers that some one factor, be it technology or economy, can be the "ultimate" or "true" cause of another. If we look at the causal lines, we see them run, at one time, from technical to economic and political matters, at another from political to religious and economic ones, etc. There is no resting point. In my opinion, the view of historical materialism, frequently espoused, that the economic is in some sense the ultimate point in the chain of causes is completely finished as a scientific proposition.[66]

Weber also rejects economic functionalism insofar as it postulated an unambiguous interdependence of economic and non-economic elements. Not all social action is economically influenced, and not all groups are economically relevant. Culturally important groups, however, have some kind of relationship with economic elements; all persistent groups must in some way meet their wants. Weber presents a simple typology of economically active groups, ranging from economic groups proper, through various economically active groups and those merely influenced by economic factors, to regulatory groups of a political, religious or other nature.[67] (In line with the reasoning in ch. I, regulatory groups belong into an economic typology of groups.)

Although Weber gave attention to the technological factor in history, he related want satisfaction primarily to modes of appropriation and expropriation, not to modes of production. The crucial importance of appropriation appears at first sight as a "quasi-Marxist" position, but in fact is another difference from Marx. Weber saw the Marxist concept of the mode of production blurring the technological and economic aspects. He explained before the Sociological Association:

> To my knowledge, Marx has not defined technology. There are many things in Marx that not only appear contradictory but actually are found contrary to fact if we undertake a thorough and pedantic analysis, as indeed we must. Among other things, there is an oft-quoted passage: The hand-mill results in feudalism, the steam-mill in capitalism. That is a technological, not an economic construction, and as an assertion it is simply false, as we can clearly prove. For the age of the hand-mill, which extended up to modern times, had cultural "super-structures" of all conceivable kinds in all fields.[68]

66. *Verhandlungen des Ersten Deutschen Soziologentages*, 101.

67. In Part Two the economically active groups are called *Gemeinschaften*, in Part One *Verbände* (organizations).

68. *Verhandlungen*, *op. cit.*, 95f. The point is repeated below, 1091.

Such superstructures are related to modes of appropriation, which emerge from the competition for livelihood but also depend on the nature of an object, material or immaterial. Weber does accept the historical generalization that free property and acquired rights grew out of the gradual appropriation by group members of their shares in the group's holdings. Private property became important with the disintegration of the old monopolist associations. It is a recurrent process in history that decreasing opportunities lead to monopolization; then legally privileged groups with privileged members (*Rechtsgenossen*) and organs come into being. Weber lists the stages of the appropriation of opportunities through external and internal closure. With fine nominalist irony he mixes contemporary examples from Imperial Germany with historically early illustrations (below, 342).

Once an organization has been established, the vested interests of the organs (functionaries, officials) tend to perpetuate or transform it beyond the original purpose. This phenomenon of institutionalization was a controversial point between Weber and his friend Robert Michels, who was just completing his *Political Parties* (1911).[69] Whereas Michels reified his observations into the "iron law of oligarchy" and thus stressed the sameness of the phenomena at issue, Weber pointed to the multiple, and often contradictory, consequences of institutionalization, which might lead to monopolization *or* expansionism (ch. II:3). For Weber the greatest historical example for the expansionist tendency was the age-old connection of capitalist interests with imperialism. The expansionist tendencies of an organization could, however, be restrained by monopolist interests. In voluntary organizations the rational primary purpose might be overshadowed by "communal" goals if social action involved personal elements (below, 346), thus promoting closure and establishing social legitimacy.

Irrespective of this dualism, most rationally organized groups must satisfy their wants in one or more of the following ways: (1) the *oikos;* (2) market-oriented assessments; (3) production for the market; (4) maecenatic support; (5) contributions and services linked to positive and negative privileges (ch. II:4).

With this typology Weber completes the economic framework for the substantive theme that runs through all of *Economy and Society:* the preconditions and the rise of modern capitalism. Subsequently, this

69. On the close intellectual relationship between Michels and Weber, see my *The Social Democrats in Imperial Germany* (Totowa, N.J.: Bedminster Press, 1963), 249–257; cf. also Juan Linz, "Michels e il suo contributo alla sociologia politica," introduction to Roberto Michels, *La Sociologia del Partito politico nella Democrazia moderna* (Bologna: Il Mulino, 1966), 7–119.

problem is treated from several vantage points: the household and other relatively universal groups (chs. III–V), religion (ch. VI), law (ch. VIII), political community (ch. IX), and the various kinds of rulership (chs. X–XVI). This underlying theme, however, does not determine the typological structure of the chapters; moreover, it is paralleled by the themes of rationalization in religion, law and politics. In view of the importance that Weber attributed to the political factor in his previous work, it is no surprise that his first historical explanation (ch. II:5) concerns the way in which the fiscal and monetary policies of the modern states made possible the rise and persistence of capitalism.

The issue of the origins of capitalism puts *Economy and Society* besides the work that apparently was both inspiration and foil: Werner Sombart's *Modern Capitalism*.[70] Its two massive volumes were published in 1902, shortly before Weber began writing "The Protestant Ethic and the Spirit of Capitalism." Sombart and Weber had been close allies since the mid-nineties. Weber unsuccessfully tried to have Sombart succeed him in Freiburg when he left for Heidelberg in 1897; in the reactionary nineties—the so-called Era Stumm—official resistance to Sombart was too strong. Both men shared a wide interest in the capitalist enterprise, the spirit of capitalism, social reform and the labor movement, and together they advocated the value-neutral approach in the *Archiv für Sozialwissenschaft*. Sombart was the more flamboyant of the two and proved to be more mercurial. On the one hand, he demanded "facts, facts, facts—this admonition rang in my ears all the time I was writing the book." On the other, he also tried to explain them from ultimate causes: "What separates me from Schmoller and his school is the constructive element in the ordering of the material, the radical postulate of a uniform explanation from last causes, the reconstruction of all historical phenomena as a social system, in short, what I call the specifically theoretical. I also might say: Karl Marx."[71]

This was not much more than a rhetorical declaration exaggerating the difference from his former teacher Schmoller. The work failed to link the many facts with its postulate and showed that Sombart was

70. Werner Sombart, *Der moderne Kapitalismus*, vol. I: *Die Genesis des Kapitalismus*, vol. II: *Die Theorie der kapitalistischen Entwicklung* (Leipzig: Duncker & Humblot, 1902). Vol. III appeared much later as *Das Wirtschaftsleben im Zeitalter des Hochkapitalismus* (Munich: Duncker & Humblot, 1927). For Talcott Parsons' interpretation of Sombart's relation to Marx, on the one hand, and to Weber on the other, see his *Structure of Social Action* (Glencoe, Ill.: The Free Press, 1949), 495–499, and "Capitalism in Recent German Literature: Sombart and Weber," *Journal of Political Economy*, vol. 36, 1928, 641–661, and vol. 37, 1929, 31–51. Parsons, however, does not deal with the question of the extent to which Weber's writings were a direct response to Sombart.

71. Sombart, *op. cit.*, I, xii and xxix.

already far removed from Marxism, if he ever was an orthodox Marxist. At any rate, Weber did not consider the postulate feasible, but he was interested in Sombart's facts and decided to approach them through systematic comparative study. Since this involved a methodological difference, it was more than a mere sensible division of labor.[72] Sombart contrasted the traditionalist orientation of craft production with the spirit of capitalism, which to both men appeared very different from the universal desire for wealth. This spirit was a peculiarly European phenomenon, but Sombart barely hinted at the comparative perspective: "A glance at other major civilizations, such as the Chinese, Indian, or ancient American, is enough to prove, in this regard too, the insufficiency of the view that the genesis of modern capitalism can be explained from a 'general law of development' of the human economy."[73] Where Sombart merely glanced, Weber proceeded to the comparisons of *Economy and Society* and, immediately afterwards, the studies of China, India and ancient Judaism.

CHS. III–V: THE RELATIVELY UNIVERSAL GROUPS

At the beginning of ch. III Weber limits his use of the term "society" to "the general kinds of human groups." He intends to deal with economy and society in this sense, not with economy and *Kultur*—literature, art, science. The first groups to be treated are relatively universal—household, neighborhood, kin group, ethnic group, religious group, political community—; in other words, they are found at various levels of historical development. The "developmental forms" of these groups are taken up in the Sociology of Domination. The treatment of the more basic forms is intentionally brief, in part because Weber is primarily interested in the more differentiated associations and their relationship to religion, law and politics, in part, presumably, because Marianne Weber had dealt with some of the subject matter at length in her work on *Wife and Mother in Legal Development* (1907). Weber limits himself to a series of points that either have polemical value or prepare the later exposition. His critical targets are evolutionary conceptions, especially the theory of matriarchy and the related socialist theory of family, property and the state (Engels and Bebel); the neighborhood sentimentalism of agrarian romantics; Gierke's notion of the kin group as the first political association; and racist and nationalist ideas. Against the Romanticist notions of those mourning the passing of Community, but also against the apostles of Progress, Weber endeavors to show that

72. Cf. Parsons, "Capitalism . . . ," *loc. cit.*, 31, 50.
73. Sombart, *op. cit.*, I, 379.

"communal" and rationalist, capitalist and communist, traditionalist and modernist elements appear in ever new combinations—in short, that history is not the progression from *Gemeinschaft* to *Gesellschaft*.

Positively, Weber points out: The household is the original locus of patriarchal rulership and the capitalist enterprise; the neighborhood is an unsentimental economic brotherhood; the kin group is the protective counter-force to the authoritarian household; ethnic groups are not groups, strictly speaking, but propensities for, or residues of, group formation. Weber particularly stresses the pluralism of group affiliation in relatively undeveloped societies before the emerging political community gradually monopolizes the use of force—contrary to the view that modern society is more pluralist than traditionalist society in this respect.

Weber sees no evidence for a universal stage of matriarchy. He explains maternal groupings as a result of military separation of the males from the household. This separation produces the men's house, which nowadays appears in residual form in army barracks and student dormitories—Weber likes to move back and forth, often with ironic undertones, between the ancient origin of a phenomenon and its survival into modern times. The patriarchal household emerges with the military dispersion of warriors in the countryside. In dealing with polygamy and monogamy Weber provides a specifically economic, nonromantic explanation. Monogamy suited the household of the emergent urban patriciate; only later did Christianity raise it to an ethical level. With the dowry the calculative spirit entered the domestic communism of the family. This spirit reached a high point with the rise of the capitalist family enterprise. The legal forms of early modern capitalism originated in part in the communistic household, as Weber had already shown in his dissertation. The enterprise was eventually separated from the household, but Weber points to an historical twist: a "later" economic stage, such as capitalism, may perpetuate or recreate an "earlier" (communistic) family structure in which the extended family remains a unit: "Beyond the balance sheet, those lucky enough to participate enter the realm of equality and brotherhood" (below, 360)—a reference to the communist slogan. Here Weber takes obvious pleasure in outdoing the dialectic of historical materialism. His general point is that the household and domestic authority are relatively independent of economic conditions; in fact, they often shape economic relationships because of their historically developed structure. Weber believed that the contractual regulation of household relations was a peculiarly Occidental phenomenon. Only in Europe did the household create out of itself the capitalist enterprise; elsewhere it developed into the *oikos*, the economic basis of patrimonial domination.

Households are related to one another through neighborliness in an unpathetic, economic sense. The neighbor is the typical helper in need. Thus, neighborliness is not restricted to social equals, but customary help rendered by social inferiors may gradually turn into manorial service. The neighborhood may become an economic group proper or an economically regulatory group, but even in the self-sufficient economy of early times there is no necessary identity between neighborhood and other associations. Only in the case of joint political action can the neighborhood develop into a local community.

The kin group is usually not an extension of the household but a protective group guaranteeing the security and legal protection of the individual. Collective self-help is the most typical means for the defense of its interests. The oldest trial procedures originate in compulsory arbitration within, and between, kin groups. Insofar as kin groups do not have a head with powers of command and a staff, they are not organizations in Weber's sense. Through their regulation of marriage and lineage relations kin groups may effectively curb domestic authority. Similarly, the property laws of the great empires steadily weaken unlimited patriarchal power, but because of the very predominance of patriarchalism—another dialectical feature of historical development. Kin groups may oppose political associations and cross the boundaries of political communities. They tend to become associations only when economic conditions make it desirable to erect monopolies against outsiders.

Race and ethnicity are familiar devices for the monopolist protection of interests. Weber doubts the sociological utility of both concepts if understood in a naturalistic way. He insists that, regardless of the outcome of genetic research, social behavior must be interpreted primarily in social terms. Ethnic membership derives from some consciousness of kind due to common customs, common language and common historical experiences. It may be the product of political association and may remain after the group has dissolved politically. The cultural and political importance of ethnicity rests on the fact that the sense of ethnic honor is a specific honor of the masses and, in the extreme, leads to the notion of the chosen people.

Weber's sketch of nationality and cultural prestige (ch. V:4) illuminates the political situation of Central Europe before the first World War. The section is closely linked to the chapter on the political communities (ch. IX). However, Weber had one more major universal group to deal with: the religious *Gemeinschaft*. In theoretical complexity, originality and sheer size the chapter on religious groups was bound to transcend the preceding chapters.

CH. VI: THE SOCIOLOGY OF RELIGION

In 1902 Sombart touched on the impact of Calvinism and Quakerism on capitalist development and noted that it was "too well-known a fact to require detailed explanation."[74] Weber, far from being deterred by this dismissal, proceeded to state more fully the case for the Protestant ethic's impact on the spirit of capitalism.[75] He may also have been prompted by Schmoller, who in a masterful review of Sombart, his most exasperating pupil, observed:

> Whatever Marx and the Social Democrats have against the capitalist—the "hunger for profit" and the untrammeled ruthlessness toward the worker's welfare—concerns primarily the manner in which the individualist drive for acquisition developed between 1500 and 1900 and cut itself loose from most earlier moral and social restraints. These phenomena must be investigated if one wants to understand today's economy.[76]

If it is unclear whether Schmoller's suggestion really was a major factor in Weber's decision to write the "Protestant Ethic and the Spirit of Capitalism," it can be stated affirmatively that the relationship between Calvinism and capitalism had been an "internal" academic issue for some time and that Weber wrote in response to other studies, and

74. Sombart, *op. cit.*, I, 381.

75. Weber stated the major differences between Sombart's approach and his own in the 1920 re-issue of "Die Protestantische Ethik und der Geist des Kapitalismus," *GAzRS*, I (1920), 34; for other references to Sombart see *ibid.*, 5, 21, 33, 38 *et passim;* these include his replies to Sombart's later critiques. Weber explained: "Although the essays go back, in all important respects, to much earlier studies of mine, I need scarcely emphasize how much their presentation owes to the mere existence of Sombart's substantial works, with their pointed formulations, even and especially—where they diverge from them" (*ibid.*, 42). In his last anti-critique Weber mentioned that he had presented some of his ideas on the Protestant ethic in his courses at the University of Heidelberg in 1897/98. See "Antikritisches zum 'Geist' des Kapitalismus," *AfS*, XXX, 1910, 177.

76. Gustav Schmoller on Sombart in his *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, vol. 27, 1903, 298; cf. Lindenlaub, *Richtungskämpfe . . .*, *op. cit.*, 287. It is true that Weber did not recognize Schmoller, the most powerful figure in the *Verein für Sozialpolitik*, as one of his teachers and openly disagreed with him in political matters, but this may have been more of an additional incentive than a hindrance to prove to him what could be done in this regard. In fact, Schmoller later worked Weber's findings into his *Grundriss der allgemeinen Volkswirtschaftslehre* (Leipzig: Duncker & Humblot, 1908). Marianne Weber believed that Weber had started the first essay on the Protestant ethic ". . . in 1903, probably in the second half, just after finishing the first part of his treatise on Roscher and Knies" (*Lebensbild*, 340). Schmoller published Weber's treatise on "Roscher and Knies and the Logical Problems of Historical Economics" in his *Jahrbuch* in the fourth issue of the 1903 volume, having reviewed Sombart in the first issue.

not just against historical materialism as has sometimes been suggested in spite of his own denial at the end of the work.[77] Weber acknowledged particularly the earlier work of three colleagues: Eberhard Gothein's monumental study modestly entitled *Economic History of the Black Forest*, Werner Wittich's "tremendously perceptive remarks" on religious differences between France and Germany, and Georg Jellinek's "proof of religious traces in the genesis of the Rights of Man . . . which gave me a crucial stimulus . . . to investigate the impact of religion in areas where one might not otherwise look."[78]

The publication of the two essays on the Protestant ethic in the *Archiv für Sozialwissenschaft* in 1904/5 was an instantaneous literary success and almost immediately led to the controversy that has since continued unabated. The exchange of critiques and anti-critiques between Weber and his adversaries lasted until 1910.[79] Weber considered the exchanges "pretty unrewarding" and decided on another positive statement, which became the present chapter. He left the historical treatment of Protestantism to his friend Ernst Troeltsch, who was then working on *The Social Teachings of the Christian Churches and Sects*,[80] and instead put the theme in a comparative perspective. Yet neither the "underlying" issue of the rise of capitalism nor that of rationalization and secularization over the ages determines the structure of the Sociology of Religion; it is built, rather, around the relation of *religions* to

77. For example, Parsons has written that "the essay was intended to be a refutation of the Marxian thesis in a particular historical case." However, Weber's general theoretical interest in the critique of historical materialism should not be equated with his reasons for writing the essays at that time. Cf. Parsons, "Capitalism . . . ," *loc. cit.*, 40.

78. Cf. Eberhard Gothein, *Wirtschaftsgeschichte des Schwarzwaldes* (Strassburg: Trübner, 1892), 674; Werner Wittich, *Deutsche und französische Kultur im Elsass* (Strassburg: Schlesier & Schweikhardt, 1900), 18–32 (the quote is from *GAzRS*, I, 25; cf. below, 396); Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte* (Leipzig: Duncker & Humblot, 1895; 2nd ed., 1904), *passim* (cf. below, 1209)—the quote is from Weber's memorial address on Jellinek (René König and Johannes Winckelmann, eds., *Max Weber zum Gedächtnis* [Köln: Westdeutscher Verlag, 1963], 15).—On the general familiarity of the 18th and 19th-century literature with the relationship between religious dissent and economic motivation, Protestantism and capitalism, see Reinhard Bendix, "The Protestant Ethic—Revisited," in *Comparative Studies in Society and History*, IX:3, 1967, 266–273.

79. For an account, see Ephraim Fischoff, "The Protestant Ethic and the Spirit of Capitalism: The History of a Controversy," *Social Research*, XI, 1944, 52–77.

80. Ernst Troeltsch, *Die Soziallehren der christlichen Kirchen und Gruppen* (Tübingen: Mohr, 1912), in part published earlier in the form of articles in *AfS*, 1908–10; trsl. by O. Wyon (London: Allen & Unwin, 1931).

their organizational carriers (functionaries), to the status groups and classes supporting them, and to their inherent theological elaboration. Weber took the general functions of religion, whether in a Durkheimian or a Marxist sense, for granted. With his customary realism, he stressed the compensatory functions of religion and, even more, the political uses of religion for legitimation and pacification. In a limited way, it is possible to see his sociology of religion as a vast paraphrase of Marx's dictum that "religion is the sigh of a creature in distress, the heart of a heartless world, the spirit of times without spirit. It is the opiate of the people."[81] But there is an important difference: Weber had a much more profound sense than Marx for the meaning of ethical conduct. The religious polemics of Engels, August Bebel and Karl Kautsky appeared to him as shallow rationalism. Possibly, Weber was familiar with Engels' fleeting remarks on Calvinism: "Where Luther failed, Calvin triumphed. His dogma was adapted to the most daring of the bourgeois. His doctrine of predestination was the religious expression of the fact that in the commercial world of competition success or bankruptcy depend not on the enterprise or skill of the individual but on circumstances independent of him."[82] At any rate, the "Protestant Ethic and the Spirit of Capitalism" reversed this materialist interpretation without substituting a mere spiritualist one. Behind the divergent perspectives of Weber and the Marxists was a personal difference: The Marxists were psychologically unable to take religion seriously enough to undertake his kind of study. Weber called himself "unmusical" in matters religious—this gave him the necessary analytical distance—, hut he lived in an extended family in which the women were devout and articulate believers. With his strong family sense, Weber could have disdained religion only at the price of offending those closest to him—this gave him the requisite empathy for the study of religion.[83]

For systematic reasons, ch. VI begins with a brief treatment of primitive religion and the original this-worldly orientation of magical and religious action (secs. i–ii).[84] Weber quickly sketches the rise of functional, local and, finally, universalist and monotheist conceptions of deity. As in the preceding chapters, his ethnographic examples are occasionally doubtful or erroneous, or a statement may suffer from the telescoping of historical events over millennia, or the love of paradox

81. Karl Marx, "Zur Kritik der Hegelschen Rechtsphilosophie," in *Die Frühschriften* (Stuttgart: Kröner, 1953), 208.

82. Friedrich Engels, English introduction to *Socialism: Utopian and Scientific* (London 1892), published in German in *Neue Zeit*, XI: 1–2, 1892/93; Marx/Engels, *Werke* (Berlin: Dietz, 1963), vol. 22, 300.

83. Cf. Marianne Weber, *Lebensbild*, 27, 84, 88, 91f, 351f.

84. For an explanation of Weber's intention, see below, 421, n. 1.

carries him to an extreme. When he comes to the rationalization of conduct through ethical and exemplary prophecy (secs. *iii–iv*), Weber strikes out on his own. Building on Harnack's typology, he isolates the features peculiar to the prophet through a comparison with magicians, lawgivers, teachers of ethics and mystagogues. Prophets and priests organize the permanent association of laymen: the congregation. Prophets develop preaching and pastoral care, priests the dogmata and the canonical writings.

After thus dealing with the religious leaders and the associations created by them Weber turns to an examination of all major social strata and their affinity to religion (secs. *v–vi*). This provides a comparative frame for assessing the Puritan bourgeoisie, but in the context of the present work it also prepares the treatment of aristocratic and bureaucratic rulership, the role of the intelligentsia, and the themes of bureaucratization and democratization. Aristocrats tend toward irreligion, unless they are warriors for the faith, an historically important, but transitional phenomenon. Bureaucrats are inclined toward a formalistic religion or philosophy, while permitting less complex magical beliefs among the masses for the sake of "mass domestication." The urban bourgeois, even though concerned with economic rationality, tends to be more religious than the aristocrat and bureaucrat. In fact, the rationalist piety of bourgeois believers is a step on the road that ultimately led to the Protestant ethic. Non-privileged strata have powerful needs for salvation, but they may find primarily passive or purely affective expression. Weber goes down the social ladder from the craftsmen's piety, so important in early Christianity, to the religious disinclinations of slaves, day laborers and the modern proletariat. Peasants are traditionally concerned not with salvation but with the practical, magical effects of religion, even though in modern times the rural population is a mainstay of Christian conservatism. Salvation religions, usually the creation of intellectuals of higher social rank, can devolve into the creed of non-privileged strata, changing their function from legitimation to compensation. Pariah peoples tend to develop an intense religious attachment —Judaism being the historically decisive case.

After this tour de force in the sociology of knowledge Weber balances his analysis of status tendencies with an investigation of religious intellectualism (secs. *vii–xi*). Intellectuals of *diverse* status elaborate religions on logical and theological grounds. Status differences may recede in the face of changing political fortunes; an important case is the escapism of intellectuals of politically declining strata or defeated communities. Conversely, nativist lower-class intellectuals may turn against the intellectualism of higher strata, as it happened in Judaism and early

Christianity vis-à-vis Hellenized intellectuals. Weber carries his analysis up to his own time, ending with secular salvation ideologies and some biting remarks on café-house intellectuals (sec. *vii*:8).

The last part (secs. *xii–xv*) examines the influence of religious ethics on the "world": the sphere of the economic, political, artistic, and sexual. The last extant section breaks off with yet another attempt to contrast Jewish rationalism, Puritan asceticism, Islamic this-worldliness, Buddhist other-worldliness and Jesus' indifference to the world—all with a look back toward "The Protestant Ethic," but also in anticipation of the subsequent large-scale studies of the great world religions, to which Weber turned without completing Part Two of *Economy and Society*.

CH. VII. THE MARKET: ITS IMPERSONALITY AND ETHIC

The chapter on the market—another group (*Gemeinschaft*) in Weber's terminology—logically follows the treatment of religion. The economically rationalized, hence ethically irrational, character of pure market relationships is basically irreconcilable with ethical religion—with the historic exception of Calvinism. Whereas Weber gave much attention to the chapter on religion, his market chapter is only a brief sketch. Unlike the sociology of religion, the market was a topic that could be handled by many other men. Perhaps Weber postponed writing the chapter because he waited for other contributions to the series, the better to coordinate the various expositions. In any case, the fragment he did write was sufficient to distinguish the market (*Marktgemeinschaft* or *Marktvergemeinschaftung*) from the more "natural" groups and the political community. The market is the *Gemeinschaft* based on the most rational kind of social action: association (*Vergesellschaftung*) through exchange. The association may last only for the duration of the exchange, or it may develop into a continuous relationship.

In early history the market was the only peaceful relationship of men who were not linked through household, kinship or tribal ties. The participants were strangers, "enemies" who did not expect action in accordance with an ethic of brotherhood. The "community" of the market is the most impersonal group, but not because it involves struggle (*Kampf*) between opposed interests—there is struggle also in the most intimate relationships; rather, the market is the more impersonal, the more the struggle of the participants is oriented merely to actual or potential exchanges. In this manner the market is the exact opposite of any association (*Vergesellschaftung*) based on a formal order, voluntary or imposed. Even so, neither the use of money nor the impersonality of exchange prevent the eventual rise of a market ethic binding on those

who continually trade. Such exchange partners develop expectations of reciprocity which make them abide by the rules. Occasional traders are most likely to ignore the maxim that "honesty is the best policy"; Weber sarcastically cites aristocratic cavalry officers trading horses—a familiar current example is the private sale of automobiles. One aspect of the market ethic is the fixed price, a peculiarly European phenomenon that became one of the preconditions of modern capitalism.

The market proved destructive to many status monopolies of the past. Yet the very success of capitalist interests on the free market led to new monopolies based either on political alliances or sheer superiority over competitors. As markets increased in importance, religious and political associations moved to protect them for reasons of their own. This brings Weber to the organizations concerned with legal regulation.

CH. VIII. THE SOCIOLOGY OF LAW

The Sociology of Law gives historical depth to the introductory statement on convention and law (ch. I).[85] After the earlier methodological critique of Stammler's approach Weber now demonstrates what a sociology of law should be, in contrast to legal philosophy, jurisprudence, and mere legal history. The chapter provides a typological setting within which a given legal phenomenon can be located, not with regard to any systematically or dogmatically proper placement but for the sake of historical explanation. The impact of Roman law and common law on the rise of capitalism constitutes one link with the overall theme of *Economy and Society*; another is the varieties of rationalization, which may be mutually incompatible. The chapter is also constructed with a view to the frequently mentioned Sociology of Domination: Here Weber treats the creation and administration of law by political and other associations,

85. Chs. I and VIII are the only sections of *Wirtschaft und Gesellschaft* that could be compared with the original manuscript. Marianne Weber put these chapters in an envelope marked "Sociology of Law"—ch. VIII had no manuscript title—and presented them as a gift to Karl Loewenstein, whom they accompanied into exile, thus escaping the fate of the rest of the manuscript. On the basis of this original, now at the Max Weber Institute in Munich, Johannes Winckelmann prepared a definitive edition—although Weber's almost illegible handwriting leaves some passages doubtful—of the two chapters; see *Rechtssoziologie* (2nd ed.; Neuwied: Luchterhand, 1967). The text now differs considerably from that in the 1925 edition of *Wirtschaft und Gesellschaft*, on which the Rheinstein-Shils translation of the Sociology of Law was based. The changes involve not merely many printing errors, but also the sequence of sections and terminological clarifications. For example, the category of the "coercive contract" (*Zwangskontrakt*) turned out to be a misreading of *Zweckkontrakt*, which (in sec. ii) contrasts with *Statuskontrakt*, a distinction related to Henry Sumner Maine's *Ancient Law* (1861).

there the ruler's legitimation, organizational power and motives for imposing law.

If Weber was a self-made scholar in affairs religious, he was on academic homeground in the Sociology of Law. Not only do legal topics of his dissertation and *Habilitation* of two decades before appear, but so does much of the later literature. Even as Weber broadened his intellectual concerns, he retained an active interest in legal studies. His ability to write the Sociology of Law as a legal historian makes this the most difficult chapter for the legal layman and mere sociologist, for whom it may be helpful to perceive the broad structural parallels with the Sociology of Religion.[86] The substitution of legal for religious topics yields the following rough outline: the basic categories of public and private law; the development of contracts and of juristic personality; early forms of law administered by non-political associations; an occupational typology of "specialists," ranging from charismatic law prophets to legal *honoratiores* and university-trained judges; a typology of various forms of legal training; the historical systems of theocratic and secular law; a comparison of Indian, Islamic, Persian, Jewish, Canon and Roman law; the great codifications; the revolutionary power of natural law; formal and substantive rationalization and the ineradicable tension between formal and substantive justice; finally, the irrationalist trends at the eve of the first World War, with their "characteristic reaction" to formal rationality and the dominance of legal experts—paralleling the fashion of surrogate religions in intellectual circles and the "romantic game of syndicalism." Here Weber continues the sociology of intellectuals with an examination of their propensity for substantive justice, on the one hand, and skepticism on the other; he points to another historical dialectic: 19th-century socialist intellectuals first advanced substantive natural law against the formalist natural law of the bourgeoisie and then undermined their own position through positivistic relativism and Marxist evolutionism.

The gradual ascendancy of state law over the law of the other groups is part of the larger theme of the rise of the political community. Weber follows juridical usage when he makes the existence of a legal order dependent on a staff ready to resort to physical or psychic coercion, and when he defines the *modern* political community—the state—in terms of its monopoly on the legal use of force. As a sociologist, however, he is

86. For interpretations of the Sociology of Law by jurists, see the introductions by Rheinstein (*Max Weber on Law in Economy and Society*, 1954, xxv–lxxi) and Winckelmann (*Rechtssoziologie*, 1967, 15–49); also Karl Engisch, "Max Weber als Rechtsphilosoph und als Rechtssoziologe," in K. Engisch, B. Pfister and J. Winckelmann, eds., *Max Weber: Gedächtnisschrift der Ludwig-Maximilians-Universität München* (Berlin: Duncker & Humblot, 1966), 67–88.

equally concerned with the extent to which this claim is *de facto* limited in the modern state, where conventional and religious sanctions continue to be powerful. Weber remembered as one of his youthful lessons the inability of the mighty Prussian state to triumph over the Catholic church in the *Kulturkampf* of the eighteen-seventies and again over the Social Democrats in the eighties, the period of the anti-socialist laws.

The chapter on political communities links the chapters on the more "universal" groups and the Sociology of Law with the Sociology of Domination; it describes the development of political community from rudimentary beginnings to complex differentiation.[87] For many centuries the political community differed only quantitatively from the other relatively "universal" groups that gradually lost their protective and coercive functions as the old political pluralism declined. Eventually a qualitative difference developed: a belief in the right of the state to define the legal order and the use of legitimate force. This belief in legitimacy resulted from gradual usurpation. Previously, the notion of legitimate force was part of the *consensual* action of kin members engaging in blood revenge; now it became part of the *organized* action (*Verbandshandeln*) of community members. In the modern state, the exercise of political powers (*Gewalt*) is a part of *institutional* action (*anstaltsmaessiges Handeln*).[88]

87. Until the fourth (1956) edition of *Wirtschaft und Gesellschaft*, the *Gemeinschaften* ranging from the household to the religious and legal associations and even the city were arranged into a separate part (Part Two, "Typen der Vergemeinschaftung und Vergesellschaftung") set off against the types of domination (Part Three, "Typen der Herrschaft") which included the political community. There is no warrant for this division in Weber's 1914 outline or in the logic of his exposition. The categories of social action and group formation (*Vergemeinschaftung, Vergesellschaftung, Herrschaft*) encompass all of the present Part Two, although the detailed treatment of *Herrschaft* is reserved for the last chapters. The definition of *Herrschaft* appears first, together with the other basic concepts, in "The Categories of Interpretive Sociology" (App. I, 1378 below) and in the first chapter of Part One.

88. In English, the use of "political power" for *politische Gewalt* can easily be misleading. Therefore the plural "powers" or the singular "authority" has been used. Linguistic habit and stylistic convenience make it difficult to render Weber's social action terms always in such ways as to avoid the impression that it is groups, rather than individuals, which act. "Organized action" is *organization-oriented* action and "institutional action" *institution-oriented* action; likewise, "class action" (below, 929) is *class-oriented* action and "party action" (below, 938) *party-oriented* action—four varieties of social action that contrast with "mass action." The juxtaposition of social and mass action was obscured in the Gerth and Mills translation of ch. IX:6, which interpolated the terminology of Part One (ch. I:9) into the text of Part Two (cf. Gerth and Mills, *From Max Weber* . . . , 183). In the different terminology of Part Two, *Gemeinschaftshandeln* means "social action," not "communal action," and *Vergesellschaftung* means

CH. IX. POLITICAL COMMUNITY AND STATE

The political community is a group ready to defend a given territory with force against outsiders. This minimum definition is designed to encompass all historical communities and thus does not even include the guarantee of internal security. Many communities actually did limit themselves to nothing more than the maintenance of territorial control. The Pennsylvanian commonwealth of the Quakers was exceptional in that it refused for a time to use external force. Between these two extremes social action may be oriented to any number of goals, and therefore a community may be robber state, welfare state, constitutional state or *Kulturstaat*. Communities united merely for defense may in peacetime relapse into a state of anarchy (in the strict sense)—the mere consensual recognition among the members of the given economic order. And external peacetime may also be a period of internal war. Thus the ascendancy of the political community over other groups becomes the history of internal pacification: of the peace edicts of kings, bishops and cities during their struggles with the feuding nobility. Old and new groups whose ideal and material interests were not adequately protected by the traditional arrangements demanded pacification and the "nationalization" of legal norms (treated in the Sociology of Law).

Weber clearly distinguishes between patriarchal powers, "non-authoritarian" consensual and arbitral powers, and political powers proper—autonomous military and judicial authority. The prototype for political powers is the *imperium* of the legitimate Roman officials (ch. VIII:*vi*), which later was usurped by military leaders who received *ex post facto* confirmation by the Senate. Political authority (*Gewalt*) involves the power over life and death which gives the political community its specific pathos. As the community develops, political coercion frequently becomes internal, since many demands of the political order are accepted by the members only under pressure. However, a political community is held together not only through coercion but also through common historical experiences: it is a "community of shared memory" (*Erinnerungsgemeinschaft*). Yet both the pathos of the supreme sacrifice and the shared memory of dangers persist also in other groups ranging from those practicing violence—the Camorra, nowadays the Mafia—to those suffering it, as in persecuted sects.

After an historical sketch of the development of political community

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"association," not "societal action"—i.e., it is not a contrast in Toennies' sense (cf. below, 60, n. 24). Hence, terminological adjustments had to be made. For example, the seemingly illogical passage, "The communal actions of parties always mean a societalization" (Gerth and Mills, *op. cit.*, 194) now reads "party-oriented social action always involves association" (below, 938).

(sec. 2) Weber again takes up the European state of affairs on the eve of the first World War (cf. ch. V:4), comparing it with the capitalism and imperialism of Antiquity. The dynamics of international and national stratification is his dual theme: the relations of prestige and power among and within political communities. Here again was an issue previously raised by Sombart. His *Socialism and Social Movement in the 19th Century* (1896) opened with the dictum of the *Communist Manifesto* that "the history of all hitherto existing society has been a history of class struggles." Sombart considered this

> one of the greatest truths of the century . . . , but not the whole truth. For it is incorrect to say that all history of society is merely a history of class struggles. If it be worthwhile at all to subsume world history under one formula, we will have to say that social history has mo ed between two poles . . . which I will call the social and [inter-] national antagonisms (*Gegensätze*). . . . We find the same striving for wealth, power and prestige among communities as among individuals. . . . Today we are at the end of an historical epoch of national exaltation and in the midst of a period of great social cleavage; it seems to me that all the antagonistic viewpoints of the various groups can be reduced to the alternative: national or social.[89]

Sombart did not further pursue the topic of international stratification and instead focussed on the Marxist concept of class. Weber, however, carried the juxtaposition of the external and internal realm of honor to its logical conclusion and elaborated a scheme that also incorporated the Marxist approach as one segment. In the external sphere, he was concerned with power prestige, not just with national pride, which can also be found in non-expansionist Switzerland or Norway. Since power prestige derives from power over other political communities, it promotes expansionism and is thus a major component cause of war. The prestige pretensions of one country escalate those of others—Weber points to the deteriorating relations between France and Germany in the first decade of the century when, in contrast to the eighteen-nineties that Sombart had in mind, nationalist antagonisms prevailed again over internal cleavage. The carriers of power prestige are the "Great Powers," yet their ruling groups, fearing the seizure of power by their own victorious generals, are not always expansionist—witness ancient Rome and early 19th-century England. In both cases, however, capitalist interests enforced the resumption of political expansion.

Weber's theory of imperialism adds the economic element to the prestige factor. Building on his earlier writings, Weber constructs his

89. Werner Sombart, *Socialismus und soziale Bewegung im 19. Jahrhundert* (Jena: Fischer, 1896), 1f.

notion of imperialist capitalism from the first great historical case: ancient Rome with its tax-farmers and state purveyors. In modern times, as in Antiquity, it is the general structure of the economy, rather than trade interests, which is crucial for political expansionism. Imperialist capitalism may be restrained by the profitableness of "pacifist" capitalism, but for his own time Weber foresees the former's ascendancy, largely because of the state's role as the biggest customer of the defense contractors and similar enterprises. The economic-pacifist interests of the petty-bourgeois and proletarian strata are easily reduced by appeals to the emotive idea of "the nation."

Weber reviews the diverse cultural and social characteristics of individuals that may define membership in a nation. He emphasizes three elements: (1) the speed with which certain historical experiences can create the sense of nationhood, (2) the different meanings of the term from one country, and one stratum, to another, (3) the intellectuals' role in fashioning a sense of national identity. His unfinished analysis of the intellectuals—"those who usurp leadership in a *Kulturgemeinschaft*"—breaks off with a hint at the affinity of cultural prestige and power prestige, but not without the skeptical reminder that "art and literature of a specifically German character did *not* develop in the political center of Germany" (below, 926).

Weber's improvement on the Marxian class analysis lies in the detailed typology of the three phenomena of power distribution within the political community: class, status group, and party. Those powerful in the economic order need have neither political power nor social honor, but they often do have both. Apart from the economic order, the distribution of political power is codetermined by the legal order and the social or status order. Weber proposes to consider classes not as communities but as propensities for social action, similar to ethnic groups. Therefore, he speaks of "class situation," which is defined by market situation and has two basic categories: property and the lack of property. Property, in turn, differs according to whether it is used for rent income or profit-making. Although it does make a difference whether communities are based on labor, as in soil-tilling villages, or merely on property, as among cattle-breeders, the historical origin of class struggles lies not in the countryside but within the city: in the clash between creditors and debtors. At a later economic stage the class struggle was transformed into the struggle on the commodity market; in modern times it has come to center in wage disputes on the labor market. The contemporary bitterness of wage-earners is primarily directed against the entrepreneurs and managers, who are more visible than the "real" capitalists, the shareholders and bankers. This opaqueness is only one of

the many social and cultural factors that influence the way in which class situation may (or may not) become the basis for class-oriented or party-oriented action.

The major polemical target of this exposition on class and class situation was "that kind of pseudoscientific operation with the concepts of class and class interests which is so frequent these days and which has found its most classic expression in the assertion (*Behauptung*) of a talented author that the individual may be in error about his interests, but that the class is infallible" (below, 930)—a reference, it seems, to none other than the young Georg Lukács.[90] As against this class reification by a new breed of Marxian metaphysicians Weber insisted on his own empirical dialectic of class and status. Status groups are real, if often amorphous, groups limiting the sheer market principle with its opposition of class interests. Positive or negative social honor is the basis of status groups. Status differences express themselves in the style of life: a phenomenon extensively treated in the Sociology of Domination. In the extreme, status differentiation leads to caste formation: a link with the earlier exposition of ethnic and religious groups. Status groups are the bearers of all conventions: a structural explanation for the coercive character of conventions that Weber upheld against Stammler. In sum, classes are part of the economic order, status groups, of the social order; put in another way, classes are rooted in the sphere of production and acquisition, status groups in the realm of consumption.

Class interests as well as status interests may be represented by parties. In contrast to classes and status groups, parties are always purposive-rational associations, since their goal is the acquisition of power in larger associations. Thus parties are frequently authoritarian organizations—an issue of paramount concern for the sociology of political parties in modern democracy. However, adequately to understand the structure

90. When Weber wrote this passage, Georg Lukács was one of his close young friends. He had attracted public attention through his first German book, *Die Seele und die Formen* (1911). At the time he was preparing himself for an academic career, a plan destroyed by the onset of the war. In Weber's Heidelberg circle Lukács and Ernst Bloch represented a new generation of Marxians who were highly critical of "vulgar" Marxism. If the identification is correct, Weber refers to conversations rather than publications, as he also does elsewhere in the text. An early formulation of Lukács' theory that the proletariat as a whole is infallible about its interests is found in an Hungarian essay of 1919, "Tactics and Ethics"; see his *Schriften zur Ideologie und Politik*, ed. Peter Ludz (Neuwied: Luchterhand, 1967), esp. 9, 18f., 31. Lukács later adapted Weber's class terminology in his famous work on *History and Class Consciousness* (1923). On the relation of Weber and Lukács, see Marianne Weber, *Lebensbild*, 473–76, and Paul Honigsheim, "Erinnerungen an Max Weber," in R. König and J. Winckelmann, eds., *Max Weber zum Gedächtnis*, 184–88.

of parties one must first examine the larger associations within which they operate.

Herewith Weber has reached the Sociology of Domination. Parties vary not only according to class and status structure but also according to the larger group's structure of domination. In line with his comparative interests in earlier studies, Weber now proceeds to a broad typology comprising parties and polities of Antiquity as well as of the Middle Ages and of some non-European areas.

CHS. X–XVI. THE SOCIOLOGY OF DOMINATION

The Sociology of Domination is the core of *Economy and Society*.[91] The major purpose of the work was the construction of a typology of associations, with most prominence given to the types of domination and their relation to want-satisfaction through appropriation. To be sure, religion and law were constituent parts of the work, irrespective of whether Weber planned the chapters to be as comprehensive as they finally came to be, but the 1914 outline and the proportions of the manuscript show the Sociology of Domination to be the central theme. In the reception of the piecemeal translation of *Economy and Society*, the Sociology of Domination has been obscured as a whole. Until now, nearly half of it was untranslated; the other half was divided among three different translations.[92] In the theoretical discussions the three types of legitimate domination have usually been treated in isolation, and in research the complex typology of domination has all too frequently been reduced to the simple dichotomy of charisma and bureaucracy, if not just to the so-called Weberian "formal model of bureaucracy." Too

91. Weber was in the habit of speaking, respectively, of his Sociology of Law, Religion, Domination, and State, and he employed these terms in cross-references. However, since the 1914 outline does not contain the terms and the manuscript of ch. VIII was untitled, it appears likely that he did not want to use the phrase "sociology of" in a chapter title. At any rate, in view of the great overall length of chs. X–XVI, no summary title was chosen in the text for the Sociology of Domination. Even in its incomplete state this section is twice as long as the chapters on religion and law—a quantitative indicator of their importance for the work as a whole.

92. If ch. III of Part One is included, there are four different translations. The incomplete terminological summary of Part One further telescopes the historical dimension. It does not parallel the structure of the Sociology of Domination in Part Two, especially in the chapters on secular and hierocratic rulership and the city; the contrast of secular and hierocratic domination appears in Part One in ch. I:17, and the forms of legitimate rulership peculiar to the city are found mostly under rule by notables (ch. III:15–20). Moreover, feudalism is in Part Two a variant of patrimonialism, in Part One a variant of charisma—equally feasible classifications.

often a rulership has been measured only against the formal features of bureaucracy or of charismatic domination. In this manner the technical sense of the typology (see below, 263) has been disregarded: More than one type should be compared to any given case, rather than just one "ideal type" with one "natural system."

The Sociology of Domination is the mold in which some of Weber's most substantive interests, and the influences arousing them, were fused into a conceptual unity. As a basic influence Weber acknowledged the work of his friend Georg Jellinek: "From his great studies I received decisive impulses for whatever fate has permitted me to accomplish. . . . [Among these was] his coinage of the concept of the 'social theory of the state,' clarifying the blurred tasks of sociology."[93] In his *Allgemeine Staatslehre* Jellinek defined as the ultimate objective elements of the state the social relations of men, as against metaphysical notions of its corporeality:

> More precisely, the state exists in relations of will among a plurality of persons. Men who command and others who obey form the basis of the state. . . . In the state the relations of will, concentrated in an organizational unit, are essentially relations of domination. The quality of domination does not exhaust the essence of the state. But relations of domination are so necessary to the state that it cannot be conceived without them. The state has the powers of rulership (*Herrschergewalt*). To rule (*herrschen*) means the ability to impose one's own will upon others unconditionally. . . . Only the state has this power to enforce its will unconditionally against other wills. It is the only organization that rules by virtue of its inherently autonomous powers. . . . The state, then, is that organizational unit equipped with underived powers of command.[94]

Weber differentiated Jellinek's notion of rule. What Jellinek called *Herrschen*, he called "power" (*Macht*); this left the term *Herrschaft* (domination) free for an adaptation of the Kantian categorical imperative: "The situation in which the manifested will (command) of the ruler or rulers is meant to influence the conduct of one or more others (the ruled) and actually does influence it in such a way that their conduct, to a socially relevant degree, occurs as if the ruled had made the content of the command the maxim of their conduct for its very own sake" (below, 946). Domination transforms amorphous and intermittent social action into persistent association. Weber exemplifies the difference of domination from mere power with the case of monopolistic control in the market. In their own rational interest, the unorganized

93. R. König and J. Winckelmann, eds., *Max Weber zum Gedächtnis*, 15.
94. Georg Jellinek, *Allgemeine Staatslehre*, 2nd ed. (Berlin: Häring, 1905; 1st ed., 1900), 169, 172.

customers of a monopolistic enterprise may comply with its market dictate: this is domination by virtue of interest constellation. Through many gradual transitions, this relationship may be transformed into domination proper, that means, by virtue of the authoritarian power of command, as it prevails in the large-scale industrial enterprise and on the manor—the two most important economic structures of domination. Domination exists insofar as there is obedience to a command; in general, obedience is due to a mixture of habit, expediency and belief in legitimacy. The subjects' willingness to comply with a command is enhanced by the existence of a staff, which again acts on the basis of habit, legitimacy and self-interest. Sociologically, then, a *Herrschaft* is a structure of superordination and subordination sustained by a variety of motives and means of enforcement.[95] For the historical persistence of structures of domination, staff enforcement on whatever grounds is no less important than belief in legitimacy. In fact, explains Weber, he is "primarily interested in domination insofar as it is administration" (below, 948). Only after defining domination in terms of rule by a master and his apparatus does Weber add the ultimate grounds for its validity. He turns to legitimacy because of its inherent historical importance—the need of those who have power, wealth and honor to justify their good fortune.

The resulting typology of domination goes far beyond the three familiar types of authority. The substance of the Sociology of Domination consists in the general historical models of rulership. Weber does not wish to work out a "political system" applicable to all political groups irrespective of time and place; rather, he aims at a "systems analysis" of these models. Here he takes up the postulate of a "social theory of the state," but whereas Jellinek's typology of states remains largely on the level of constitutional theory and political philosophy, Weber "descends" to a level of greater historical descriptiveness. With the nature of the modern state and of industrial capitalism as underlying themes, Weber puts together a comparative scheme within which he integrates the major topics and results of his earlier studies:

I. the ancient and medieval city state as an autonomous polity, ranging from the patrimonial-bureaucratic kingdom to the confraternity of equals (cf. above, secs. 6 and 7);

II. manorial domination (*Grundherrschaft*) in Germanic Antiquity and the Middle Ages, involving the issues of patriarchalism, feudalism, and military communism (cf. above, sec. 4);

95. For the terminological resolution of the translation of *Herrschaft* as domination or authority, see below, 61, n. 31.

III. the rise of modern public and private bureaucracy and the organizational realities of modern democracy (cf. above, sec. 8);

IV. the perennial tension between usurpation and legitimation (cf. above, sec. 7, p. li).

In the Sociology of Domination, theme I is treated mostly under patrimonialism (ch. XII) and the city (ch. XVI); theme II under feudalism (ch. XIII) and charismatic rulership (ch. XIV); theme III under bureaucracy (ch. XI) and again under charisma (ch. XIV); theme IV under caesaropapism and hierocracy (ch. XV) and under the special aspect of non-legitimate domination (again ch. XVI). However, Weber puts at the beginning of the Sociology of Domination (ch. X) what was politically most important to him: the meaning of democracy in an industrialized and bureaucratized society.

(A) THE THEORY OF MODERN DEMOCRACY. Since domination and administration are interdependent, domination is an irreducible component of democratic administration. So-called direct democracy is nothing primeval, but a product of historical development. Its aim is the minimization of domination; its precondition is the relative equality of the participants. Here is another historical twist: Direct democracy is most feasible in an aristocracy, whether it be Venetian noblemen or the vaunted German "aristocracy of the spirit"—the university professors. Direct democracy, however, is inherently unstable, and wherever there is economic differentiation in the group, domination tends to fall into the hands of those who have the economic requisites for performing administrative and political tasks. This is, first of all, a matter of "economic availability," not necessarily of high status; thus, managers of large-scale enterprises, teachers and medical doctors are less available than lawyers, country squires and urban *rentiers*. In general, the available groups also have social honor, and then they are *honoratiores* (notables). If direct democracy turns into rule by *honoratiores*, the demand for democracy easily becomes the battle cry of those lacking in wealth or honor. In that case both sides may form parties, which tend to be tightly organized because their object is, after all, the struggle for power. If this happens, and if the community grows beyond a certain size, "the meaning of democracy changes so radically that it no longer makes sense for the sociologist to ascribe to the term the same meaning as in the case discussed so far" (below, 951).

Weber's own theory of modern democracy was directed against the many intellectuals (*"literati"*) to his right and left who failed to understand the *facts* of parliamentary government and democratic party organization and were thus unable to weigh them against the prevalent

monarchic constitutionalism or against panaceas such as the "corporate" state, just as they failed to comprehend the *technical* imperatives of a private capitalist economy in contrast to state socialism and capitalism. Weber stressed the formal similarity of the democratic party and the capitalist enterprise: If parties are legal and party affiliation is voluntary, the business of politics is the pursuit of ideal and material interests, which is as inevitable as the activism of the few against the passivity of the many. Under the conditions of mass suffrage, the leadership of the few rests on mass mobilization, and this in turn requires an effective party apparatus. The party bureaucracies parallel those of state and economy. However, the bureaucratization of the parties does not necessarily spell the end of meaningful political democratization or of charismatic leadership. Here Weber's disagreements with Robert Michels reappear.[96] Michels' "iron law of oligarchy" became for a time very influential in the American literature on democracy and party organization, but eventually Weber's conception gained ground through its popularization in Joseph Schumpeter's *Capitalism, Socialism and Democracy*.[97]

The chapter on bureaucracy (ch. XI) elaborates the partly supportive and partly antagonistic relations between bureaucracy and modern democracy, and between passive and active democratization. The chapter on charisma (ch. XIV) adds the transition to democratic suffrage and the selection of democratic leadership. It contains the important recogni-

96. Traces of Weber's objections to Michels' arguments are found in chs. XI and XIV (cf. below, 991 and 1003, n. 8), apart from ch. II. Weber did not publicly state his disagreement with Michels, whose academic career in Germany had been forestalled by official disapproval of his political activities and in whose behalf he had protested vociferously in an article on "The So-Called Freedom of Teaching" (*Frankfurter Zeitung*, Sept. 20, 1908; cf. Marianne Weber *Lebensbild*, 361). In 1913 Michels became co-editor of the *Archiv für Sozialwissenschaft und Sozialpolitik*. The two men corresponded extensively; Michels mentioned in the second edition of his *Political Parties* that he took into consideration a lengthy critique by Weber, to whom he had dedicated the first edition. The difficulties of reconstructing Weber's critical thrusts are similar in the case of Georg Simmel, whose career he tried to further against strong (in part anti-Semitic) resistance. In order to protect him, Weber terminated a projected severe critique after writing a few pages of personal testimonial to Simmel and a bitter denunciation of his academic and bureaucratic detractors.

97. Schumpeter, *Capitalism, Socialism, and Democracy* (3rd ed.; New York: Harper & Brothers, 1950), ch. XXII. Schumpeter, one of the earliest contributors to the *Outline of Social Economics* (1914), did not here mention Weber's name, but there is a point-by-point correspondence of his description with passages in both parts of *Economy and Society*. For Schumpeter's account of his relationship to Weber, see his *History of Economic Analysis*, ed. Elizabeth Boody Schumpeter (New York: Oxford University Press, 1954), 815–820, and his 1920 necrologue on Weber, reprinted in R. König and J. Winckelmann, eds., *Max Weber zum Gedächtnis*, 64–71.

tion that, far from being irreconcilable, charisma and bureaucracy may be interdependent. The adjustment of the Catholic church to bourgeois democracy, especially in the United States, appears in the chapter on political and hierocratic domination (ch. XV). The chapter on the city (ch. XVI) deals with the theory of ancient and medieval democracy, providing the historical contrast to modern democracy.[98]

(B) THE DIMENSIONS OF RULERSHIP. From the beginning, Weber deals with bureaucracy not only in its formal aspects but as a status group with vested interests. At the core of his approach to rulership is the three-way struggle between ruler, staff, and subjects. The types of rulership are distinguished by differing forms of appropriation—Weber speaks of appropriation because the legal concept of property is too narrow for many historical cases. Appropriation involves the means and positions of administration, ranging from economic resources and weaponry to managerial and political functions. The seizure of goods and the extraction of services often originate in usurpation. Normally, appropriation is carried through by a group rather than individuals. Legitimacy is used to defend appropriation. Weber suggests, for example, that European feudalism, although in many ways an "impossible" structure of domination, survived as long as it did because the vassals needed the shield of legitimacy. This "functional" emphasis on legitimacy pervades the whole exposition.

From the viewpoint of legitimation, the structure of the Sociology of Domination is the following:

(1) The historical models of bureaucracy, patriarchalism, patrimonialism, feudalism, *Ständestaat*, and military (and monastic) communism are subsumed under the three types of legitimate domination (chs. XI–XIV);

(2) As the greatest force of legitimation in history, the priesthood is ceaselessly struggling for power with secular rulership (ch. XV); their relationship is one of mutual antagonism as well as dependence;

(3) The city is the locus of specifically non-legitimate domination in history (ch. XVI).

However, the bulk of each chapter is concerned not with legitimacy, but with the various strategies and resources of domination on the part of ruler and staff. In each chapter, the military constituency, which was basic to the analysis of the ancient states in the "Agrarian Conditions of Antiquity," is treated next to the civilian administration. Each chapter also contains a section on the ethos and education of the status groups.

98. In Part One, the theory of democracy is treated especially in ch. III:*vii* and *x*.

Finally, the relation between each form of domination and economic development is examined. Weber finds that it is easier to state the impact of domination on the economy than vice versa. There are, for instance, striking similarities between the class struggle in the Italian cities of the Middle Ages and in the Roman Republic, although the economic conditions were quite different. The reason lies in the limited number of administrative techniques available for effecting compromises among the status groups of a polity. Therefore, similarities of political administration must not be interpreted as identical superstructures rising over identical economic foundations: "These things obey their own law" (below, 1309).

(c) THE TERMINOLOGY OF DOMINATION. The terminological integration of the Sociology of Domination was a remarkable achievement. By drawing on concepts from ancient, medieval and modern history Weber succeeded in fashioning a terminology applicable to all three eras. It should be remembered that this did not involve any assumptions about historical sameness, but an insistence on typological gradation. Weber addressed his comparative terminology to medievalists like Below and Gierke, who wrote on both manorial domination (*Grundherrschaft*) and the city, to ancient historians like Eduard Meyer, and to church and legal historians like Rudolf Sohm. He demonstrated some of the typological implications of their terminology.

The term *Herrschaft* has a very concrete and a very abstract meaning. In historiography a *Herrschaft* is a noble estate, corresponding to the French *seigneurie* and the English manor. In the philosophy of history, *Herrschaft* is the basic category of superordination, and in this sense it loomed large in the work of the young Marx. Weber uses the term frequently in the historical sense and occasionally in the philosophical meaning. Sometimes he refers to the "domination of man over man." However, this is not technically relevant to his typology. The *Herrschaftsverband* (authoritarian association)[99] was a term widely used after the late eighteen-sixties when Gierke made it the standard contrast to the *Genossenschaft* (equalitarian association). The term "patrimonial state" was older still; it was introduced early in the nineteenth century by Carl Ludwig von Haller.[100] Haller fought against the liberal doctrines

99. Since Weber did not use the term *Herrschaftsverband* as a contrast to *Genossenschaft*, the translation "ruling organization" was chosen for the most general formulation in the basic definitions (cf. below, 53) in order to exclude the colloquial connotations of "authoritarianism." In Weber's terminology even the most democratic organization is a *Herrschaftsverband*.

100. Carl Ludwig von Haller, *Restauration der Staats-Wissenschaft, oder Theorie des natürlich-geselligen Zustands der Chimäre des künstlich-bürgerlichen entgegengesetzt* (Winterthur: Steiner, 1817/18), vols. II and III.

of the social contract and for the thesis that all governmental authority was the private property of the ruler. He also elaborated the early ideal type of patrimonial bureaucracy. Whereas Haller equated patriarchalism and patrimonialism, Weber contrasted the two concepts and defined the latter as the *political* domination of a ruler with the help of his *personal* apparatus (consisting of slaves, retainers, *ministeriales*). This change reflected the controversy over the importance of *Grundherrschaft* (manorial domination) in Germanic history, which Weber downgraded in favor of the charismatic origin of political rulership. His 1914 letter to Georg von Below stressed the distinction between patriarchal and patrimonial domination:

> Although I have good reason to think very modestly of my own expertise, I have no doubt that you are right [about the existence of genuine political authority, not just private powers, in European feudalism]. It is astonishing that the old contrary theory—to which, admittedly, I too once adhered—is still so persistently defended. . . . Terminologically, I must limit the concept of patrimonialism to certain kinds of *political* domination. I hope you will find that I have sufficiently emphasized the absolute distinction between domestic, personal and manorial authority, on the one hand, and political *Herrschaft* on the other, which is none of these but rather military and judicial authority. This main thesis of your book will find no objection from my side. I will only show that this difference is as old as history.[101]

Weber demonstrated his point by drawing on examples from Antiquity and the Chinese empire. Patrimonialism was the most important kind of administration before the emergence of modern bureaucracy. In the most centralized case, it constituted a patrimonial-bureaucratic administration with a "state-socialist" *oikos* economy—Rodbertus' concept—; European feudalism was its most fragmented case, with its sole and limited analogy in Japan. Only European feudalism developed the *Ständestaat*, the consociation of ruler, nobility and *honoratiores* under a quasi-constitutional division of powers. Feudalism was for Weber a marginal case of patrimonialism, because the feudal vassal was a patrimonial lord in relation to his own retainers and because the feudal principle did not completely replace the patrimonial administration of the realm. Feudalism had charismatic features as well; the status group of warriors was first distinguished by personal military prowess and later by "noble" descent.

Precisely because feudalism was a unique medieval phenomenon, Weber's distinction between feudalism and patrimonialism has consider-

101. Weber's letter of June 21, 1914, printed in G. von Below, *Der deutsche Staat des Mittelalters*, 2nd ed. (1925), xxiv f.

able terminological utility today when "feudalism" is all too often an indiscriminate pejorative term referring to sundry situations in all countries where large-scale landownership and political power are still closely related. The concepts of patrimonialism and personal rulership—divested of traditionalist legitimation—are frequently more applicable to the New States than feudalism, bureaucracy or charismatic rulership.[102]

If patrimonialism has been conceptually underemployed, charisma has been used indiscriminately to label almost all non-bureaucratic forms of leadership.[103] Weber chose the term to characterize, first of all, the relationship between the military chieftain and his free following, the subject of his 1905 essay (sec. 4 above). He secularized Rudolf Sohm's notion of the charisma of the Christian church. In his major work on *Church Law* (1892), Sohm, a devout believer and conservative columnist, had described the church not as a "legal" but a "charismatic" organization—i.e., an organization established by virtue of divine inspiration, not man-made law. After using the concept of charisma in its religious connotations in the Sociology of Religion, Weber apparently decided that it could also denote the self-legitimation of political leadership, a usurpatory challenge from the viewpoint of patriarchal, patrimonial and bureaucratic legitimacy.

Throughout history political and religious charisma have warred and cooperated with one another. The secular rulers had to face, in one way or another, the institutionalized charisma of the priesthood—theocracy. Since Weber concerned himself with the charisma of both powers, he differentiated the traditional notion of theocracy—still his terminology in the "Agrarian Conditions in Antiquity"—into a typology of hierocracy contrasting with caesaropapism.[104] The latter term denoted the complete control of the secular ruler over the church, and since this was true of both the Anglican and Lutheran rulers, the phrase also suited Weber's penchant for nominalist irony.[105] Successful political usurpers or their successors often endeavored to fortify their rule through religious

102. For a proposal along these lines, see my "Personal Rulership, Patrimonialism and Empire-Building in the New States," *World Politics*, XX, 1968, 194–206.

103. On the indiscriminate application of the concept of charisma, cf. Reinhard Bendix, "Reflections on Charismatic Leadership," *Asian Survey*, VII, 1967, 341–352.

104. In this he followed the terminology of Byzantine studies; cf. *Religion in Geschichte und Gegenwart*, I (Tübingen: Mohr, 1909), cols. 1527–31.

105. The analytical advance made by Weber can be seen by comparing, for example, Wilhelm Roscher's treatment of "priestly aristocracy" in his *Politik: Geschichtliche Naturlehre der Monarchie, Aristokratie und Demokratie* (Stuttgart: Cotta, 1892), 87–117.

legitimation: the foremost European examples were Charlemagne and Napoleon I. Whereas these two rulers controlled the church, others were more dependent. European history was profoundly influenced by the great clash and subsequent stalemate between emperor and pope—a subject about which Weber wrote his first major essay at the age of thirteen [106] This gave the Italian cities their historic opportunity to gain autonomy for a time from the patrimonial and hierocratic powers and to usher in the Renaissance with its unbridled individualism: an age of illegitimacy.

(D) THE CITY: USURPATION AND REVOLUTION.[107] It has been asserted occasionally that the Sociology of Domination, with its "static" ideal types, cannot explain revolutionary change. Were this true, Marxism as well could not have advanced a theory of revolution, since its "laws" and developmental constructs are nothing if not ideal types—as Weber pointed out in 1904.[108] The fact is that his own theory of revolution appears in the guise of usurpation and non-legitimate domination because of its attention to administration and legitimacy, marginal concerns to Marxism. Weber looked more closely at the consequences of the seizure of power than did Marx in spite of the "dictatorship of the proletariat"; he saw that revolutionary domination can survive only when an efficient administration suppresses the expropriated former holders of legitimate power.

The city as an autonomous, oath-bound commune of armed men existed only in the Occident, and then only in Antiquity and the Middle Ages. It was the specific locus of revolutionary domination in two respects: It was a "state within a state" erected by the patricians against the patrimonial rulerships with their traditionalist legitimation; it also was the scene of the uprising of the "people" against the patricians who had in turn assumed the mantle of legitimacy. The people's leaders created another "state within a state." Weber maintained that the oldest

106. In the same year, 1877, Weber wrote an essay on "The Roman Empire from Constantine to the Teutonic Migrations"; at the age of fifteen he wrote "Reflections on the Character, Development and History of the Indo-Germanic Peoples." These were standard topics in the classical schools, but the essays also indicate the early origins and the continuity of some of Weber's basic interests.

107. The chapter on the city was the fulfilment of a project that Weber had declared to be worthwhile in 1908/9 (cf. above, p. xxxi); he took himself by his own words and demonstrated how the ancient polis and medieval city could be compared to explain their differences and how an indirect contribution could be made to the study of modern democracy.

108. Cf. Shils and Finch, eds., *Methodology . . .*, 103. For a comparison of the ideal-typical constructs of Marx and Weber, see Judith Janoska-Bendl, *Methodologische Aspekte des Idealtypus. Max Weber und die Soziologie der Geschichte* (Berlin: Duncker & Humblot, 1965), 89–114.

historical records of the city as a commune proved its revolutionary character, but that this was often obscured in documents which purposively hid usurpations of political power.[109]

The first great usurpation of the early Middle Ages was the "revolutionary movement of 726 that led to the defection of Italy from Byzantine domination and centered around Venice. It was called forth especially by opposition to the icon destruction ordered by the emperor who was under the pressure of [the Islamic sympathies of] his own army. Thus the religious element, although not the only factor, triggered the revolution."[110] After a period of patrician rule, the Italian *popolo* rose under its leaders and established "the first deliberately nonlegitimate and revolutionary political association" (below, 1302).

Weber contrasted the patrician city with the plebeian city of the Middle Ages and of Antiquity, exploring the different forms of class struggle in each type and era. He stressed the remarkable parallels between the Italian *popolo* with its *capitano* and the ancient Roman plebs with its tribune. In the absence of traditional legitimation, the tribune was sustained by armed popular support. He checked the power of the senate and instigated the *plebiscita*.

Democratization means the political expropriation of the upper strata, which in these historical cases were as "closely policed, disenfranchized and outlawed as is the Russian bourgeoisie by Lenin. The basis of democratization is everywhere of a military nature; it lies in the emergence of a disciplined infantry. . . . Military discipline signified the victory of democracy, for the wish and the need to call on the non-knightly masses gave them arms and thereby political power. The parallels to the German revolution of 1918 are obvious."[111] However, democratization by no means leads to the waning of domination. Ancient and medieval democracy passed through the state of the *tyrannis* and the *signoria* before the city state disappeared, reverting to patrimonial rulership through internal transformation or external defeat. But this his-

109. Weber rejected Sombart's theory that "ground rent is the mother of the city" (cf. *Economic History*, 239). The two men differed in their interest and interpretation of the city. Sombart was primarily concerned with the economic aspects; cf. *Der moderne Kapitalismus*, II, 176–249, and his "Der Begriff der Stadt und das Wesen der Städtebildung," *AfS*, XXV, 1907, 1–9. In dealing with the city as a political phenomenon, Weber followed the tradition of ancient and medieval history. However, he reversed the standard political definition of the German medieval city as a self-governing body with a town council subject to confirmation by the legitimate overlord, and instead emphasized the aspect of usurpation. For the older definition, see Freiherr Roth von Schreckenstein, *Das Patriziat in den deutschen Städten* (Tübingen: Mohr, 1856), 28.

110. *Wirtschaftsgeschichte*, 274; cf. *Economic History*, 236.

111. *Wirtschaftsgeschichte*, 278f.; cf. *Economic History*, 240.

torical "cycle" had very different results in the two eras: In Antiquity a universal empire came into being, suppressing private capitalism; at the beginning of modern history, the competing patrimonial-bureaucratic states created the European balance of power, one of the preconditions of modern capitalism. They further developed the rational administration first promoted by the non-legitimate dictatorship of the Italian *signoria*. Thus the modern state and modern democracy were not the direct successors of the medieval city. Their rise was prepared by the struggle for representation in the *Ständestaat* and the absolutist state, which preceded their violent establishment in the American and French revolutions.

From the viewpoint of legitimacy and administrative control there is no basic difference between *coups d'état* and mass uprisings. Weber's reference to the Russian and German "revolutions" was more than a mere illustrative analogy. Structurally, the modern state, whether parliamentary, plebiscitary or a "people's democracy," is one city. Non-legitimate domination is at the root of modern democracies, whether they are more libertarian or more authoritarian. The United States, the "first new nation" in Seymour Martin Lipset's phrase, came into being in rejection of monarchic legitimacy and instead created a polity that, in analogous terms, resembles the Roman Republic: its President (tribune) and the plebeian House of Representatives contrast with the Senate, an imitation of the House of Lords, as the most traditionalist and aristocratic element.

It is a moot point which contemporary state should be considered less similar to a city and closer to patrimonial rulership. Hierocracy and caesaropapism continue to exist in some of their traditional ways, but more frequently in a new secularized form. Secular intellectuals have replaced priests as the new legitimizers, especially in the New States. Weber did not foresee how quickly and terribly totalitarianism would seize and exercise power, although he described it as an "objective possibility" (below, 644, 661, n.4). Toward the end of his life he considered it more likely that a Bonapartist *coup d'état* might occur in Bolshevist Russia or in Weimar Germany, a reasonable guess on the basis of historical precedent. But Weber had no deterministic view of history: "The continuum of cultural development in the Mediterranean-European realm has up to now shown neither completed 'cycles' nor an unambiguous unilinear development."[112] Despite his fulminations, he did not consider the oppressive dominance of bureaucracy politically inescapable (cf. below, 991). In his showdown with Oswald Spengler in

112. "Agrarverhältnisse . . . ," *GAzSW*, 278.

February of 1920, Weber extracted the admission from the author of the *Decline of the West* that his morphology was historical poetry. Domination in large-scale communities was for Weber the only historic inevitability—a point directed at the same occasion against a young communist who was dreaming of the perfect commune of intellectuals and proletarians in Siberia.[113]

If the course of history is not predetermined but domination inescapable at the same time that its forms are limited, a historically saturated typology is the best analytical tool for the researcher. This is the ultimate rationale for the typologies of *Economy and Society.*

II. PART ONE: THE LATER PART

Between 1918 and 1920, during and after the Empire's collapse, Weber turned to the terminological summary. In contrast to Part Two, where after 1918 he revised only the chapter on bureaucracy, he rewrote the definitions many times. Weber spent so much energy on the categories because he recognized that the discursive exposition of his complex and novel terminology made retention difficult. Several colleagues, among them the philosopher Heinrich Rickert, had told him that the Stammler critique and the essay on "Some Categories of Interpretive Sociology" were excessively hard to read. Weber heeded their advice and simplified the terminology. He divided the text into numbered main definitions and small-print comments, a device frequently employed in the older literature, as in Schönberg's *Handbook of Political Economy.*

In the first edition of *Wirtschaft und Gesellschaft,* Part One was published under the title now carried by Part Two, but Weber liked to call it his *Kategorienlehre* or casuistry. In those last months of his life he seems to have expressed some satisfaction with his progress—with the feeling, however: "People will shake their heads." He expected resistance to his redefining of well-known historical, economic, legal and theological terms for his sociological purposes. Thus, he wanted it clearly understood that his definitions were nothing more than a clarification of his own terms to be tested by their scholarly yield; they were not an attempt to impose a new terminology on his colleagues. Hundreds of students attended his courses at this time—in Vienna in 1918 and in Munich in 1919/20—but the course on the categories drove them away *en masse.*[114] Upon their urging, Weber compensated the students for

113. Cf. Marianne Weber, *Lebensbild,* 685ff., and Eduard Baumgarten, ed., *Max Weber: Werk und Person* (Tübingen: Mohr, 1964), 554f.

114. In a period when political agitation is again an issue at American universities, it may be worthwhile to recount that Weber opened the course on the most general categories of sociology with a statement showing that he was for

his definitions with his lectures on economic history. It is certainly true that the definitions are not "readable." Part One is really a reference text, and it would indeed have greatly facilitated the reading of Part Two had Weber lived to revise the old terminology in the light of the new. The discrepancy as it now exists makes additional demands upon the reader of both parts, but it also offers researchers the opportunity to work with Weber's alternative terminology.

When Schmoller wrote his critique of Sombart's *Modern Capitalism* he advanced a complaint that might have applied also to Weber: "Every few pages we find the sentence: 'I call this such and such,' and the reader is overwhelmed by a flood of new names, new etiquettes and pigeonholes."[115] Sombart considered his own terminological introduction a "considerable esthetic impairment" but an inevitable nuisance since he wanted to introduce a personal terminology; similarly, Weber acknowledged the stylistic awkwardness of his precise definitions. Sombart called for an esthetic science: "The guilt toward all living things that every science brings upon itself [by its deadening generalities] can be expiated only if scholarship produces new life through its creations, shaping them into works of art . . . It seems to me that we should strive to make a scientific scheme *beautiful* in itself."[116] Weber never advanced such an exuberant demand, but the casuistry of Part One, which is so much indebted to his legal training, does indeed have an esthetic quality, which will be revealed especially to the reader who works his way first through Part Two with its descriptive richness.

Weber finished three chapters of Part One and the beginning of chapter IV. These are the only chapters he could rework in the proofs.[117] Both parts of the work begin with basic definitions of social action and then take up economic action. In Part One, however, the typology of

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"profession" even as he was against "indoctrination." In Marianne Weber's phrasing (*Lebensbild*, 673f.), he wanted to say a "first and last word on politics, which has no place in the lecture hall and in science, but rather belongs in an arena where the free airing of opposing judgements is possible. . . . We can have only *one* common goal: To turn the Versailles treaty into a scrap of paper. At the moment this is not possible, but the right of rebellion against foreign domination cannot be foresworn. Now we must practice the art of silence and return to the sober tasks of everyday life." Cf. Baumgarten, ed., *op. cit.*, 553, 716.

115. Schmoller, *loc. cit.*, 297.

116. Sombart, *op. cit.*, I, xxx.

117. The translation of chs. I–II of Part One was drafted by Henderson and reworked by Parsons, who did the subsequent chapters on his own. Terminologically, the original translation diverged from the German text by using "type" and "system" much more freely than did Weber, who in general spoke of "type" only when he really meant "ideal type" and for the rest employed terms such as "kind" or "phenomenon"; the term "system" was rarely used by Weber.

domination appears already in ch. III; classes and status groups (ch. IV) follow rather than precede it. Notes found with the manuscript indicate that Weber intended to go on to status groups of warriors. At least two chapters anticipated in the text of Part One are missing altogether: One on the more "universal" groups (household, kin group, etc.) treated early in Part Two, and another one on the theory of revolution (cf. the anticipatory reference below, 266), corresponding in Part Two to the chapter on the city as non-legitimate domination (ch. XVI). This chapter would have dealt with the German and Russian revolutions within a typology designed to give a more precise description than that afforded by the mere label "revolution."

Almost half of the first chapter of Part One is given over to a simplified presentation of the meaning of "interpretive sociology" and the concept of "social action."[118] This is Weber's easiest methodological statement, but because of its very conciseness the reader cannot afford to disregard the other methodological writings. In the second half of the chapter, the basic definitions of social action and association, Weber abandoned the older, more differentiated typology of Part Two (cf. below, Appendix I). He changed *Gemeinschaftshandeln* into *soziales Handeln* (social action) and *Gemeinschaft* mostly into *Verband* (organization). This made it possible to contrast *Vergemeinschaftung* and *Vergesellschaftung* (communal and associative relationships) in sec. 9 and to come closer to Tönnies' terminology without accepting his basic dichotomy. Tönnies' distinction had gained wide currency after the turn of the century, especially after the second edition of his work (1912). Apparently Weber felt that he should not insist on a quite different terminology. Weber treated Tönnies considerately as a comrade-in-arms in the struggle for social research and expressed himself with somewhat distant politeness about *Gemeinschaft und Gesellschaft* (1887), but there is no indication that the work was a major influence on his intellectual development, and *Economy and Society* appears partly conceived in opposition to it.[119]

118. For recent additions to the large literature on social action, see Helmut Girndt, *Das soziale Handeln als Grundkategorie erfahrungswissenschaftlicher Soziologie* ("Veröffentlichungen des Max Weber Instituts der Universität München"; Tübingen: Mohr, 1967); on the origin of the terminology of social action, see Johannes Winckelmann's introduction to Girndt, *ibid.*, 1–20; for an interpretation of Weber's theory of science in the light of subsequent developments in the natural and social sciences, see Winckelmann, "Max Webers Verständnis von Mensch und Gesellschaft," in K. Engisch *et al.*, eds., *Max Weber: Gedächtnisschrift der Ludwig-Maximilians-Universität München*, 195–243.

119. On the theoretical differences between Tönnies and Weber, see the definitive critique of Tönnies by René König, "Die Begriffe Gemeinschaft und

In communal as well as associative relationships conflict is normal (sec. 8). As in the case of power and domination, the definition of conflict has been wrenched out of context in discussions of Weber's orientation to power. He certainly was a political realist, but the purpose of the section is the definition of peaceful and regulated conflict ("competition") as against social selection and the free-for-all. The target of the section is Social Darwinism. Unrestrained struggle and social selection are marginal to Weber's analytical interest. Up to now the reversal of a key sentence has confused both German and English readers. Instead of the sentence: "The treatment of conflict involving the use of physical violence as a separate type is justified by the special characteristics of the employment of this means and the corresponding peculiarities of the sociological consequences of its use" (Parsons, ed., *Theory*, 133), it must read: "The conceptual separation (*Absonderung*) of peaceful [from violent] conflict is justified by the quality of the means normal to it and the peculiar sociological consequences of its occurrence" (below, 38). Weber goes on to emphasize the importance of the rules of the game as against inherent personal qualities (whether social or biological) and states that "we want to speak of conflict only when there really is competition" (cf. below, 39). He refers ahead to ch. II, where economic action is defined "as a peaceful use of the actor's control over resources" (below, 63).

The chapter on the sociological categories of economic action is remarkable for its length, the same as chs. I and III together. It is likely that Weber wanted to compensate for the relatively brief economic casuistry of Part Two. However, the many pages of seemingly dry definitions and comments owe some of their length—and hidden fervor—to Weber's political involvement with the problems of postwar economic and political reconstruction in the wake of the Empire's collapse and in the face of the victor's harsh demands at Versailles. The chapter also reflects the phenomenon of the wartime "state-socialist" economy and the syndicalist and socialist proposals for economic reconstruction. Some of Weber's comments on the much-debated question of the economic feasibility of socialism are definitely time-bound; other passages in this

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Gesellschaft bei Ferdinand Tönnies," *Kölner Zeitschrift für Soziologie*, VII, 1955, 348–420. In the American literature the relationship apparently was misperceived for two reasons: (1) the early date (1887) of Tönnies work, which for a long time received little attention, and the fact that the *Gemeinschaft–Gesellschaft* dichotomy became well-known so much earlier than *Economy and Society*. For illustrations, see Robert Nisbet, *The Sociological Tradition* (New York: Basic Books, 1966), 79 and 326; Robert Presthus, *Men at the Top. A Study in Community Power* (New York: Oxford University Press, 1964), 9.

chapter show him years ahead of the critique that welfare economists later were to direct against classical economics, even though he did not use their technical apparatus.

While he was working intermittently on the economic categories, Weber in speeches and statements strenuously opposed the nationalization of the major industries. He considered neither the remaining state bureaucracy nor the inexperienced functionaries of the socialist labor movement capable of running the economy. In April, 1920, when the Democratic Party he had helped to establish in November, 1918, asked him to serve on the Nationalization Commission, he resigned, explaining that "the politician *must* make compromises—the scholar must not whitewash them."[120] A few weeks later he died.

11. *Political Writings*

"Parliament and Government in a Reconstructed Germany" (Appendix II) is offered for three reasons: (1) to compensate for the unwritten part on the sociology of the state; (2) to provide a corrective to the one-sided reception of the chapter on bureaucracy (ch. XI)—as if Weber had somehow missed the facts of bureaucracy as a vested interest group or a network of informal cliques; (3) to introduce to the English reader one of his major political writings, almost all of which are untranslated.[121]

The essay is a revision of newspaper articles originally written for

120. E. Baumgarten, ed., *Max Weber: Werk und Person*, 530; cf. also *ibid.*, 608 and Wolfgang Mommsen, *Max Weber und die deutsche Politik 1890–1920* (Tübingen: Mohr, 1959), 303f.

121. In the fourth edition of *Wirtschaft und Gesellschaft*, as a substitute for the chapters on the modern state and its parties that Weber did not live to write, Johannes Winckelmann provides a Sociology of the State constructed out of passages from *Economic History*, "Politics as a Vocation," and "Parliament and Government" with the omission of the more polemical and time-bound sections (for a separate edition, see Max Weber, *Staatssoziologie*, ed. Johannes Winckelmann; 2nd rev. ed., Berlin: Duncker & Humblot, 1966). In the English edition this imaginative didactic effort has been replaced by a continuous translation of the last essay. This appeared desirable because of the English reader's lack of familiarity with the political writings; by contrast, the *Economic History* was the first Weber translation (1927) and "Politics as a Vocation," a philosophical statement rather than a polemical article, is already well-known in the Gerth and Mills translation (*From Max Weber . . .*, 77–128).—The list of Weber's political newspaper articles and journal essays is lengthy; it includes two essays on the 1905 Russian revolution, "On the Conditions of Bourgeois Democracy in Russia" and "Russia's Transition to Pseudo-Constitutionalism" (both 1906). The *Gesammelte Politische Schriften* comprise only part of the political writings. The Gerth and Mills volume contains somewhat more than one quarter of

the leftwing-liberal *Frankfurter Zeitung*, one of the best-known European newspapers until its suppression by the Nazis. The articles appeared in the summer of 1917, after Woodrow Wilson entered the war. They launched a sensational attack on the political incompetency of the Imperial and Prussian bureaucracy; the paper was subsequently put under pre-publication censorship, but the very publication of the articles is enough to show that even in wartime Imperial Germany was far less oppressive than Nazi Germany.

Weber made his impassioned plea for political democratization at a time when reform seemed highly uncertain and revolution only a slight possibility. His siding with parliamentarism was by no means a sudden conversion under the shadow of military disaster, as it was for Ludendorff and the general staff in September 1918. Weber had for many years advocated parliamentary government. He considered himself part of a vigorous but loyal opposition to the monarchy. He argued from premises of national interest, partly out of deep conviction, partly for tactical reasons, hoping that parliamentary government would make possible a more rational politics in the international no less than the national interest. He wanted Germany to play a major part in the rather discordant concert of European powers, but he never advocated her hegemony over Europe. In domestic politics he wanted to be recognized as a "class conscious bourgeois" who opposed the entrenched Junkers and the rightwing romantics no less than the petty-bourgeois labor movement and the utopian leftwing intellectuals. He positively scorned the *litterateurs* of the right and left—witness his outbursts in "Parliament and Government." Weber took a humanitarian commitment for granted but was convinced that it would suffer from noisy display and moralistic sermonizing. He saluted pacifists as well as revolutionaries with a pure "ethic of ultimate ends" (*Gesinnungsethik*). But he believed in politics as the art of the possible—the morally imperative compromise in a world of irreconcilable ideologies and raw interests.

These few remarks cannot do justice to Weber's politics or to his political critics.[122] The reader of "Parliament and Government" should bear in mind that it represents only one phase of Weber's politics, neither the early period when the very young professor intentionally shocked his father's liberal generation with tough nationalist rhetoric in his Frei-

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"Suffrage and Democracy in Germany" (1917) under the heading "National Character and the Junkers" (*op. cit.*, 386–95). Weber's political writings are, of course, partly dated; however, in part they can also be read as discussions of democratization, especially the issue of political development in "new" states.

122. For a review of the critics, see my "Political Critiques of Max Weber: Some Implications for Political Sociology," *American Sociological Review*, vol. 30, 1965, 213–23.

burg inaugural address of 1895—only to regret it later—nor the last phase when the despairing democrat returned from the Versailles treaty meetings with grave forbodings, just like John Maynard Keynes. Weber foresaw Wilson's failure at Versailles. In an unsigned editorial statement in the *Frankfurter Zeitung* (October 27, 1918) he lectured his colleague-in-politics on the hard facts of the power balance and the art of peace-making:

> Men of good will and understanding do not question Pre ident Wilson's sincerity. However, it appears that he does not sufficiently grasp the following: If the German government accepts his armi ice conditions, which make any further military resistance impossible, not only Germany *but he too* would be eliminated as a major factor in the peace settlement. His own po ition as arbiter for the world rests on the fact that the German army is at least strong enough to avoid defeat without the help of American troops on the Allied side. Were this to become different, the absolutely intransigent elements, which no doubt exi t in other enemy countries, would gain the upper hand and simply push the President aside with polite thanks for his previous support. *His role would be over,* unless he went to war against his present allies. The German governme t, too, should have co sidered this state of affairs. Even though an armistice is desirable to avoid unnecessary bloodshed, it would certainly have been better not to focus deliberations so exclusively on the armistice offer as has been done. Peace negotiations could take place without an armistice if the enemies insist on continuation of the slaughter.[123]

In extremis, Weber was not averse to a *levée en masse* and guerrilla warfare ("national wars of liberation"), as he demonstrated in his speech at an anti-Versailles meeting of the University of Heidelberg in March, 1919; he protested against what appeared to him a flagrant violation of Wilson's promise of self-determination for all peoples. Such national pride, however, did not prevent rightwing students from picketing his house and disrupting his lectures. Emotional appeals aside, he devoted much constructive energy to the drafting of the Weimar constitution, through his writings and as member of the revolutionary government's planning committee.[124]

123. *GPS,* 435.

124. In the past, Weber's contribution to the presidential features of the Weimar constitution was exaggerated by friend and foe. For a correction, see Gerhard Schulz, *Zwischen Demokratie und Diktatur: Verfassungspolitik und Reichsreform in der Weimarer Republik* (Berlin: de Gruyter, 1963), I, 114–42. Schulz points out that far from taking a blunt position in favor of a "Caesarist" leader, Weber gradually shifted his opinions in response to the changing political situation and the diversity of opinion in committee meetings. Eventually he came to favor a popularly elected President as a mediator between the *Reichstag* and the States. Cf. also Weber, *GPS,* 394–471, 486–89.

In essence, Weber stood for the rational support of a political order that can be affirmed in most essentials. His sociology can serve the self-clarification of critical-minded organization men in industrialized and democratized society. This was the ultimate dialectic in Weber's position: he was a sharp critic of human and institutional failures, but basically a moralist with reformist convictions, not a revolutionary temper.[125]

12. *On Editing and Translating* Economy and Society

There are some misunderstandings abroad about the readability of *Economy and Society*. They relate in part to the original, in part to the translations. To begin with, it must be pointed out that Weber wrote lucidly and subtly. He wrote more clearly than did most of his colleagues, including Sombart, Tönnies, Troeltsch and his own brother Alfred, not to mention the legion of "ordinary" professors of his time. Weber does not stand in the tradition of German philosophical prose with its murky profundity that has usually suggested dangerous obscurantism to Anglo-Saxon readers. Considering that most of *Economy and Society* is a first draft, Weber's power of formulation proves extraordinary. Yet there are difficulties:

(1) Since Part Two was written with great speed, stylistic editing and judicious cutting would have been helpful to the reader, but this would also have been incompatible with the requirements of a complete edition.

(2) Weber never wrote a well-wrought book. His larger works are longish problem-centered research papers. *Economy and Society* is the only work conceived for a wider audience, but it never reached the stage of final literary form; moreover, it was simply not meant as a text for introductory courses, or as the kind of polished study in cultural pessimism so popular in the nineteen-twenties.

(3) Weber uses a profusion of quotation marks as an alienating device to indicate that he employs familiar terms with reservations, with a new meaning, or in an ironic sense. This habit was the counterpoint to his concern with terminological precision and at times is a drawback. In the translation, the quotation marks were used more sparingly.

(4) Weber tended to overqualify his sentences, using terms such as

125. For a sketch of this dialectic, see Guenther Roth and Bennett M. Berger, "Max Weber and the Organized Society," *New York Times Book Review*, April 3, 1966, 6 and 44f.

"perhaps," "more or less," "in general," "as a rule," "frequently but not always," etc. This reflected the difficulty both of formulating historical generalizations and of identifying a specific cause. Weber's sense of caution became a stylistic mannerism.

Similar to the second and third volume of *Das Kapital*, Weber's work was edited from literary remains written in a scarcely legible handwriting. The early editions of *Wirtschaft und Gesellschaft* contained hundreds of reading and identification errors. For thirty-five years this distorted, or outright destroyed, the meaning of many passages and obviously affected the translations. In 1956, after many years of painstaking labor, Johannes Winckelmann published his critically revised (fourth) edition. In close cooperation, Winckelmann and the English editors have decided on a large number of further changes in wording, clauses, names and dates; some of these have been incorporated in the 1964 German paperback edition. The projected fifth edition will identify all these changes; listing them in the English edition would have been too cumbersome. The definitive German edition will be almost identical with the present English text, with the exception of Winckelmann's compilation of the Sociology of the State.[126] However, the German and English edition differ in the subheadings of the chapters. The manuscript had no subheadings, it seems, excepting the Sociology of Law, which in turn had no title. The early editions summarized the chapter contents, often inadequately, below the chapter headings. Winckelmann extensively revised them. The English editors proceeded at their own discretion and used subheadings in the text to improve its readability.

The systematic checking of the text required considerable library research, invisible where there are no corrections and annotations. The revision of the extant translations proved almost as time-consuming and difficult as the new translation since every sentence had to be compared to the German text and changed if it appeared necessary for textual, terminological and, more rarely, stylistic reasons. Weber's skilful use of German syntax permits more complex construction than is feasible in English. Thus, Weber is not really improved by "streamlining," by breaking up his carefully balanced and qualified sentences into a series of linear constructs. A more linear rendering was inevitable in the English version, but our inclination was to retain, and in some cases to restore, Weber's architecture. However, in most cases pragmatic pre-

126. Like the German paperback edition of 1964, the English edition omits Weber's essay on "The Rational and Social Foundations of Music," which was not part of the original but was appended to the second German edition. For an English version, see the translation by Don Martindale, Johannes Riedel and Gertrude Neuwirth (Carbondale: Southern Illinois University Press, 1958).

vailed over stylistic considerations, whether the revision of previous translations or our own formulations were involved.

In most academic translations, the task involves prosaic accuracy, not an esthetic recreation. Academic translation should properly be teamwork. Individual "heroism" is bound to be affected by the limitations of any single translator, as was proven by Parsons, Fischoff and Kolegar. Some of the English translations have been undertaken by two men, one familiar with each language. This arrangement could not, however, lighten the burden of the primary translator. Our translation was aided by two-fold familiarity with the original language, which permitted collateral reading and prevented premature closure by either one of us. Our revision of the extant translations has also been in the nature of collateral reading, backed by the wisdom of hindsight. The ideal translation, however, requires a third man: the stylist in the language of translation. Our third man was missing.

Everett C. Hughes once remarked that, as a matter of principle, a work should only be translated as a whole. Each piecemeal translation tends to reduce the incentive for publishing the whole. This leads to unanticipated and fortuitous intellectual consequences. Theoretical developments in American sociology have been considerably influenced by the vagaries of the Weber translations. Thus, the Gerth and Mills edition created the impression that the Sociology of Domination centers about the contrast of bureaucracy and charisma. Parsons' translation of only Part One perforce attenuated the historical dimension of the work and led some writers to believe that Weber did not follow up on his categories.[127] Weber's case is far from exceptional. In recent years it has become clear that the translations of Durkheim and Nietzsche have had similar distorting consequences.

Without sustained support by foundations and institutes the desiderata of academic translation cannot be fulfilled in most cases. This support has been lacking largely because translation and editing are the most underestimated kind of work in the social sciences. But as long as sociologists continue to lean on the Sociological Tradition, the need for translation will persist. Moreover, in an era of world-wide comparative research the linguistic problem will be perpetual without adequate translation facilities and better linguistic training for social scientists.

127. Since David Easton explicitly aimed at a forceful and incisive improvement of Weber, it appears legitimate to observe that his *A Systems Analysis of Political Life* (New York: Wiley, 1965) is a major example for some unintended consequences of the partial translations by Gerth and Mills and by Parsons. The Rheinstein-Shils translation, which would have corrected part of his interpretation, was not consulted. This may be indicative of the difficulty to see partial translations as part of a whole. (See Easton, *op. cit.*, 183, 281, 283, 301 ff.)

13. *Acknowledgements*

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PART ONE

Conceptual Exposition

CHAPTER I

BASIC SOCIOLOGICAL TERMS

Prefatory Note

An introductory discussion of concepts can hardly be dispensed with, in spite of the fact that it is unavoidably abstract and hence gives the impression of remoteness from reality. The method employed makes no claim to any kind of novelty. On the contrary it attempts only to formulate what all empirical sociology really means when it deals with the same problems, in what it is hoped is a more convenient and somewhat more exact terminology, even though on that account it may seem pedantic. This is true even where terms are used which are apparently new or unfamiliar. As compared to the author's essay in *Logos*,[1] the terminology has been simplified as far as possible and hence considerably changed in order to render it more easily understandable. The most precise formulation cannot always be reconciled with a form which can readily be popularized. In such cases the latter aim has had to be sacrificed.

On the concept of "understanding"[2] compare the *Allgemeine Psychopathologie* of Karl Jaspers, also a few observations by Heinrich Rickert in the second edition of the *Grenzen der naturwissenschaftlichen Begriffsbildung* and particularly some of Simmel's discussions in the *Probleme der Geschichtsphilosophie*. For certain methodological considerations the reader may here be referred, as often before in the author's writings, to the procedure of Friedrich Gottl in his work *Die Herrschaft des Wortes;* this book, to be sure, is written in a somewhat difficult style and its argument does not appear everywhere to have been thoroughly thought through. As regards content, reference may be made

especially to the fine work of Ferdinand Tönnies, *Gemeinschaft und Gesellschaft*, and also to the gravely misleading book of Rudolf Stammler, *Wirtschaft und Recht nach der materialistischen Geschichtsauffassung*, which may be compared with my criticism in the *Archiv für Sozialwissenschaft* (vol. 14, 1907, [GAzW, 291-359]). This critical essay contains many of the fundamental ideas of the following exposition. The present work departs from Simmel's method (in his *Soziologie* and his *Philosophie des Geldes*) in drawing a sharp distinction between subjectively intended and objectively valid "meanings"; two different things which Simmel not only fails to distinguish but often deliberately treats as belonging together.

1. *The Definition of Sociology and of Social Action*

Sociology (in the sense in which this highly ambiguous word is used here) is a science concerning itself with the interpretive understanding of social action and thereby with a causal explanation of its course and consequences. We shall speak of "action" insofar as the acting individual attaches a subjective meaning to his behavior—be it overt or covert, omission or acquiescence. Action is "social" insofar as its subjective meaning takes account of the behavior of others and is thereby oriented in its course.[3]

A. METHODOLOGICAL FOUNDATIONS[4]

1. "Meaning" may be of two kinds. The term may refer first to the actual existing meaning in the given concrete case of a particular actor, or to the average or approximate meaning attributable to a given plurality of actors; or secondly to the theoretically conceived *pure type*[5] of subjective meaning attributed to the hypothetical actor or actors in a given type of action. In no case does it refer to an objectively "correct" meaning or one which is "true" in some metaphysical sense. It is this which distinguishes the empirical sciences of action, such as sociology and history, from the dogmatic disciplines in that area, such as jurisprudence, logic, ethics, and esthetics, which seek to ascertain the "true" and "valid" meanings associated with the objects of their investigation.

2. The line between meaningful action and merely reactive behavior to which no subjective meaning is attached, cannot be sharply drawn empirically. A very considerable part of all sociologically relevant behavior, especially purely traditional behavior, is marginal between the

two. In the case of some psychophysical processes, meaningful, i.e., subjectively understandable, action is not to be found at all; in others it is discernible only by the psychologist. Many mystical experiences which cannot be adequately communicated in words are, for a person who is not susceptible to such experiences, not fully understandable. At the same time the ability to perform a similar action is not a necessary prerequisite to understanding; "one need not have been Caesar in order to understand Caesar." "Recapturing an experience" is important for accurate understanding, but not an absolute precondition for its interpretation. Understandable and non-understandable components of a process are often intermingled and bound up together.

3. All interpretation of meaning, like all scientific observations, strives for clarity and verifiable accuracy of insight and comprehension (*Evidenz*).* The basis for certainty in understanding can be either rational, which can be further subdivided into logical and mathematical, or it can be of an emotionally empathic or artistically appreciative quality. Action is rationally evident chiefly when we attain a completely clear intellectual grasp of the action-elements in their intended context of meaning. Empathic or appreciative accuracy is attained when, through sympathetic participation, we can adequately grasp the emotional context in which the action took place. The highest degree of rational understanding is attained in cases involving the meanings of logically or mathematically related propositions; their meaning may be immediately and unambiguously intelligible. We have a perfectly clear understanding of what it means when somebody employs the proposition $2 \times 2 = 4$ or the Pythagorean theorem in reasoning or argument, or when someone correctly carries out a logical train of reasoning according to our accepted modes of thinking. In the same way we also understand what a person is doing when he tries to achieve certain ends by choosing appropriate means on the basis of the facts of the situation, as experience has accustomed us to interpret them. The interpretation of such rationally purposeful action possesses, for the understanding of the choice of means, the highest degree of verifiable certainty. With a lower degree of certainty, which is, however, adequate for most purposes of explanation, we are able to understand errors, including confusion of problems of the sort that we ourselves are liable to, or the origin of which we can detect by sympathetic self-analysis.

On the other hand, many ultimate ends or values toward which experience shows that human action may be oriented, often cannot be understood completely, though sometimes we are able to grasp them intellectually. The more radically they differ from our own ultimate values, however, the more difficult it is for us to understand them em-

pathically. Depending upon the circumstances of the particular case we must be content either with a purely intellectual understanding of such values or when even that fails, sometimes we must simply accept them as given data. Then we can try to understand the action motivated by them on the basis of whatever opportunities for approximate emotional and intellectual interpretation seem to be available at different points in its course. These difficulties confront, for instance, people not susceptible to unusual acts of religious and charitable zeal, or persons who abhor extreme rationalist fanaticism (such as the fanatic advocacy of the "rights of man").

The more we ourselves are susceptible to such emotional reactions as anxiety, anger, ambition, envy, jealousy, love, enthusiasm, pride, vengefulness, loyalty, devotion, and appetites of all sorts, and to the "irrational" conduct which grows out of them, the more readily can we empathize with them. Even when such emotions are found in a degree of intensity of which the observer himself is completely incapable, he can still have a significant degree of emotional understanding of their meaning and can interpret intellectually their influence on the course of action and the selection of means.

For the purposes of a typological scientific analysis it is convenient to treat all irrational, affectually determined elements of behavior as factors of deviation from a conceptually pure type of rational action. For example a panic on the stock exchange can be most conveniently analysed by attempting to determine first what the course of action would have been if it had not been influenced by irrational affects; it is then possible to introduce the irrational components as accounting for the observed deviations from this hypothetical course. Similarly, in analysing a political or military campaign it is convenient to determine in the first place what would have been a rational course, given the ends of the participants and adequate knowledge of all the circumstances. Only in this way is it possible to assess the causal significance of irrational factors as accounting for the deviations from this type. The construction of a purely rational course of action in such cases serves the sociologist as a type (ideal type) which has the merit of clear understandability and lack of ambiguity. By comparison with this it is possible to understand the ways in which actual action is influenced by irrational factors of all sorts, such as affects and errors, in that they account for the deviation from the line of conduct which would be expected on the hypothesis that the action were purely rational.

Only in this respect and for these reasons of methodological convenience is the method of sociology "rationalistic." It is naturally not legitimate to interpret this procedure as involving a rationalistic bias of

sociology, but only as a methodological device. It certainly does not involve a belief in the actual predominance of rational elements in human life, for on the question of how far this predominance does or does not exist, nothing whatever has been said. That there is, however, a danger of rationalistic interpretations where they are out of place cannot be denied. All experience unfortunately confirms the existence of this danger.

4. In all the sciences of human action, account must be taken of processes and phenomena which are devoid of subjective meaning, in the role of stimuli, results, favoring or hindering circumstances. To be devoid of meaning is not identical with being lifeless or non-human; every artifact, such as for example a machine, can be understood only in terms of the meaning which its production and use have had or were intended to have; a meaning which may derive from a relation to exceedingly various purposes. Without reference to this meaning such an object remains wholly unintelligible. That which is intelligible or understandable about it is thus its relation to human action in the role either of means or of end; a relation of which the actor or actors can be said to have been aware and to which their action has been oriented. Only in terms of such categories is it possible to "understand" objects of this kind. On the other hand processes or conditions, whether they are animate or inanimate, human or non-human, are in the present sense devoid of meaning in so far as they cannot be related to an intended purpose. That is to say they are devoid of meaning if they cannot be related to action in the role of means or ends but constitute only the stimulus, the favoring or hindering circumstances. It may be that the flooding of the Dollart [at the mouth of the Ems river near the Dutch-German border] in 1277 had historical significance as a stimulus to the beginning of certain migrations of considerable importance. Human mortality, indeed the organic life cycle from the helplessness of infancy to that of old age, is naturally of the very greatest sociological importance through the various ways in which human action has been oriented to these facts. To still another category of facts devoid of meaning belong certain psychic or psychophysical phenomena such as fatigue, habituation, memory, etc.; also certain typical states of euphoria under some conditions of ascetic mortification; finally, typical variations in the reactions of individuals according to reaction-time, precision, and other modes. But in the last analysis the same principle applies to these as to other phenomena which are devoid of meaning. Both the actor and the sociologist must accept them as data to be taken into account.

It is possible that future research may be able to discover non-interpretable uniformities underlying what has appeared to be specif-

ically meaningful action, though little has been accomplished in this direction thus far. Thus, for example, differences in hereditary biological constitution, as of "races," would have to be treated by sociology as given data in the same way as the physiological facts of the need of nutrition or the effect of senescence on action. This would be the case if, and insofar as, we had statistically conclusive proof of their influence on sociologically relevant behavior. The recognition of the causal significance of such factors would not in the least alter the specific task of sociological analysis or of that of the other sciences of action, which is the interpretation of action in terms of its subjective meaning. The effect would be only to introduce certain non-interpretable data of the same order as others which are already present, into the complex of subjectively understandable motivation at certain points. (Thus it may come to be known that there are typical relations between the frequency of certain types of teleological orientation of action or of the degree of certain kinds of rationality and the cephalic index or skin color or any other biologically inherited characteristic.)

5. Understanding may be of two kinds: the first is the direct observational understanding[7] of the subjective meaning of a given act as such, including verbal utterances. We thus understand by direct observation, in this case, the meaning of the proposition $2 \times 2 = 4$ when we hear or read it. This is a case of the direct rational understanding of ideas. We also understand an outbreak of anger as manifested by facial expression, exclamations or irrational movements. This is direct observational understanding of irrational emotional reactions. We can understand in a similar observational way the action of a woodcutter or of somebody who reaches for the knob to shut a door or who aims a gun at an animal. This is rational observational understanding of actions.

Understanding may, however, be of another sort, namely explanatory understanding. Thus we understand in terms of *motive* the meaning an actor attaches to the proposition twice two equals four, when he states it or writes it down, in that we understand what makes him do this at precisely this moment and in these circumstances. Understanding in this sense is attained if we know that he is engaged in balancing a ledger or in making a scientific demonstration, or is engaged in some other task of which this particular act would be an appropriate part. This is rational understanding of motivation, which consists in placing the act in an intelligible and more inclusive context of meaning.[8] Thus we understand the chopping of wood or aiming of a gun in terms of motive in addition to direct observation if we know that the woodchopper is working for a wage or is chopping a supply of firewood for his own use or possibly is doing it for recreation. But he might also be working off a

fit of rage, an irrational case. Similarly we understand the motive of a person aiming a gun if we know that he has been commanded to shoot as a member of a firing squad, that he is fighting against an enemy, or that he is doing it for revenge. The last is affectually determined and thus in a certain sense irrational. Finally we have a motivational understanding of the outburst of anger if we know that it has been provoked by jealousy, injured pride, or an insult. The last examples are all affectually determined and hence derived from irrational motives. In all the above cases the particular act has been placed in an understandable sequence of motivation, the understanding of which can be treated as an explanation of the actual course of behavior. Thus for a science which is concerned with the subjective meaning of action, explanation requires a grasp of the complex of meaning in which an actual course of understandable action thus interpreted belongs. In all such cases, even where the processes are largely affectual, the subjective meaning of the action, including that also of the relevant meaning complexes, will be called the 'intended meaning.' (This involves a departure from ordinary usage, which speaks of intention in this sense only in the case of rationally purposive action.)

6. In all these cases understanding involves the interpretive grasp of the meaning present in one of the following contexts: (a) as in the historical approach, the actually intended meaning for concrete individual action; or (b) as in cases of sociological mass phenomena, the average of, or an approximation to, the actually intended meaning; or (c) the meaning appropriate to a scientifically formulated pure type (an ideal type) of a common phenomenon. The concepts and "laws" of pure economic theory are examples of this kind of ideal type. They state what course a given type of human action would take if it were strictly rational, unaffected by errors or emotional factors and if, furthermore, it were completely and unequivocally directed to a single end, the maximization of economic advantage. In reality, action takes exactly this course only in unusual cases, as sometimes on the stock exchange; and even then there is usually only an approximation to the ideal type. (On the purpose of such constructions, see my essay in *AfS*, 19 [cf. n. 5] and point 11 below.)

Every interpretation attempts to attain clarity and certainty, but no matter how clear an interpretation as such appears to be from the point of view of meaning, it cannot on this account claim to be the causally valid interpretation. On this level it must remain only a peculiarly plausible hypothesis. In the first place the "conscious motives" may well, even to the actor himself, conceal the various "motives" and "repressions" which constitute the real driving force of his action. Thus in such cases even subjectively honest self-analysis has only a relative value. Then it

is the task of the sociologist to be aware of this motivational situation and to describe and analyse it, even though it has not actually been concretely part of the conscious intention of the actor; possibly not at all, at least not fully. This is a borderline case of the interpretation of meaning. Secondly, processes of action which seem to an observer to be the same or similar may fit into exceedingly various complexes of motive in the case of the actual actor. Then even though the situations appear superficially to be very similar we must actually understand them or interpret them as very different, perhaps, in terms of meaning, directly opposed. (Simmel, in his *Probleme der Geschichtsphilosophie*, gives a number of examples.) Third, the actors in any given situation are often subject to opposing and conflicting impulses, all of which we are able to understand. In a large number of cases we know from experience it is not possible to arrive at even an approximate estimate of the relative strength of conflicting motives and very often we cannot be certain of our interpretation. Only the actual outcome of the conflict gives a solid basis of judgment.

More generally, verification of subjective interpretation by comparison with the concrete course of events is, as in the case of all hypotheses, indispensable. Unfortunately this type of verification is feasible with relative accuracy only in the few very special cases susceptible of psychological experimentation. In very different degrees of approximation, such verification is also feasible in the limited number of cases of mass phenomena which can be statistically described and unambiguously interpreted. For the rest there remains only the possibility of comparing the largest possible number of historical or contemporary processes which, while otherwise similar, differ in the one decisive point of their relation to the particular motive or factor the role of which is being investigated. This is a fundamental task of comparative sociology. Often, unfortunately, there is available only the uncertain procedure of the "imaginary experiment" which consists in thinking away certain elements of a chain of motivation and working out the course of action which would then probably ensue, thus arriving at a causal judgment.[10]

For example, the generalization called Gresham's Law is a rationally clear interpretation of human action under certain conditions and under the assumption that it will follow a purely rational course. How far any actual course of action corresponds to this can be verified only by the available statistical evidence for the actual disappearance of under-valued monetary units from circulation. In this case our information serves to demonstrate a high degree of accuracy. The facts of experience were known before the generalization, which was formulated afterwards; but without this successful interpretation our need for causal understand-

ing would evidently be left unsatisfied. On the other hand, without the demonstration that what can here be assumed to be a theoretically adequate interpretation also is in some degree relevant to an actual course of action, a "law," no matter how fully demonstrated theoretically, would be worthless for the understanding of action in the real world. In this case the correspondence between the theoretical interpretation of motivation and its empirical verification is entirely satisfactory and the cases are numerous enough so that verification can be considered established. But to take another example, Eduard Meyer has advanced an ingenious theory of the causal significance of the battles of Marathon, Salamis, and Platea for the development of the cultural peculiarities of Greek, and hence, more generally, Western, civilization.[11] This is derived from a meaningful interpretation of certain symptomatic facts having to do with the attitudes of the Greek oracles and prophets towards the Persians. It can only be directly verified by reference to the examples of the conduct of the Persians in cases where they were victorious, as in Jerusalem, Egypt, and Asia Minor, and even this verification must necessarily remain unsatisfactory in certain respects. The striking rational plausibility of the hypothesis must here necessarily be relied on as a support. In very many cases of historical interpretation which seem highly plausible, however, there is not even a possibility of the order of verification which was feasible in this case. Where this is true the interpretation must necessarily remain a hypothesis.

7. A motive is a complex of subjective meaning which seems to the actor himself or to the observer an adequate ground for the conduct in question. The interpretation of a coherent course of conduct is "subjectively adequate" (or "adequate on the level of meaning"), insofar as, according to our habitual modes of thought and feeling, its component parts taken in their mutual relation are recognized to constitute a "typical" complex of meaning.[12] It is more common to say "correct." The interpretation of a sequence of events will on the other hand be called *causally* adequate insofar as, according to established generalizations from experience, there is a probability that it will always actually occur in the same way. An example of adequacy on the level of meaning in this sense is what is, according to our current norms of calculation or thinking, the correct solution of an arithmetical problem. On the other hand, a causally adequate interpretation of the same phenomenon would concern the statistical probability that, according to verified generalizations from experience, there would be a correct or an erroneous solution of the same problem. This also refers to currently accepted norms but includes taking account of typical errors or of typical confusions. Thus causal explanation depends on being able to determine that there is a

probability, which in the rare ideal case can be numerically stated, but is always in some sense calculable, that a given observable event (overt or subjective) will be followed or accompanied by another event.

A correct causal interpretation of a concrete course of action is arrived at when the overt action and the motives have both been correctly apprehended and at the same time their relation has become meaningfully comprehensible. A correct causal interpretation of typical action means that the process which is claimed to be typical is shown to be both adequately grasped on the level of meaning and at the same time the interpretation is to some degree causally adequate. If adequacy in respect to meaning is lacking, then no matter how high the degree of uniformity and how precisely its probability can be numerically determined, it is still an incomprehensible statistical probability, whether we deal with overt or subjective processes. On the other hand, even the most perfect adequacy on the level of meaning has causal significance from a sociological point of view only insofar as there is some kind of proof for the existence of a probability[13] that action in fact normally takes the course which has been held to be meaningful. For this there must be some degree of determinable frequency of approximation to an average or a pure type.

Statistical uniformities constitute understandable types of action, and thus constitute sociological generalizations, only when they can be regarded as manifestations of the understandable subjective meaning of a course of social action. Conversely, formulations of a rational course of subjectively understandable action constitute sociological types of empirical process only when they can be empirically observed with a significant degree of approximation. By no means is the actual likelihood of the occurrence of a given course of overt action always directly proportional to the clarity of subjective interpretation. Only actual experience can prove whether this is so in a given case. There are statistics of processes devoid of subjective meaning, such as death rates, phenomena of fatigue, the production rate of machines, the amount of rainfall, in exactly the same sense as there are statistics of meaningful phenomena. But only when the phenomena are meaningful do we speak of sociological statistics. Examples are such cases as crime rates, occupational distributions, price statistics, and statistics of crop acreage. Naturally there are many cases where both components are involved, as in crop statistics.

8. Processes and uniformities which it has here seemed convenient not to designate as sociological phenomena or uniformities because they are not "understandable," are naturally not on that account any the less important. This is true even for sociology in our sense which is restricted

to subjectively understandable phenomena—a usage which there is no intention of attempting to impose on anyone else. Such phenomena, however important, are simply treated by a different method from the others; they become conditions, stimuli, furthering or hindering circumstances of action.

9. Action in the sense of subjectively understandable orientation of behavior exists only as the behavior of one or more *individual* human beings. For other cognitive purposes it may be useful or necessary to consider the individual, for instance, as a collection of cells, as a complex of bio-chemical reactions, or to conceive his psychic life as made up of a variety of different elements, however these may be defined. Undoubtedly such procedures yield valuable knowledge of causal relationships. But the behavior of these elements, as expressed in such uniformities, is not subjectively understandable. This is true even of psychic elements because the more precisely they are formulated from a point of view of natural science, the less they are accessible to subjective understanding. This is never the road to interpretation in terms of subjective meaning. On the contrary, both for sociology in the present sense, and for history, the object of cognition is the subjective meaning-complex of action. The behavior of physiological entities such as cells, or of any sort of psychic elements, may at least in principle be observed and an attempt made to derive uniformities from such observations. It is further possible to attempt, with their help, to obtain a causal explanation of individual phenomena, that is, to subsume them under uniformities. But the subjective understanding of action takes the same account of this type of fact and uniformity as of any others not capable of subjective interpretation. (This is true, for example, of physical, astronomical, geological, meteorological, geographical, botanical, zoological, and anatomical facts, of those aspects of psycho-pathology which are devoid of subjective meaning, or of the natural conditions of technological processes.)

For still other cognitive purposes—for instance, juristic ones—or for practical ends, it may on the other hand be convenient or even indispensable to treat social collectivities, such as states, associations, business corporations, foundations, as if they were individual persons. Thus they may be treated as the subjects of rights and duties or as the performers of legally significant actions. But for the subjective interpretation of action in sociological work these collectivities must be treated as *solely* the resultants and modes of organization of the particular acts of individual persons, since these alone can be treated as agents in a course of subjectively understandable action. Nevertheless, the sociologist cannot for his purposes afford to ignore these collective concepts derived from other disciplines. For the subjective interpretation of action has at least three

important relations to these concepts. In the first place it is often necessary to employ very similar collective concepts, indeed often using the same terms, in order to obtain an intelligible terminology. Thus both in legal terminology and in everyday speech the term "state" is used both for the legal concept of the state and for the phenomena of social action to which its legal rules are relevant. For sociological purposes, however, the phenomenon "the state" does not consist necessarily or even primarily of the elements which are relevant to legal analysis; and for sociological purposes there is no such thing as a collective personality which "acts." When reference is made in a sociological context to a state, a nation, a corporation, a family, or an army corps, or to similar collectivities, what is meant is, on the contrary, *only* a certain kind of development of actual or possible social actions of individual persons. Both because of its precision and because it is established in general usage the juristic concept is taken over, but is used in an entirely different meaning.

Secondly, the subjective interpretation of action must take account of a fundamentally important fact. These concepts of collective entities which are found both in common sense and in juristic and other technical forms of thought, have a meaning in the minds of individual persons, partly as of something actually existing, partly as something with normative authority. This is true not only of judges and officials, but of ordinary private individuals as well. Actors thus in part orient their action to them, and in this role such ideas have a powerful, often a decisive, causal influence on the course of action of real individuals. This is above all true where the ideas involve normative prescription or prohibition. Thus, for instance, one of the important aspects of the existence of a modern state, precisely as a complex of social interaction of individual persons, consists in the fact that the action of various individuals is oriented to the belief that it exists or should exist, thus that its acts and laws are valid in the legal sense. This will be further discussed below. Though extremely pedantic and cumbersome, it would be possible, if purposes of sociological terminology alone were involved, to eliminate such terms entirely, and substitute newly-coined words. This would be possible even though the word "state" is used ordinarily not only to designate the legal concept but also the real process of action. But in the above important connexion, at least, this would naturally be impossible.

Thirdly, it is the method of the so-called "organic" school of sociology —classical example: Schäffle's brilliant work, *Bau und Leben des sozialen Körpers*—to attempt to understand social interaction by using as a point of departure the "whole" within which the individual acts. His action and behavior are then interpreted somewhat in the way that a

physiologist would treat the role of an organ of the body in the "economy" of the organism, that is from the point of view of the survival of the latter. (Compare the famous dictum of a well-known physiologist: "Sec. 10. The spleen. Of the spleen, gentlemen, we know nothing. So much for the spleen." Actually, of course, he knew a good deal about the spleen—its position, size, shape, etc.; but he could say nothing about its function, and it was his inability to do this that he called "ignorance.") How far in other disciplines this type of functional analysis of the relation of "parts" to a "whole" can be regarded as definitive, cannot be discussed here; but it is well known that the bio-chemical and bio-physical modes of analysis of the organism are on principle opposed to stopping there. For purposes of sociological analysis two things can be said. First this functional frame of reference is convenient for purposes of practical illustration and for provisional orientation. In these respects it is not only useful but indispensable. But at the same time if its cognitive value is overestimated and its concepts illegitimately "reified,"[14] it can be highly dangerous. Secondly, in certain circumstances this is the only available way of determining just what processes of social action it is important to understand in order to explain a given phenomenon. But this is only the beginning of sociological analysis as here understood. In the case of social collectivities, precisely as distinguished from organisms, we are in a position to go beyond merely demonstrating functional relationships and uniformities. We can accomplish something which is never attainable in the natural sciences, namely the subjective understanding of the action of the component individuals. The natural sciences on the other hand cannot do this, being limited to the formulation of causal uniformities in objects and events and the explanation of individual facts by applying them. We do not "understand" the behavior of cells, but can only observe the relevant functional relationships and generalize on the basis of these observations. This additional achievement of explanation by interpretive understanding, as distinguished from external observation, is of course attained only at a price—the more hypothetical and fragmentary character of its results. Nevertheless, subjective understanding is the specific characteristic of sociological knowledge.

It would lead too far afield even to attempt to discuss how far the behavior of animals is subjectively understandable to us and vice versa; in both cases the meaning of the term understanding and its extent of application would be highly problematical. But in so far as such understanding existed it would be theoretically possible to formulate a sociology of the relations of men to animals, both domestic and wild. Thus many animals "understand" commands, anger, love, hostility, and react to them in ways which are evidently often by no means purely instinctive

and mechanical and in some sense both consciously meaningful and affected by experience. In a way, our ability to share the feelings of primitive men is not very much greater. We either do not have any reliable means of determining the subjective state of mind of an animal or what we have is at best very unsatisfactory. It is well known that the problems of animal psychology, however interesting, are very thorny ones. There are in particular various forms of social organization among animals: monogamous and polygamous "families," herds, flocks, and finally "states," with a functional division of labour. (The extent of functional differentiation found in these animal societies is by no means, however, entirely a matter of the degree of organic or morphological differentiation of the individual members of the species. Thus, the functional differentiation found among the termites, and in consequence that of the products of their social activities, is much more advanced than in the case of the bees and ants.) In this field it goes without saying that a purely functional point of view is often the best that can, at least for the present, be attained, and the investigator must be content with it. Thus it is possible to study the ways in which the species provides for its survival; that is, for nutrition, defence, reproduction, and reconstruction of the social units. As the principal bearers of these functions, differentiated types of individuals can be identified: "kings," "queens," "workers," "soldiers," "drones," "propagators," "queen's substitutes," and so on. Anything more than that was for a long time merely a matter of speculation or of an attempt to determine the extent to which heredity on the one hand and environment on the other would be involved in the development of these "social" proclivities. This was particularly true of the controversies between Götte and Weismann.[15] The latter's conception in *Die Allmacht der Naturzüchtung* was largely based on wholly non-empirical deductions. But all serious authorities are naturally fully agreed that the limitation of analysis to the functional level is only a necessity imposed by our present ignorance, which it is hoped will only be temporary. (For an account of the state of knowledge of the termites, for example, see the study by Karl Escherich, *Die Termiten oder weissen Ameisen*, 1909.)

The researchers would like to understand not only the relatively obvious survival functions of these various differentiated types, but also the bearing of different variants of the theory of heredity or its reverse on the problem of explaining how these differentiations have come about. Moreover, they would like to know first what factors account for the original differentiation of specialized types from the still neutral undifferentiated species-type. Secondly, it would be important to know what leads the differentiated individual in the typical case to behave

in a way-which actually serves the survival value of the organized group. Wherever research has made any progress in the solution of these problems it has been through the experimental demonstration of the probability or possibility of the role of chemical stimuli or physiological processes, such as nutritional states, the effects of parasitic castration, etc., in the case of the individual organism. How far there is even a hope that the existence of "subjective" or "meaningful" orientation could be made experimentally probable, even the specialist today would hardly be in a position to say. A verifiable conception of the state of mind of these social animals accessible to meaningful understanding, would seem to be attainable even as an ideal goal only within narrow limits. However that may be, a contribution to the understanding of human social action is hardly to be expected from this quarter. On the contrary, in the field of animal psychology, human analogies are and must be continually employed. The most that can be hoped for is, then, that these biological analogies may some day be useful in suggesting significant problems. For instance they may throw light on the question of the relative role in the early stages of human social differentiation of mechanical and instinctive factors, as compared with that of the factors which are accessible to subjective interpretation generally, and more particularly to the role of consciously rational action. It is necessary for the sociologist to be thoroughly aware of the fact that in the early stages even of human development, the first set of factors is completely predominant. Even in the later stages he must take account of their continual interaction with the others in a role which is often of decisive importance. This is particularly true of all "traditional" action and of many aspects of charisma, which contain the seeds of certain types of psychic "contagion" and thus give rise to new social developments. These types of action are very closely related to phenomena which are understandable either only in biological terms or can be interpreted in terms of subjective motives only in fragments. But all these facts do not discharge sociology from the obligation, in full awareness of the narrow limits to which it is confined, to accomplish what it alone can do.

The various works of Othmar Spann [1878–1950] are often full of suggestive ideas though at the same time he is guilty of occasional misunderstandings and above all of arguing on the basis of pure value judgments which have no place in an empirical investigation. But he is undoubtedly correct in doing something to which, however, no one seriously objects, namely, emphasizing the sociological significance of the functional point of view for preliminary orientation to problems. This is what he calls the "universalistic method." It is true that we must know what kind of action is functionally necessary for "survival," but even

more so for the maintenance of a cultural type and the continuity of the corresponding modes of social action, before it is possible even to inquire how this action has come about and what motives determine it. It is necessary to know what a "king," an "official," an "entrepreneur," a "procurer," or a "magician" does, that is, what kind of typical action, which justifies classifying an individual in one of these categories, is important and relevant for an analysis, before it is possible to undertake the analysis itself. (This is what Rickert means by *Wertbezogenheit*.) But it is only this analysis itself which can achieve the sociological understanding of the actions of typically differentiated human (and only human) individuals, and which hence constitutes the specific function of sociology. It is a tremendous misunderstanding to think that an "individualistic" *method* should involve what is in any conceivable sense an individualistic system of *values*. It is as important to avoid this error as the related one which confuses the unavoidable tendency of sociological concepts to assume a rationalistic character with a belief in the predominance of rational motives, or even a positive valuation of rationalism. Even a socialistic economy would have to be understood sociologically in exactly the same kind of "individualistic" terms; that is, in terms of the action of individuals, the types of officials found in it, as would be the case with a system of free exchange analysed in terms of the theory of marginal utility or a "better," but in this respect similar theory). The real empirical sociological investigation begins with the question: What motives determine and lead the individual members and participants in this socialistic community to behave in such a way that the community came into being in the first place and that it continues to exist? Any form of functional analysis which proceeds from the whole to the parts can accomplish only a preliminary preparation for this investigation—a preparation, the utility and indispensability of which, if properly carried out, is naturally beyond question.

10. It is customary to designate various sociological generalizations, as for example "Gresham's Law," as "laws." These are in fact typical probabilities confirmed by observation to the effect that under certain given conditions an expected course of social action will occur, which is understandable in terms of the typical motives and typical subjective intentions of the actors. These generalizations are both understandable and definite in the highest degree insofar as the typically observed course of action can be understood in terms of the purely rational pursuit of an end, or where for reasons of methodological convenience such a theoretical type can be heuristically employed. In such cases the relations of means and end will be clearly understandable on grounds of experience, particularly where the choice of means was "inevitable." In such

cases it is legitimate to assert that insofar as the action was rigorously rational it could not have taken any other course because for technical reasons, given their clearly defined ends, no other means were available to the actors. This very case demonstrates how erroneous it is to regard any kind of psychology as the ultimate foundation of the sociological interpretation of action. The term psychology, to be sure, is today understood in a wide variety of senses. For certain quite specific methodological purposes the type of treatment which attempts to follow the procedures of the natural sciences employs a distinction between "physical" and "psychic" phenomena which is entirely foreign to the disciplines concerned with human action, at least in the present sense. The results of a type of psychological investigation which employs the methods of the natural sciences in any one of various possible ways may naturally, like the results of any other science, have outstanding significance for sociological problems; indeed this has often happened. But this use of the results of psychology is something quite different from the investigation of human behavior in terms of its subjective meaning. Hence sociology has no closer relationship on a general analytical level to this type of psychology than to any other science. The source of error lies in the concept of the "psychic." It is held that everything which is not physical is *ipso facto* psychic. However, the *meaning* of a train of mathematical reasoning which a person carries out is not in the relevant sense "psychic." Similarly the rational deliberation of an actor as to whether the results of a given proposed course of action will or will not promote certain specific interests, and the corresponding decision, do not become one bit more understandable by taking "psychological" considerations into account. But it is precisely on the basis of such rational assumptions that most of the laws of sociology, including those of economics, are built up. On the other hand, in explaining the irrationalities of action sociologically, that form of psychology which employs the method of subjective understanding undoubtedly can make decisively important contributions. But this does not alter the fundamental methodological situation.

11. We have taken for granted that sociology seeks to formulate type concepts and generalized uniformities of empirical process. This distinguishes it from history, which is oriented to the causal analysis and explanation of individual actions, structures, and personalities possessing cultural significance. The empirical material which underlies the concepts of sociology consists to a very large extent, though by no means exclusively, of the same concrete processes of action which are dealt with by historians. An important consideration in the formulation of sociological concepts and generalizations is the contribution that sociology

can make toward the causal explanation of some historically and culturally important phenomenon. As in the case of every generalizing science the abstract character of the concepts of sociology is responsible for the fact that, compared with actual historical reality, they are relatively lacking in fullness of concrete content. To compensate for this disadvantage, sociological analysis can offer a greater precision of concepts. This precision is obtained by striving for the highest possible degree of adequacy on the level of meaning. It has already been repeatedly stressed that this aim can be realized in a particularly high degree in the case of concepts and generalizations which formulate rational processes. But sociological investigation attempts to include in its scope various irrational phenomena, such as prophetic, mystic, and affectual modes of action, formulated in terms of theoretical concepts which are adequate on the level of meaning. In *all* cases, rational or irrational, sociological analysis both abstracts from reality and at the same time helps us to understand it, in that it shows with what degree of approximation a concrete historical phenomenon can be subsumed under one or more of these concepts. For example, the same historical phenomenon may be in one aspect feudal, in another patrimonial, in another bureaucratic, and in still another charismatic. In order to give a precise meaning to these terms, it is necessary for the sociologist to formulate pure ideal types of the corresponding forms of action which in each case involve the highest possible degree of logical integration by virtue of their complete adequacy on the level of meaning. But precisely because this is true, it is probably seldom if ever that a real phenomenon can be found which corresponds exactly to one of these ideally constructed pure types. The case is similar to a physical reaction which has been calculated on the assumption of an absolute vacuum. Theoretical differentiation (*Kasuistik*) is possible in sociology only in terms of ideal or pure types. It goes without saying that in addition it is convenient for the sociologist from time to time to employ average types of an empirical statistical character, concepts which do not require methodological discussion. But when reference is made to "typical" cases, the term should always be understood, unless otherwise stated, as meaning *ideal* types, which may in turn be rational or irrational as the case may be (thus in economic theory they are always rational), but in any case are always constructed with a view to adequacy on the level of meaning.

It is important to realize that in the sociological field as elsewhere, averages, and hence average types, can be formulated with a relative degree of precision only where they are concerned with differences of degree in respect to action which remains qualitatively the same. Such cases do occur, but in the majority of cases of action important to history

or sociology the motives which determine it are qualitatively heterogeneous. Then it is quite impossible to speak of an "average" in the true sense. The ideal types of social action which for instance are used in economic theory are thus unrealistic or abstract in that they always ask what course of action would take place if it were purely rational and oriented to economic ends alone. This construction can be used to aid in the understanding of action not purely economically determined but which involves deviations arising from traditional restraints, affects, errors, and the intrusion of other than economic purposes or considerations. This can take place in two ways. First, in analysing the extent to which in the concrete case, or on the average for a class of cases, the action was in part economically determined along with the other factors. Secondly, by throwing the discrepancy between the actual course of events and the ideal type into relief, the analysis of the non-economic motives actually involved is facilitated. The procedure would be very similar in employing an ideal type of mystical orientation, with its appropriate attitude of indifference to worldly things, as a tool for analysing its consequences for the actor's relation to ordinary life—for instance, to political or economic affairs. The more sharply and precisely the ideal type has been constructed, thus the more abstract and unrealistic in this sense it is, the better it is able to perform its functions in formulating terminology, classifications, and hypotheses. In working out a concrete causal explanation of individual events, the procedure of the historian is essentially the same. Thus in attempting to explain the campaign of 1866, it is indispensable both in the case of Moltke and of Benedek to attempt to construct imaginatively how each, given fully adequate knowledge both of his own situation and of that of his opponent, would have acted. Then it is possible to compare with this the actual course of action and to arrive at a causal explanation of the observed deviations, which will be attributed to such factors as misinformation, strategical errors, logical fallacies, personal temperament, or considerations outside the realm of strategy. Here, too, an ideal-typical construction of rational action is actually employed even though it is not made explicit.

The theoretical concepts of sociology are ideal types not only from the objective point of view, but also in their application to subjective processes. In the great majority of cases actual action goes on in a state of inarticulate half-consciousness or actual unconsciousness of its subjective meaning. The actor is more likely to "be aware" of it in a vague sense than he is to "know" what he is doing or be explicitly self-conscious about it. In most cases his action is governed by impulse or habit. Only occasionally and, in the uniform action of large numbers, often only in the case of a few individuals, is the subjective meaning of the action, whether

rational or irrational, brought clearly into consciousness. The ideal type of meaningful action where the meaning is fully conscious and explicit is a marginal case. Every sociological or historical investigation, in applying its analysis to the empirical facts, must take this fact into account. But the difficulty need not prevent the sociologist from systematizing his concepts by the classification of possible types of subjective meaning. That is, he may reason as if action actually proceeded on the basis of clearly self-conscious meaning. The resulting deviation from the concrete facts must continually be kept in mind whenever it is a question of this level of concreteness, and must be carefully studied with reference both to degree and kind. It is often necessary to choose between terms which are either clear or unclear. Those which are clear will, to be sure, have the abstractness of ideal types, but they are none the less preferable for scientific purposes. (On all these questions see "'Objectivity' in Social Science and Social Policy.")

B. SOCIAL ACTION

1. Social action, which includes both failure to act and passive acquiescence, may be oriented to the past, present, or expected future behavior of others. Thus it may be motivated by revenge for a past attack, defence against present, or measures of defence against future aggression. The "others" may be individual persons, and may be known to the actor as such, or may constitute an indefinite plurality and may be entirely unknown as individuals. (Thus, money is a means of exchange which the actor accepts in payment because he orients his action to the expectation that a large but unknown number of individuals he is personally unacquainted with will be ready to accept it in exchange on some future occasion.)

2. Not every kind of action, even of overt action, is "social" in the sense of the present discussion. Overt action is non-social if it is oriented solely to the behavior of inanimate objects. Subjective attitudes constitute social action only so far as they are oriented to the behavior of others. For example, religious behavior is not social if it is simply a matter of contemplation or of solitary prayer. The economic activity of an individual is social only if it takes account of the behavior of someone else. Thus very generally it becomes social insofar as the actor assumes that others will respect his actual control over economic goods. Concretely it is social, for instance, if in relation to the actor's own consumption the future wants of others are taken into account and this becomes one consideration affecting the actor's own saving. Or, in another connexion, production may be oriented to the future wants of other people.

3. Not every type of contact of human beings has a social character; this is rather confined to cases where the actor's behavior is meaningfully oriented to that of others. For example, a mere collision of two cyclists may be compared to a natural event. On the other hand, their attempt to avoid hitting each other, or whatever insults, blows, or friendly discussion might follow the collision, would constitute "social action."

4. Social action is not identical either with the similar actions of many persons or with every action influenced by other persons. Thus, if at the beginning of a shower a number of people on the street put up their umbrellas at the same time, this would not ordinarily be a case of action mutually oriented to that of each other, but rather of all reacting in the same way to the like need of protection from the rain. It is well known that the actions of the individual are strongly influenced by the mere fact that he is a member of a crowd confined within a limited space. Thus, the subject matter of studies of "crowd psychology," such as those of Le Bon, will be called "action conditioned by crowds." It is also possible for large numbers, though dispersed, to be influenced simultaneously or successively by a source of influence operating similarly on all the individuals, as by means of the press. Here also the behavior of an individual is influenced by his membership in a "mass" and by the fact that he is aware of being a member. Some types of reaction are only made possible by the mere fact that the individual acts as part of a crowd. Others become more difficult under these conditions. Hence it is possible that a particular event or mode of human behavior can give rise to the most diverse kinds of feeling—gaiety, anger, enthusiasm, despair, and passions of all sorts—in a crowd situation which would not occur at all or not nearly so readily if the individual were alone. But for this to happen there need not, at least in many cases, be any meaningful relation between the behavior of the individual and the fact that he is a member of a crowd. It is not proposed in the present sense to call action "social" when it is merely a result of the effect on the individual of the existence of a crowd as such and the action is not oriented to that fact on the level of meaning. At the same time the borderline is naturally highly indefinite. In such cases as that of the influence of the demagogue, there may be a wide variation in the extent to which his mass clientele is affected by a meaningful reaction to the fact of its large numbers; and whatever this relation may be, it is open to varying interpretations.

But furthermore, mere "imitation" of the action of others, such as that on which Tarde has rightly laid emphasis, will not be considered a case of specifically social action if it is purely reactive so that there is no meaningful orientation to the actor imitated. The borderline is, however, so indefinite that it is often hardly possible to discriminate. The mere

fact that a person is found to employ some apparently useful procedure which he learned from someone else does not, however, constitute, in the present sense, social action. Action such as this is not oriented to the action of the other person, but the actor has, through observing the other, become acquainted with certain objective facts; and it is these to which his action is oriented. His action is then *causally* determined by the action of others, but not meaningfully. On the other hand, if the action of others is imitated because it is fashionable or traditional or exemplary, or lends social distinction, or on similar grounds, it is meaningfully oriented either to the behavior of the source of imitation or of third persons or of both. There are of course all manner of transitional cases between the two types of imitation. Both the phenomena discussed above, the behavior of crowds and imitation, stand on the indefinite borderline of social action. The same is true, as will often appear, of traditionalism and charisma. The reason for the indefiniteness of the line in these and other cases lies in the fact that both the orientation to the behavior of others and the meaning which can be imputed by the actor himself, are by no means always capable of clear determination and are often altogether unconscious and seldom fully self-conscious. Mere "influence" and meaningful orientation cannot therefore always be clearly differentiated on the empirical level. But conceptually it is essential to distinguish them, even though merely reactive imitation may well have a degree of sociological importance at least equal to that of the type which can be called social action in the strict sense. Sociology, it goes without saying, is by no means confined to the study of social action; this is only, at least for the kind of sociology being developed here, its central subject matter, that which may be said to be decisive for its status as a science. But this does not imply any judgment on the comparative importance of this and other factors.

2. *Types of Social Action*

Social action, like all action, may be oriented in four ways. It may be:

(1) ***instrumentally rational*** (***zweckrational***), that is, determined by expectations as to the behavior of objects in the environment and of other human beings; these expectations are used as "conditions" or "means" for the attainment of the actor's own rationally pursued and calculated ends;

(2) ***value-rational*** (***wertrational***), that is, determined by a conscious

belief in the value for its own sake of some ethical, aesthetic, religious, or other form of behavior, independently of its prospects of success;
(3) *affectual* (especially emotional), that is, determined by the actor's specific affects and feeling states;
(4) *traditional*, that is, determined by ingrained habituation.

1. Strictly traditional behavior, like the reactive type of imitation discussed above, lies very close to the borderline of what can justifiably be called meaningfully oriented action, and indeed often on the other side. For it is very often a matter of almost automatic reaction to habitual stimuli which guide behavior in a course which has been repeatedly followed. The great bulk of all everyday action to which people have become habitually accustomed approaches this type. Hence, its place in a systematic classification is not merely that of a limiting case because, as will be shown later, attachment to habitual forms can be upheld with varying degrees of self-consciousness and in a variety of senses. In this case the type may shade over into value rationality (*Wertrationalität*).

2. Purely affectual behavior also stands on the borderline of what can be considered "meaningfully" oriented, and often it, too, goes over the line. It may, for instance, consist in an uncontrolled reaction to some exceptional stimulus. It is a case of sublimation when affectually determined action occurs in the form of conscious release of emotional tension. When this happens it is usually well on the road to rationalization in one or the other or both of the above senses.

3. The orientation of value-rational action is distinguished from the affectual type by its clearly self-conscious formulation of the ultimate values governing the action and the consistently planned orientation of its detailed course to these values. At the same time the two types have a common element, namely that the meaning of the action does not lie in the achievement of a result ulterior to it, but in carrying out the specific type of action for its own sake. Action is affectual if it satisfies a need for revenge, sensual gratification, devotion, contemplative bliss, or for working off emotional tensions (irrespective of the level of sublimation).

Examples of pure value-rational orientation would be the actions of persons who, regardless of possible cost to themselves, act to put into practice their convictions of what seems to them to be required by duty, honor, the pursuit of beauty, a religious call, personal loyalty, or the importance of some "cause" no matter in what it consists. In our terminology, value-rational action always involves "commands" or "demands" which, in the actor's opinion, are binding on him. It is only in cases where human action is motivated by the fulfillment of such unconditional demands that it will be called value-rational. This is the case in widely varying degrees, but for the most part only to a relatively slight extent. Nevertheless, it will be shown that the occurrence of this mode of action is important enough to justify its formulation as a distinct type;

though it may be remarked that there is no intention here of attempting to formulate in any sense an exhaustive classification of types of action.

4. Action is instrumentally rational (*zweckrational*) when the end, the means, and the secondary results are all rationally taken into account and weighed. This involves rational consideration of alternative means to the end, of the relations of the end to the secondary consequences, and finally of the relative importance of different possible ends. Determination of action either in affectual or in traditional terms is thus incompatible with this type. Choice between alternative and conflicting ends and results may well be determined in a value-rational manner. In that case, action is instrumentally rational only in respect to the choice of means. On the other hand, the actor may, instead of deciding between alternative and conflicting ends in terms of a rational orientation to a system of values, simply take them as given subjective wants and arrange them in a scale of consciously assessed relative urgency. He may then orient his action to this scale in such a way that they are satisfied as far as possible in order of urgency, as formulated in the principle of "marginal utility." Value-rational action may thus have various different relations to the instrumentally rational action. From the latter point of view, however, value-rationality is always irrational. Indeed, the more the value to which action is oriented is elevated to the status of an absolute value, the more "irrational" in this sense the corresponding action is. For, the more unconditionally the actor devotes himself to this value for its own sake, to pure sentiment or beauty, to absolute goodness or devotion to duty, the less is he influenced by considerations of the consequences of his action. The orientation of action wholly to the rational achievement of ends without relation to fundamental values is, to be sure, essentially only a limiting case.

5. It would be very unusual to find concrete cases of action, especially of social action, which were oriented *only* in one or another of these ways. Furthermore, this classification of the modes of orientation of action is in no sense meant to exhaust the possibilities of the field, but only to formulate in conceptually pure form certain sociologically important types to which actual action is more or less closely approximated or, in much the more common case, which constitute its elements. The usefulness of the classification for the purposes of this investigation can only be judged in terms of its results.

3. *The Concept of Social Relationship*

The term "social relationship" will be used to denote the behavior of a plurality of actors insofar as, in its meaningful content, the action of each takes account of that of the others and is oriented in these terms. The social relationship thus consists entirely and exclusively in the exist-

ence of a probability that there will be a meaningful course of social action —irrespective, for the time being, of the basis for this probability.

1. Thus, as a defining criterion, it is essential that there should be at least a minimum of mutual orientation of the action of each to that of the others. Its content may be of the most varied nature: conflict, hostility, sexual attraction, friendship, loyalty, or economic exchange. It may involve the fulfillment, the evasion, or the violation of the terms of an agreement; economic, erotic, or some other form of "competition"; common membership in status, national or class groups (provided it leads to social action). Hence, the definition does not specify whether the relation of the actors is co-operative or the opposite.

2. The "meaning" relevant in this context is always a case of the meaning imputed to the parties in a given concrete case, on the average, or in a theoretically formulated pure type—it is never a normatively "correct" or a metaphysically "true" meaning. Even in cases of such forms of social organization as a state, church, association, or marriage, the social relationship consists exclusively in the fact that there has existed, exists, or will exist a probability of action in some definite way appropriate to this meaning. It is vital to be continually clear about this in order to avoid the "reification" of those concepts. A "state," for example, ceases to exist in a sociologically relevant sense whenever there is no longer a probability that certain kinds of meaningfully oriented social action will take place. This probability may be very high or it may be negligibly low. But in any case it is only in the sense and degree in which it does exist that the corresponding social relationship exists. It is impossible to find any other clear meaning for the statement that, for instance, a given "state" exists or has ceased to exist.

3. The subjective meaning need not necessarily be the same for all the parties who are mutually oriented in a given social relationship; there need not in this sense be "reciprocity." "Friendship," "love," "loyalty," "fidelity to contracts," "patriotism," on one side, may well be faced with an entirely different attitude on the other. In such cases the parties associate different meanings with their actions, and the social relationship is insofar objectively "asymmetrical" from the points of view of the two parties. It may nevertheless be a case of mutual orientation insofar as, even though partly or wholly erroneously, one party presumes a particular attitude toward him on the part of the other and orients his action to this expectation. This can, and usually will, have consequences for the course of action and the form of the relationship. A relationship is objectively symmetrical only as, according to the typical expectations of the parties, the meaning for one party is the same as that for the other. Thus the actual attitude of a child to its father may be a least approximately that which the father, in the individual case, on the average or typically, has come to ex t. A social relationship in which the attitudes are completely and fully corresponding is in reality a limiting case. But the absence of reciprocity will, for terminological

purposes, be held to exclude the existence of a social relationship only if it actually results in the absence of a mutual orientation of the action of the parties. Here as elsewhere all sorts of transitional cases are the rule rather than the exception.

4. A social relationship can be of a very fleeting character or of varying degrees of permanence. In the latter case there is a probability of the repeated recurrence of the behavior which corresponds to its subjective meaning and hence is expected. In order to avoid fallacious impressions, let it be repeated that it is *only* the existence of the probability that, corresponding to a given subjective meaning, a certain type of action will take place which constitutes the "existence" of the social relationship. Thus that a "friendship" or a "state" exists or has existed means this and only this: that we, the observers, judge that there is or has been a probability that on the basis of ce ain kinds of known subjective attitude of certain individuals there will result in the average sense a certain specific type of action. For the purposes of legal reasoning it is essential to be able to decide whether a rule of law does or does not carry legal authority, hence whether a legal relationship does or does not "exist." This type of question is not, however, relevant to sociological problems.

5. The subjective meaning of a social relationship may change, thus a political relationship once based on solidarity may develop into a conflict of interests. In that case it is only a matter of terminological convenience and of the degree of continuity of the change whether we say that a new relationship has come into existence or that the old one continues but has acquired a new meaning. It is also possible for the meaning to be partly constant, partly changing.

6. The meaningful content which remains relatively constant in a social relationship is capable of formulation in terms of maxims which the parties concerned expect to be adhered to by their partners on the average and approximately. The more rational in relation to values or to given ends the action is, the more is this likely to be the case. There is far less possibility of a rational formulation of subjective meaning in the case of a relation of erotic attraction or of personal loyalty or any other affectual type than, for example, in the case of a business contract.

7. The meaning of a social relationship may be agreed upon by mutual consent. This implies that the parties make promises covering their future behavior, whether toward each other or toward third persons. In such cases each party then normally counts, so far as he acts rationally, in some degree on the fact that the other will orient his action to the meaning of the agreement as he (the first actor) understands it. In part he orients his action rationally (*zweckrational*) to these expectations as given facts with, to be sure, varying degrees of subjectively "loyal" intention of doing his part. But in part also he is motivated value-rationally by a sense of duty, which makes him adhere to the agreement as he understands it. This much may be anticipated. (For a further elaboration, see secs. 9 and 13 below.)

4. *Types of Action Orientation: Usage, Custom, Self-Interest*

Within the realm of social action certain empirical uniformities can be observed, that is, courses of action that are repeated by the actor or (simultaneously) occur among numerous actors since the subjective meaning is meant to be the same. Sociological investigation is concerned with these typical modes of action. Thereby it differs from history, the subject of which is rather the causal explanation of important individual events; important, that is, in having an influence on human destiny.

If an orientation toward social action occurs regularly, it will be called "usage" (*Brauch*) insofar as the probability of its existence within a group is based on nothing but actual practice. A usage will be called a "custom" (*Sitte*) if the practice is based upon long standing. On the other hand, a uniformity of orientation may be said to be "determined by self-interest," if and insofar as the actors' conduct is instrumentally (*zweckrational*) oriented toward identical expectations.[16]

1. Usage also includes "fashion" (*Mode*). As distinguished from custom and in direct contrast to it, usage will be called fashion so far as the mere fact of the *novelty* of the corresponding behavior is the basis of the orientation of action. Its locus is in the neighborhood of "convention,"[17] since both of them usually spring from a desire for social prestige. Fashion, however, will not be further discussed here.

2. As distinguished from both "convention" and "law," "custom" refers to rules devoid of any external sanction. The actor conforms with them of his own free will, whether his motivation lies in the fact that he merely fails to think about it, that it is more comfortable to conform, or whatever else the reason may be. For the same reasons he can consider it likely that other members of the group will adhere to a custom.

Thus custom is not "valid" in anything like the legal sense; conformity with it is not "demanded" by anybody. Naturally, the transition from this to validly enforced convention and to law is gradual. Everywhere what has been traditionally handed down has been an important source of what has come to be enforced. Today it is customary every morning to eat a breakfast which, within limits, conforms to a certain pattern. But there is no obligation to do so, except possibly for hotel guests, and it has not always been customary. On the other hand, the current mode of dress, even though it has partly originated in custom, is today very largely no longer customary alone, but conventional.

(On the concepts of usage and custom, the relevant parts of vol. II of R. von Jhering's *Zweck im Recht* are still worth reading. Compare also, P. Oertmann, *Rechtsordnung und Verkehrssitte* (1914); and more recently E. Weigelin, *Sitte, Recht und Moral* (1919), which agrees with the author's position as opposed to that of Stammler.)

3. Many of the especially notable uniformities in the course of social action are not determined by orientation to any sort of norm which is held to be valid, nor do they rest on custom, but entirely on the fact that the corresponding type of social action is in the nature of the case best adapted to the normal interests of the actors as they themselves are aware of them. This is above all true of economic action, for example, the uniformities of price determination in a "free" market, but is by no means confined to such cases. The dealers in a market thus treat their own actions as means for obtaining the satisfaction of the ends defined by what they realize to be their own typical economic interests, and similarly treat as conditions the corresponding typical expectations as to the prospective behavior of others. The more strictly rational (*zweckrational*) their action is, the more will they tend to react similarly to the same situation. In this way there arise similarities, uniformities, and continuities in their attitudes and actions which are often far more stable than they would be if action were oriented to a system of norms and duties which were considered binding on the members of a group. This phenomenon—the fact that orientation to the situation in terms of the pure self-interest of the individual and of the others to whom he is related can bring about results comparable to those which imposed norms prescribe, very often in vain—has aroused a lively interest, especially in economic affairs. Observation of this has, in fact, been one of the important sources of economics as a science. But it is true in all other spheres of action as well. This type, with its clarity of self-consciousness and freedom from subjective scruples, is the polar antithesis of every sort of unthinking acquiescence in customary ways as well as of devotion to norms consciously accepted as absolute values. One of the most important aspects of the process of "rationalization" of action is the substitution for the unthinking acceptance of ancient custom, of deliberate adaptation to situations in terms of self-interest. To be sure, this process by no means exhausts the concept of rationalization of action. For in addition this can proceed in a variety of other directions; positively in that of a deliberate formulation of ultimate values (*Wertrationalisierung*); or negatively, at the expense not only of custom, but of emotional values; and, finally, in favor of a morally sceptical type of rationality, at the expense of any belief in absolute values. The many possible meanings of the concept of rationalization will often enter into the discussion.[18] (Further remarks on the analytial problem will be found at the end.)[19]

4. The stability of merely customary action rests essentially on the fact that the person who does not adapt himself to it is subjected to both petty and major inconveniences and annoyances as long as the majority of the people he comes in contact with continue to uphold the custom and conform with it.

Similarly, the stability of action in terms of self-interest rests on the fact that the person who does not orient his action to the interests of others, does not "take account" of them, arouses their antagonism

or may end up in a situation different from that which he had foreseen or wished to bring about. He thus runs the risk of damaging his own interests.

5. *Legitimate Order*

Action, especially social action which involves a social relationship, may be guided by the belief in the existence of a legitimate order. The probability that action will actually be so governed will be called the "validity" (*Geltung*) of the order in question.

1. Thus, the validity of an order means more than the mere existence of a uniformity of social action determined by custom or self-interest. If furniture movers regularly advertise at the time many leases expire, this uniformity is determined by self-interest. If a salesman visits certain customers on particular days of the month or the week, it is either a case of customary behavior or a product of self-interested orientation. However, when a civil servant appears in his office daily at a fixed time, he does not act only on the basis of custom or self-interest which he could disregard if he wanted to; as a rule, his action is also determined by the validity of an order (viz., the civil service rules), which he fulfills partly because disobedience would be disadvantageous to him but also because its violation would be abhorrent to his sense of duty (of course, in varying degrees).

2. Only then will the content of a social relationship be called an order if the conduct is, approximately or on the average, oriented toward determinable "maxims." Only then will an order be called "valid" if the orientation toward these maxims occurs, among other reasons, also because it is in some appreciable way regarded by the actor as in some way obligatory or exemplary for him. Naturally, in concrete cases, the orientation of action to an order involves a wide variety of motives. But the circumstance that, along with the other sources of conformity, the order is also held by at least part of the actors to define a model or to be binding, naturally increases the probability that action will in fact conform to it, often to a very considerable degree. An order which is adhered to from motives of pure expediency is generally much less stable than one upheld on a purely customary basis through the fact that the corresponding behavior has become habitual. The latter is much the most common type of subjective attitude. But even this type of order is in turn much less stable than an order which enjoys the prestige of being considered binding, or, as it may be expressed, of "legitimacy." The transitions between orientation to an order from motives of tradition or of expediency to the case where a belief in its legitimacy is involved are empirically gradual.

3. It is possible for action to be oriented to an order in other ways than through conformity with its prescriptions, as they are generally understood by the actors. Even in the case of evasion or disobedience, the probability of their being recognized as valid norms may have an effect on action. This may, in the first place, be true from the point of view of sheer expediency. A thief orients his action to the validity of the criminal law in that he acts surreptitiously. The fact that the order is recognized as valid in his society is made evident by the fact that he cannot violate it openly without punishment. But apart from this limiting case, it is very common for violation of an order to be confined to more or less numerous partial deviations from it, or for the attempt to be made, with varying degrees of good faith, to justify the deviation as legitimate. Furthermore, there may exist at the same time different interpretations of the meaning of the order. In such cases, for sociological purposes, each can be said to be valid insofar as it actually determines the course of action. The fact that, in the same social group, a plurality of contradictory systems of order may all be recognized as valid, is not a source of difficulty for the sociological approach. Indeed, it is even possible for the same individual to orient his action to contradictory systems of order. This can take place not only at different times, as is an everyday occurrence, but even in the case of the same concrete act. A person who fights a duel follows the code of honor; but at the same time, insofar as he either keeps it secret or conversely gives himself up to the police, he takes account of the criminal law. To be sure, when evasion or contravention of the generally understood meaning of an order has become the rule, the order can be said to be "valid" only in a limited degree and, in the extreme case, not at all. Thus for sociological purposes there does not exist, as there does for the law, a rigid alternative between the validity and lack of validity of a given order. On the contrary, there is a gradual transition between the two extremes, and also it is possible, as it has been pointed out, for contradictory systems of order to exist at the same time. In that case each is "valid" precisely to the extent that there is a probability that action will in fact be oriented to it.

[Excursus:] Those familiar with the literature of this subject will recall the part played by the concept of "order" in the brilliant book of Rudolf Stammler, which was cited in the prefatory note, a book which, though like all his works it is very able, is nevertheless fundamentally misleading and confuses the issues in a catastrophic fashion. (The reader may compare the author's critical discussion of it, which was also cited in the same place, a discussion which, because of the author's annoyance at Stammler's confusion, was unfortunately written in somewhat too acrimonious a tone.) Stammler fails to distinguish the normative meaning of "validity" from the empirical. He further fails to recognize that social action is oriented to other things beside systems of order. Above all, however, in a way which is wholly

indefensible from a logical point of view, he treats order as a "form" of social action and then attempts to bring it into a type of relation to "content," which is analogous to that of form and content in the theory of knowledge. Other errors in his argument will he left aside. But economic action, for instance, is oriented to knowledge of the relative scarcity of certain available means to want satisfaction, in relation to the actor's state of needs and to the present and probable action of others, insofar as the latter affects the same resources. But at the same time, of course, the actor in his choice of economic procedures naturally orients himself *in addition* to the conventional and legal rules which he recognizes as valid, that is, of which he knows that a violation on his part would call forth a given reaction of other persons. Stammler succeeds in introducing a state of hopeless confusion into this very simple empirical situation, particularly in that he maintains that a causal relationship between an order and actual empirical action involves a contradiction in terms. It is true, of course, that there is no causal relationship between the *normative* validity of an order in the legal sense and any empirical process. In that context there is only the question of whether the order as correctly interpreted in the legal sense "applies" to the empirical situation. The question is whether in a *normative* sense it *should* be treated as valid and, if so, what the content of its normative prescriptions for this situation should be. But for sociological purposes, as distinguished from legal, it is only the probability of orientation to the subjective *belief* in the validity of an order which constitutes the valid order itself. It is undeniable that, in the ordinary sense of the word "causal," there is a causal relationship between this probability and the relevant course of economic action.

6. *Types of Legitimate Order: Convention and Law*

The legitimacy of an order may be guaranteed in two principal ways:[20]

I. The guarantee may be purely subjective, being either
   1. affectual: resulting from emotional surrender; or
   2. value-rational: determined by the belief in the absolute validity of the order as the expression of ultimate values of an ethical, esthetic or of any other type; or
   3. religious: determined by the belief that salvation depends upon obedience to the order.

II. The legitimacy of an order may, however, be guaranteed also (or merely) by the expectation of specific external effects, that is, by interest situations.

An order will be called
(a) *convention* so far as its validity is externally guaranteed by the probability that deviation from it within a given social group will result in a relatively general and practically significant reaction of disapproval;
(b) *law* if it is externally guaranteed by the probability that physical or psychological coercion will be applied by a *staff* of people in order to bring about compliance or avenge violation.

(On the concept of convention see Weigelin, *op. cit.*, and F. Tönnies, *Die Sitte* [1909], besides Jhering, *op. cit.*)

1. The term convention will be employed to designate that part of the custom followed within a given social group which is recognized as "binding" and protected against violation by sanctions of disapproval. As distinguished from "law" in the sense of the present discussion, it is not enforced by a staff. Stammler distinguishes convention from law in terms of the entirely voluntary character of conformity. This is not, however, in accord with everyday usage and does not even fit the examples he gives. Conformity with convention in such matters as the usual forms of greeting, the mode of dress recognized as appropriate or respectable, and various of the rules governing the restrictions on social intercourse, both in form and in content, is very definitely expected of the individual and regarded as binding on him. It is not, as in the case of certain ways of preparing food, a mere usage, which he is free to conform to or not as he sees fit. A violation of conventional rules—such as standards of "respectability" (*Standessitte*)—often leads to the extremely severe and effective sanction of an informal boycott on the part of members of one's status group. This may actually be a more severe punishment than any legal penalty. The only thing lacking is a staff with the specialized function of maintaining enforcement of the order, such as judges, prosecuting attorneys, administrative officials, or sheriffs. The transition, however, is gradual. The case of conventional guarantee of an order which most closely approaches the legal is the application of a formally threatened and organized boycott. For terminological purposes, this is best considered a form of legal coercion. Conventional rules may, in addition to mere disapproval, also be upheld by other means; thus domestic authority may be employed to expel a visitor who defies convention. This fact is not, however, important in the present context. The decisive point is that the individual, by virtue of the existence of conventional disapproval, applies these sanctions, however drastic, on his own authority, not as a member of a staff endowed with a specific authority for this purpose.

2. For the purposes of this discussion the concept "law" will be made to turn on the presence of a staff engaged in enforcement, however useful it might be to define it differently for other purposes. The

character of this agency naturally need not be at all similar to what is at present familiar. In particular it is not necessary that there should be any specifically "judicial" authority. The clan, as an agency of blood revenge and of the prosecution of feuds, is such an enforcing agency if there exist any sort of rules which governs its behavior in such situations. But this is on the extreme borderline of what can be called legal enforcement. As is well known, it has often been denied that international law could be called law, precisely because there is no legal authority above the state capable of enforcing it. In terms of the present terminology this would be correct, for we could not call "law" a system the sanctions of which consisted wholly in expectations of disapproval and of the reprisals of injured parties, which is thus guaranteed entirely by convention and self-interest without the help of a specialized enforcement agency. But for purposes of legal terminology exactly the opposite might well be acceptable.

In any case the means of coercion are irrelevant. Even a "brotherly admonition," such as has been used in various religious s ts as the first degree of mild coercion of the sinner, is "law" provided it is regulated by some order and applied by a staff. The same is to be said about the [Roman] censorial reprimand as a means to guarantee the observance of ethical duties and, even more so, about psychological coercion through ecclesiastic discipline. Hence "law" may be guaranteed by hierocratic as well as political authority, by the statutes of a voluntary association or domestic authority or through a sodality or some other association. The rules of [German students' fraternities known as] the *Komment* [and regulating such matters as convivial drinking or singing] are also law in our sense, just as the case of those [legally regulated but unenforceable] duties which are mentioned in Section 888, paragraph 2 of the German Code of Civil Procedure [for instance, the duty arising from an engagement to marry].[21] The *leges imperfectae* and the category of "natural obligations" are forms of legal terminology which express indirectly limits or conditions of the application of compulsion. In the same sense a trade practice which is compulsorily enforced is also law. See secs. 157 and 242 of the German Civil Code. On the concept of "fair practice" (*gute Sitte*), that is, desirable custom which is worthy of legal sanction, see Max Rümelin's essay in the *Schwäbische Heimatgabe für Theodor Häring* (1918).

3. It is not necessary for a valid order to be of a general and abstract character. The distinction between a legal norm and the judicial decision in a concrete case, for instance, has not always and everywhere been as clearly made as we have today come to expect. An "order" may thus occur simply as the order governing a single concrete situation. The details of this subject belong in the Sociology of Law. But for present purposes, unless otherwise specified, the modern distinction between a norm and a specific decision will be taken for granted.

4. A system of order which is guaranteed by external sanctions may at the same time be guaranteed by disinterested subjective attitudes.

The relations of law, convention, and "ethics" do not constitute a problem for sociology. From a sociological point of view an "ethical" standard is one to which men attribute a certain type of value and which, by virtue of this belief, they treat as a valid norm governing their action. In this sense it can be spoken of as defining what is ethically good in the same way that action which is called beautiful is measured by esthetic standards. It is possible for ethically normative beliefs of this kind to have a profound influence on action in the absence of any sort of external guarantee. This is often the case when the interests of others would be little affected by their violation.

Such ethical beliefs are also often guaranteed by religious motives, but they may at the same time, in the present terminology, be upheld to an important extent by disapproval of violations and the consequent boycott, or even legally with the corresponding sanctions of criminal or private law or of police measures. Every system of ethics which has in a sociological sense become validly established is likely to be upheld to a large extent by the probability that disapproval will result from its violation, that is, by convention. On the other hand, it is by no means necessary that all conventionally or legally guaranteed forms of order should claim the authority of ethical norms. Legal rules, much more often than conventional ones, may have been established entirely on grounds of expediency. Whether a belief in the validity of an order as such, which is current in a social group, is to be regarded as belonging to the realm of "ethics" or is a mere convention or a mere legal norm, cannot, for sociological purposes, be decided in general terms. It must be treated as relative to the conception of what values are treated as "ethical" in the social group in question.

7. *Bases of Legitimacy: Tradition, Faith, Enactment*

The actors may ascribe legitimacy to a social order by virtue of:

(a) *tradition:* valid is that which has always been;

(b) *affectual,* especially emotional, *faith:* valid is that which is newly revealed or exemplary;

(c) *value-rational* faith: valid is that which has been deduced as an absolute;

(d) positive enactment which is believed to be *legal.*

Such legality may be treated as legitimate because:

(*α*) it derives from a voluntary agreement of the interested parties;

(*β*) it is imposed by an authority which is held to be legitimate and therefore meets with compliance.

All further details, except for a few other concepts to be defined below, belong in the Sociology of Law and the Sociology of Domination. For the present, only a few remarks are necessary.

1. The validity of a social order by virtue of the sacredness of tradition is the oldest and most universal type of legitimacy. The fear of magical evils reinforces the general psychological inhibitions against any sort of change in customary modes of action. At the same time the manifold vested interests which tend to favor conformity with an established order help to perpetuate it. (More in ch. III.)

2. Conscious departures from tradition in the establishment of a new order were originally almost entirely due to prophetic oracles or at least to pronouncements which were sanctioned as prophetic and thus were considered sacred. This was true as late as the statutes of the Greek *aisymnetai*. Conformity thus depended on belief in the legitimacy of the prophet. In times of strict traditionalism a new order—one actually regarded as new—was not possible without revelation unless it was claimed that it had always been valid though not yet rightly known, or that it had been obscured for a time and was now being restored to its rightful place.

3. The purest type of legitimacy based on value-rationality is *natural law*. The influence of its logically deduced propositions upon actual conduct has lagged far behind its ideal claims; that they have had some influence cannot be denied, however. Its propositions must be distinguished from those of revealed, enacted, and traditional law.

4. Today the most common form of legitimacy is the belief in legality, the compliance with enactments which are *formally* correct and which have been made in the accustomed manner. In this respect, the distinction between an order derived from voluntary agreement and one which has been imposed is only relative. For so far as the agreement underlying the order is not unanimous, as in the past has often been held necessary for complete legitimacy, the order is actually imposed upon the minority; in this frequent case the order in a given group depends upon the acquiescence of those who hold different opinions. On the other hand, it is very common for minorities, by force or by the use of more ruthless and far-sighted methods, to impose an order which in the course of time comes to be regarded as legitimate by those who originally resisted it. Insofar as the ballot is used as a legal means of altering an order, it is very common for the will of a minority to attain a formal majority and for the majority to submit. In this case majority rule is a mere illusion. The belief in the legality of an order as established by voluntary agreement is relatively ancient and is occasionally found among so-called primitive people; but in these cases it is almost always supplemented by the authority of oracles.

5. So far as it is not derived merely from fear or from motives of expediency, a willingness to submit to an order imposed by one man or a small group, always implies a belief in the legitimate authority (*Herrschaftsgewalt*) of the source imposing it. This subject will be dealt with separately below: see sections 13 and 16 and ch. III.

6. Submission to an order is almost always determined by a variety of interests and by a mixture of adherence to tradition and belief in

legality, unless it is a case of entirely new regulations. In a very large proportion of cases, the actors subject to the order are of course not even aware how far it is a matter of custom, of convention, or of law. In such cases the sociologist must attempt to formulate the typical basis of validity.

8. *Conflict, Competition, Selection*

A social relationship will be referred to as "conflict" (*Kampf*) insofar as action is oriented intentionally to carrying out the actor's own will against the resistance of the other party or parties. The term "peaceful" conflict will be applied to cases in which actual physical violence is not employed. A peaceful conflict is "competition" insofar as it consists in a formally peaceful attempt to attain control over opportunities and advantages which are also desired by others. A competitive process is "regulated" competition to the extent that its ends and means are oriented to an order. The struggle, often latent, which takes place between human individuals or social types, for advantages and for survival, but without a meaningful mutual orientation in terms of conflict, will be called "selection." Insofar as it is a matter of the relative opportunities of individuals during their own lifetime, it is "social selection"; insofar as it concerns differential chances for the survival of hereditary characteristics, "biological selection."

1. There are all manner of continuous transitions ranging from the bloody type of conflict which, setting aside all rules, aims at the destruction of the adversary, to the case of the battles of medieval chivalry, bound as they were to the strictest conventions, and to the strict regulations imposed on sport by the rules of the game. A classic example of conventional regulation in war is the herald's call before the battle of Fontenoy: "Messieurs les Anglais, tirez les premiers."[22] There are transitions such as that from unregulated competition of, let us say, suitors for the favor of a woman to the competition for economic advantages in exchange relationships, bound as that is by the order governing the market, or to strictly regulated competitions for artistic awards or, finally, to the struggle for victory in election campaigns. The conceptual separation of peaceful [from violent] conflict is justified by the quality of the means normal to it and the peculiar sociological consequences of its occurrence (see ch. II and later).

2. All typical struggles and modes of competition which take place on a large scale will lead, in the long run, despite the decisive importance in many individual cases of accidental factors and luck, to a selection of those who have in the higher degree, on the average, possessed the personal qualities important to success. What qualities are

important depends on the conditions in which the conflict or competition takes place. It may be a matter of physical strength or of unscrupulous cunning, of the level of mental ability or mere lung power and skill in the technique of demagoguery, of loyalty to superiors or of ability to flatter the masses, of creative originality, or of adaptability, of qualities which are unusual, or of those which are possessed by the mediocre majority. *Among* the decisive conditions, it must not be forgotten, belong the systems of order to which the behavior of the parties is oriented, whether traditionally, as a matter of rationally disinterested loyalty (*wertrational*), or of expediency. Each type of order influences opportunities in the process of social selection differently.

Not every process of social selection is, in the present sense, a case of conflict. Social selection, on the contrary, means only in the first instance that certain types of behavior, and possibly of the corresponding personal qualities, lead more easily to success in the role of "lover," "husband," "member of parliament," "official," "contractor," "managing director," "successful business man," and so on. But the concept does not specify whether this differential advantage in selection for social success is brought to bear through conflict or not, neither does it specify whether the biological chances of survival of the type are affected one way or the other.

It is only where there is a genuine competitive process that the term conflict will be used [i.e., where regulation is, in principle, possible].[28] It is only in the sense of "selection" that it seems, according to our experience, that conflict is empirically inevitable, and it is furthermore only in the sense of *biological* selection that it is inevitable in principle. Selection is inevitable because apparently no way can be worked out of eliminating it completely. Even the most strictly pacific order can eliminate means of conflict and the objects of and impulses to conflict only partially. Other modes of conflict would come to the fore, possibly in processes of open competition. But even on the utopian assumption that all competition were completely eliminated, conditions would still lead to a latent process of selection, biological or social, which would favor the types best adapted to the conditions, whether their relevant qualities were mainly determined by heredity or by environment. On an empirical level the elimination of conflict cannot go beyond a point which leaves room for some social selection, and in principle a process of biological selection necessarily remains.

3. From the struggle of individuals for personal advantages and survival, it is naturally necessary to distinguish the "conflict" and the "selection" of social relationships. It is only in a metaphorical sense that these concepts can be applied to the latter. For relationships exist only as individual actions with particular subjective meanings. Thus a process of selection or a conflict between them means only that one type of action has in the course of time been displaced by another, whether it is action by the same persons or by others. This may occur in various ways. Human action may in the first place be consciously aimed to alter cer-

tain social relationships—that is, to alter the corresponding action—or it may be directed to the prevention of their development or continuance. Thus a "state" may be destroyed by war or revolution, or a conspiracy may be broken up by savage suppression; prostitution may be suppressed by police action; "usurious" business practices, by denial of legal protection or by penalties. Furthermore, social relationships may be influenced by the creation of differential advantages which favor one type over another. It is possible either for individuals or for organized groups to pursue such ends. Secondly, it may, in various ways, be an unanticipated consequence of a course of social action and its relevant conditions that certain types of social relationships (meaning, of course, the corresponding actions) will be adversely affected in their opportunities to maintain themselves or to arise. All changes of natural and social conditions have some sort of effect on the differential probabilities of survival of social relationships. Anyone is at liberty to speak in such cases of a process of "selection" of social relationships. For instance, he may say that among several states the "strongest," in the sense of the best "adapted," is victorious. It must, however, be kept in mind that this so-called "selection" has nothing to do with the selection of types of human individuals in either the social or the biological sense. In every case it is necessary to inquire into the reasons which have led to a change in the chances of survival of one or another form of social action or social relationship, which have broken up a social relationship or permitted it to continue at the expense of other competing forms. The explanation of these processes involves so many factors that it does not seem expedient to employ a single term for them. When this is done, there is always a danger of introducing uncritical value-judgments into empirical investigation. There is, above all, a danger of being primarily concerned with justifying the success of an individual case. Since individual cases are often dependent on highly exceptional circumstances, they may be in a certain sense "fortuitous." In recent years there has been more than enough of this kind of argument. The fact that a given specific social relationship has been eliminated for reasons peculiar to a particular situation, proves nothing whatever about its "fitness to survive" in general terms.

9. *Communal and Associative Relationships*

A social relationship will be called "communal" (*Vergemeinschaftung*) if and so far as the orientation of social action—whether in the individual case, on the average, or in the pure type—is based on a subjective feeling of the parties, whether affectual or traditional, that they belong together.

A social relationship will be called "associative" (*Vergesellschaftung*) if and insofar as the orientation of social action within it rests on a

rationally motivated adjustment of interests or a similarly motivated agreement, whether the basis of rational judgment be absolute values or reasons of expediency. It is especially common, though by no means inevitable, for the associative type of relationship to rest on a rational agreement by mutual consent. In that case the corresponding action is, at the pole of rationality, oriented either to a value-rational belief in one's own obligation, or to a rational (*zweckrationale*) expectation that the other party will live up to it.

This terminology is similar to the distinction made by Ferdinand Tönnies in his pioneering work, *Gemeinschaft und Gesellschaft*; but for his purposes, Tönnies has given this distinction a rather more specific meaning than would be convenient for purposes of the present discussion.[24] The purest cases of associative relationships are: (a) rational free market exchange, which constitutes a compromise of opposed but complementary interests; (b) the pure voluntary association based on self-interest (*Zweckverein*), a case of agreement as to a long-run course of action oriented purely to the promotion of specific ulterior interests, economic or other, of its members; (c) the voluntary association of individuals motivated by an adherence to a set of common absolute values (*Gesinnungsverein*), for example, the rational sect, insofar as it does not cultivate emotional and affective interests, but seeks only to serve a "cause." This last case, to be sure, seldom occurs in anything approaching the pure type.

2. Communal relationships may rest on various types of affectual, emotional, or traditional bases. Examples are a religious brotherhood, an erotic relationship, a relation of personal loyalty, a national community, the *esprit de corps* of a military unit. The type case is most conveniently illustrated by the family. But the great majority of social relationships has this characteristic to some degree, while being at the same time to some degree determined by associative factors. No matter how calculating and hard-headed the ruling considerations in such a social relationship—as that of a merchant to his customers—may be, it is quite possible for it to involve emotional values which transcend its utilitarian significance. Every social relationship which goes beyond the pursuit of immediate common ends, which hence lasts for long periods, involves relatively permanent social relationships between the same persons, and these cannot be exclusively confined to the technically necessary activities. Hence in such cases as association in the same military unit, in the same school class, in the same workshop or office, there is always some tendency in this direction, although the degree, to be sure, varies enormously. Conversely, a social relationship which is normally considered primarily communal may involve action on the part of some or even all of the participants which is to an important degree oriented to considerations of expediency. There is, for instance, a wide variation in the extent to which the members of a family group feel a genuine community of interests or, on the other hand, exploit the relationship for

their own ends. The concept of communal relationship has been intentionally defined in very general terms and hence includes a very heterogeneous group of phenom a.

3. The communal type of relationship is, according to the usual interpretation of its subjective meaning, the most radical antithesis of conflict. This should not, however, be allowed to obscure the fact that coercion of all sorts is a very common thing in even the most intimate of such communal relationships if one party is weaker in character than the other. Furthermore, a process of the selection of types leading to differences in opportunity and survival, goes on within these relationships just the same as anywhere else. Associative relationships, on the other hand, very often consist only in compromises between rival interests, where only a part of the occasion or means of conflict has been eliminated, or even an attempt has been made to do so. Hence, outside the area of compromise, the conflict of interests, with its attendant competition for supremacy, remains unchanged. Conflict and communal relationships are relative concepts. Conflict varies enormously according to the means employed, especially whether they are violent or peaceful, and to the ruthlessness with which they are used. It has already been pointed out that any type of order governing social action in some way leaves room for a process of selection among various rival human types.

4. It is by no means true that the existence of common qualities, a common situation, or common modes of behavior imply the existence of a communal social relationship. Thus, for instance, the possession of a common biological inheritance by virtue of which persons are classified as belonging to the same "race," naturally implies no sort of communal social relationship between them. By restrictions on social intercourse and on marriage persons may find themselves in a similar situation, a situation of isolation from the environment which imposes these distinctions. But even if they all react to this situation in the same way, this does not constitute a communal relationship. The latter does not even exist if they have a common "feeling" about this situation and its consequences. It is only when this feeling leads to a mutual orientation of their behavior to each other that a social relationship arises between them rather than of each to the environment. Furthermore, it is only so far as this relationship involves feelings of belonging together that it is a "communal" relationship. In the case of the Jews, for instance, except for Zionist circles and the action of certain associations promoting specifically Jewish interests, there thus exist communal relationships only to a relatively small extent; indeed, Jews often repudiate the existence of a Jewish "community."

A common language, which arises from a similarity of tradition through the family and the surrounding social environment, facilitates mutual understanding, and thus the formation of all types of social relationships, in the highest degree. But taken by itself it is not sufficient to constitute a communal relationship, rather, it facilitates intercourse within the groups concerned, hence the development of associate relationships. This takes place between *individuals*, not because they speak

the same language, but because they have other types of interests. Orientation to the rules of a common language is thus primarily important as a means of conununication, not as the content of a social relationship. It is only with the emergence of a consciousness of difference from third persons who speak a different language that the fact that two persons speak the same language, and in that respect share a common situation, can lead them to a feeling of community and to modes of social organization consciously based on the sharing of the common language.

Participation in a "market" is of still another kind. It encourages association between the exchanging parties and a social relationship, above all that of competition, between the individual participants who must mutually orient their action to each other. But no further modes of association develop except in cases where certain participants enter into agreements in order to better their competitive situations, or where they all agree on rules for the purpose of regulating transactions and of securing favorable general conditions for all. (It may further be remarked that the market and the competitive economy resting on it form the most important type of the reciprocal determination of action in terms of pure self-interest, a type which is characteristic of modern economic life.)

10. *Open and Closed Relationships*

A social relationship, regardless of whether it is communal or associactive in character, will be spoken of as "open" to outsiders if and insofar as its system of order does not deny participation to anyone who wishes to join and is actually in a position to do so. A relationship will, on the other hand, bes called "closed" against outsiders so far as, according to its subjective meaning and its binding rules, participation of certain persons is excluded, limited, or subjected to conditions. Whether a relationship is open or closed may be determined traditionally, affectually, or rationally in terms of values or of expediency. It is especially likely to be closed, for rational reasons, in the following type of situation: a social relationship may provide the parties to it with opportunities for the satisfaction of spiritual or material interests, whether absolutely or instrumentally, or whether it is achieved through co-operative action or by a compromise of interests. If the participants expect that the admission of others will lead to an improvement of their situation, an improvement in degree, in kind, in the security or the value of the satisfaction, their interest will be in keeping the relationship open. If, on the other hand, their expectations are of improving their position by monopolistic tactics, their interest is in a closed relationship.

There are various ways in which it is possible for a closed social relationship to guarantee its monopolized advantages to the parties. (a) Such advantages may be left free to competitive struggle within the group; (b) they may be regulated or rationed in amount and kind, or (c) they may be appropriated by individuals or sub-groups on a permanent basis and become more or less inalienable. The last is a case of closure within, as well as against outsiders. Appropriated advantages will be called "rights." As determined by the relevant order, appropriation may be (1) for the benefit of the members of particular communal or associative groups (for instance, household groups), or (2) for the benefit of individuals. In the latter case, the individual may enjoy his rights on a purely personal basis or in such a way that in case of his death one or more other persons related to the holder of the right by birth (kinship), or by some other social relationship, may inherit the rights in question. Or the rights may pass to one or more individuals specifically designated by the holder. These are cases of hereditary appropriation. Finally, (3) it may be that the holder is more or less fully empowered to alienate his rights by voluntary agreement, either to other specific persons or to anyone he chooses. This is alienable appropriation. A party to a closed social relationship will be called a "member"; in case his participation is regulated in such a way as to guarantee him appropriated advantages, a privileged member (*Rechtsgenosse*). Appropriated rights which are enjoyed by individuals through inheritance or by hereditary groups, whether communal or associative, will be called the "property" of the individual or of groups in question; and, insofar as they are alienable, "free" property.

The apparently gratuitous tediousness involved in the elaborate definition of the above concepts is an example of the fact that we often neglect to think out clearly what seems to be obvious, because it is intuitively familiar.

1. (a) Examples of communal relationships, which tend to be closed on a traditional basis, are those in which membership is determined by family relationship.

(b) Personal emotional relationships are usually affectually closed. Examples are erotic relationships and, very commonly, relations of personal loyalty.

(c) Closure on the basis of value-rational commitment to values is usual in groups sharing a common system of explicit religious belief.

(d) Typical cases of rational closure on grounds of expediency are economic associations of a monopolistic or a plutocratic character.

A few examples may be taken at random. Whether a group of people engaged in conversation is open or closed depends on its content. General conversation is apt to be open, as contrasted with intimate conversation or the imparting of official information. Market relationships

are in most, or at least in many, cases essentially open. In the case of many relationships, both communal and associative, there is a tendency to shift from a phase of expansion to one of exclusiveness. Examples are the guilds and the democratic city-states of Antiquity and the Middle Ages. At times these groups sought to increase their membership in the interest of improving the security of their position of power by adequate numbers. At other times they restricted their membership to protect the value of their monopolistic position. The same phenomenon is not uncommon in monastic orders and religious sects which have passed from a stage of religious proselytizing to one of restriction in the interest of the maintenance of an ethical standard or for the protection of material interests. There is a similar close relationship between the extension of market relationships in the interest of increased turnover on the one hand, their monopolistic restriction on the other. The promotion of linguistic uniformity is today a natural result of the interests of publishers and writers, as opposed to the earlier, not uncommon, tendency for status groups to maintain linguistic peculiarities or even for secret languages to emerge.

2. Both the extent and the methods of regulation and exclusion in relation to outsiders may vary widely, so that the transition from a state of openness to one of regulation and closure is gradual. Various conditions of participation may be laid down; qualifying tests, a period of probation, requirement of possession of a share which can be purchased under certain conditions, election of new members by ballot, membership or eligibility by birth or by virtue of achievements open to anyone. Finally, in case of closure and the appropriation of rights within the group, participation may be dependent on the acquisition of an appropriated right. There is a wide variety of different degrees of closure and of conditions of participation. Thus regulation and closure are relative concepts. There are all manner of gradual shadings as between an exclusive club, a theatrical audience the members of which have purchased tickets, and a party rally to which the largest possible number has been urged to come; similarly, from a church service open to the general public through the rituals of a limited sect to the mysteries of a secret cult.

3. Similarly, closure within the group may also assume the most varied forms. Thus a caste, a guild, or a group of stock exchange brokers, which is closed to outsiders, may allow to its members a perfectly free competition for all the advantages which the group as a whole monopolizes for itself. Or it may assign every member strictly to the enjoyment of certain advantages, such as claims over customers or particular business opportunities, for life or even on a hereditary basis. This is particularly characteristic of India. Similarly, a closed group of settlers (*Markgenossenschaft*) may allow its members free use of the resources of its area or may restrict them rigidly to a plot assigned to each individual household. A closed group of colonists may allow free use of the land or sanction and guarantee permanent appropriation of

separate holdings. In such cases all conceivable transitional and intermediate forms can be found. Historically, the closure of eligibility to fiefs, benefices, and offices within the group, and the appropriation on the part of those enjoying them, have occurred in the most varied forms. Similarly, the establishment of rights to and possession of particular jobs on the part of workers may develop all the way from the "closed shop" to a right to a particular job. The first step in this development may be to prohibit the dismissal of a worker without the consent of the workers' representatives. The development of the "works councils" [in Germany after 1918] might be a first step in this direction, though it need not be.[25]

All the details must be reserved for the later analysis. The most extreme form of permanent appropriation is found in cases where particular rights are guaranteed to an individual or to certain groups of them, such as households, clans, families, in such a way that it is specified in the order either that, in case of death, the rights descend to specific heirs, or that the possessor is free to transfer them to any other person at will. Such a person thereby becomes a party to the social relationship so that, when appropriation has reached this extreme within the group, it becomes to that extent an open group in relation to outsiders. This is true so long as acquisition of membership is not subject to the ratification of the other, prior members.

4. The principal motives for closure of a relationship are: (a) The maintenance of quality, which is often combined with the interest in prestige and the consequent opportunities to enjoy honor, and even profit; examples are communities of ascetics, monastic orders, especially, for instance, the Indian mendicant orders, religious sects like the Puritans, organized groups of warriors, of *ministeriales* and other functionaries, organized citizen bodies as in the Greek states, craft guilds; (b) the contraction of advantages in relation to consumption needs (*Nahrungsspielraum*);[26] examples are monopolies of consumption, the most developed form of which is a self-subsistent village community; (c) the growing scarcity of opportunities for acquisition (*Erwerbsspielraum*). This is found in trade monopolies such as guilds, the ancient monopolies of fishing rights, and so on. Usually motive (a) is combined with (b) or (c).

11. *The Imputation of Social Action: Representation and Mutual Responsibility*

Within a social relationship, whether it is traditional or enacted, certain kinds of action of *each* participant may be imputed to *all* others, in which case we speak of "mutually responsible members"; or the action of certain members (the "representatives") may be attributed to the

others (the "represented"). In both cases, the members will share the resulting advantages as well as the disadvantages.

In accordance with the prevailing order, the power of representation may be (a) completely appropriated in all its forms—the case of self-appointed authority (*Eigenvollmacht*); (b) conferred in accordance with particular *characteristics*, permanently or for a limited term; (c) conferred by specific *acts* of the members or of outside persons, again permanently or for a limited term—the cases of "derived" or "delegated" powers.

There are many different conditions which determine the ways in which social relationships, communal or associative, develop relations of mutual responsibility or of representation. In general terms, it is possible only to say that one of the most decisive is the extent to which the action of the group is oriented to violent conflict or to peaceful exchange as its end. Besides these, many special circumstances, which can only be discussed in the detailed analysis, may be of crucial importance. It is not surprising that this development is least conspicuous in groups which pursue purely ideal ends by peaceful means. Often the degree of closure against outsiders is closely related to the development of mutual responsibility or of representation. But this is by no means always the case.

1. Imputation may in practice involve both active and passive mutual responsibility. All participants may be held responsible for the action of any one just as he himself is, and similarly may be entitled to enjoy any benefits resulting from this action. This responsibility may be owed to spirits or gods, that is, involve a religious orientation; or it may be responsibility to other human beings, as regulated by convention or by law. Examples of regulation by convention are blood revenge carried out against or with the help of members of the kin group, and reprisals against the inhabitants of the town or the country of the offender; of the legal type, formal punishment of relatives and members of the household or community, and personal liability of members of a household or of a commercial partnership for each other's debts. Mutual responsibility in relation to gods has also had very significant historical results. For instance, in the covenant of Israel with Jahveh, in early Christianity, and in the early Puritan community.

On the other hand, the imputation may mean no more than that the participants in a closed social relationship, by virtue of the traditional or legal order, accept as legally binding a representative's decisions, especially over economic resources. (Examples are the "validity" of decisions by the executive committee of a voluntary association or by the responsible agent of a political or economic organization over resources which, as specified in the statutes, are meant to serve the group's purposes.)

2. Mutual responsibility is typically found in the following cases: (a) In traditional, communal groups based on birth or the sharing of a

common life; for example, the household and the kinship unit; (b) in closed relationships which maintain by force a monopolized position and control over the corresponding benefits; the typical case is the political association, especially in the past, but also today, most strikingly in time of war; (c) in profit-oriented enterprises whose participants personally conduct the business; the type case is the business partnership; (d) in some cases, in labor associations; e.g., the [Russian] *artel*.

Representation is most frequently found in associations devoted to specific purposes and in legally organized groups, especially when funds have been collected and must be administered in the interests of the group. This will be further discussed in the Sociology of Law.

3. The power of representation is conferred according to characteristics when it goes by seniority or some other such rule.

4. It is not possible to carry the analysis of this subject further in general terms; its elaboration must be reserved to the detailed investigation. The most ancient and most universal phenomenon in this field is that of reprisal, meant either as revenge or as a means of gaining control of hostages, or some other kind of security against future injury.

12. *The Organization*

A social relationship which is either closed or limits the admission of outsiders will be called an organization (*Verband*) when its regulations are enforced by specific individuals: a chief and, possibly, an administrative staff, which normally also has representative powers. The incumbency of a policy-making position or participation in the functions of the staff constitute "executive powers" (*Regierungsgewalten*). These may be appropriated, or they may be assigned, in accordance with the regulations of the organization, to specific persons or to individuals selected on the basis of specific characteristics or procedures. "Organized action" is (a) either the staff's action, which is legitimated by its executive or representative powers and oriented to realizing the organization's order, or (b) the members' action as directed by the staff.[27]

1. It is terminologically indifferent whether the relationship is of a communal or associative character. It is sufficient for there to be a person or persons in authority—the head of a family, the executive committee of an association, a managing director, a prince, a president, the head of a church—whose action is concerned with carrying into effect the order governing the organization. This criterion is decisive because it is not merely a matter of action which is *oriented* to an order, but which is specifically directed to its *enforcement*. Sociologically, this adds to the concept of a closed social relationship a further element, which is of far-reaching empirical importance. For by no means every closed communal or associative relationship is an organization. For instance, this is

not true of an erotic relationship or of a kinship group without a head.

2. Whether or not an organization exists is entirely a matter of the presence of a person in authority, with or without an administrative staff. More precisely, it exists so far as there is a probability that certain persons will act in such a way as to carry out the order governing the organization; that is, that persons are present who can be counted on to act in this way whenever the occasion arises. For purposes of definition, it is indifferent what is the basis of the relevant expectation, whether it is a case of traditional, affectual or value-rational devotion (such as feudal fealty, loyalty to an officer or to a service). It may, on the other hand, be a matter of expediency, as, for instance, a pecuniary interest in the attached salary. Thus, for our purposes, the organization does not exist apart from the probability that a course of action oriented in this way will take place. If there is no probability of this type of action on the part of a particular group of persons or of a given individual, there is in these terms only a social relationship. On the other hand, so long as there is a probability of such action, the organization as a sociological phenomenon continues to exist, in spite of the fact that the specific individuals whose action is oriented to the order in question, may have been completely changed. The concept has been defined intentionally to include precisely this phenomenon.

3. It is possible (a) that, in addition to the action of the administrative staff itself or that which takes place under its direction, there may be other cases where action of the participants is intended to uphold the authority of the order; for instance, contributions or "liturgies," that is, certain types of personal services, such as jury service or military service. It is also possible (b) for the order to include norms to which it is expected that the action of the members of an organization will be oriented in respects other than those pertaining to the affairs of the organization as a unit. For instance, the law of the state includes rules governing private economic relations which are not concerned with the enforcement of the state's legal order as such, but with action in the service of private interests. This is true of most of the "civil" law. In the first case (a) one may speak of action oriented to organizational affairs (*verbandsbezogenes Handeln*); in the second (b) of action subject to the organization's regulation (*verbandsgeregeltes Handeln*). It is only in the cases of the action of the administrative staff itself and of that deliberately directed by it that the term "organized action" (*Verbandshandeln*) will be used. Examples of such action would be participation in any capacity in a war fought by a state, or a motion which is passed by the members at the behest of its executive committee, or a contract entered into by the person in authority, the validity of which is imposed on all members and for which they are held responsible (cf. section 11). Further, all administration of justice and administrative procedure belongs in this category (cf. section 14).

An organization may be (a) autonomous or heteronomous, (b) autocephalous or heterocephalous. Autonomy means that the order governing

the organization has been established by its own members on their own authority, regardless of how this has taken place in other respects. In the case of heteronomy, it has been imposed by an outside agency. Autocephaly means that the chief and his staff are selected according to the autonomous order of the organization itself, not, as in the case of heterocephaly, that they are appointed by outsiders. Again, this is regardless of any other aspects of the relationship.

A case of heterocephaly is the appointment of the governors of the Canadian provinces by the central government of the Dominion. It is possible for a heterocephalous group to be autonomous and an autocephalous group to be heteronomous. It is also possible in both respects for an organization to have both characters at the same time in different spheres. The member-states of the German Empire, a federal state, were autocephalous. But in spite of this, within the sphere of authority of the Reich, they were heteronomous; whereas, within their own sphere, in such matters as religion and education, they were autonomous. Alsace-Lorraine was, under German jurisdiction, in a limited degree autonomous, but at the same time heterocephalous in that the governor was appointed by the Kaiser. All those elements may be present in the same situation to some degree. An organization which is at the same time completely heteronomous and completely heterocephalous is usually best treated as a "part" of the more extensive group, as would ordinarily be done with a "regiment" as part of an army. But whether this is the case depends on the actual extent of independence in the orientation of action in the particular case. For terminological purposes, it is entirely a question of convenience.

13. *Consensual and Imposed Order in Organizations*

An association's enacted order may be established in one of two ways: by voluntary agreement, or by being imposed and acquiesced in. The leadership in an organization may claim a legitimate right to impose new rules. The "constitution" of an organization is the empirically existing porbability, varying in extent, kind and conditions, that rules imposed by the leadership will be acceded to. The existing rules may specify that certain groups or sections of the members must consent, or at least have been heard. Besides this, there may be any number of other conditions.

An organization's order may be imposed not only on its members but also on certain non-members. This is especially true of persons who are linked to a given territorial area by virtue of residence, birth, or the performance of certain actions. In this case the order possesses "territorial validity" (*Gebietsgeltung*). An organization which imposes its order in principle on a territory will be called a "territorial organization" (*Gebiets-*

verband). This usage will be employed regardless of how far the claim to the validity of its order over its own members is also confined to matters pertaining to the area. (Such a limitation is possible[28] and indeed occurs to some extent.)

1. In our terminology, an order is always "imposed" to the extent that it does not originate from a voluntary personal agreement of all the individuals concerned. The concept of imposition hence includes "majority rule," in that the minority must submit. For that reason there have been long periods when the legitimacy of majority rule has either not been recognized at all, or been held doubtful. This was true in the case of the Estates of the Middle Ages, and in very recent times, in the Russian *obshchina*. (This will be further discussed in the Sociology of Law and of Domination.)

2. Even in cases where there is formally voluntary agreement, it is very common, as is generally known, for there to be a large measure of imposition. (This is true of the *obshchina*.) In that case, it is the actual state of affairs which is decisive for sociological purposes.

3. The concept of constitution made use of here is that also used by Lassalle. It is not the same as what is meant by a "written" constitution, or indeed by "constitution" in any sort of legal meaning.[29] The only relevant question for sociological purposes is when, for what purposes, and *within what limits*, or possibly under what special conditions (such as the approval of gods or priests or the consent of electors), the members of the organization will submit to the leadership. Furthermore, under what circumstances the administrative staff and the organized actions of the group will be at the leadership's disposal when it issues orders, in particular, new rules.

4. The major cases of the territorial imposition of an order are criminal law and various other legal rules the applicability of which depends on whether the actor was resident, born, performed or completed the action within the area controlled by a political organization. (Compare the concept of the "territorial corporate organization"—*Gebietskörperschaft*—as used by Gierke and Preuss.)[30]

14. *Administrative and Regulative Order*

Rules which govern organized action constitute an administrative order (*Verwaltungsordnung*). Rules which govern other kinds of social action and thereby protect the actors' enjoyment of the resulting benefits will be called a regulative order (*Regulierungsordnung*). So far as an organization is solely oriented to the first type, it will be called an administrative organization; so far as it is oriented to the second type, a regulative organization.

1. It goes without saying that the majority of actual organizations partake of both characteristics. An example of a merely regulative organization would be a theoretically conceivable state based purely on the upholding of public order (*Rechtsstaat*) and committed to absolute laissez-faire. (This would imply that even the control of the monetary system was left to private enterprise.)

2. On the concept of organized action see above, sec. 12:3. Under the concept of administrative order would be included all the rules which govern not only the action of the administrative staff, but also that of the members in their direct relation to the organization; hence these rules pertain to those goals the pursuit of which the administrative order seeks to facilitate through prescribed and coordinated action on the part of the administrative staff and the members. In a completely communist economy almost all social action would be of this character. In an absolute laissez-faire state (*Rechtsstaat*) only the functions of judges, police authorities, jurors and soldiers, and activity as legislator and voter would be included. The distinction between administrative and regulative order coincides in its broad lines, though not always in detail, with the distinction between public and private law. (All further details are treated in the Sociology of Law.)

15. *Enterprise, Formal Organization, Voluntary and Compulsory Association*

Continuous rational activity of a specified kind will be called an *enterprise;* an association with a continuously and rationally operating staff will be called a *formal organization.*

An organization which claims authority only over voluntary members will be called a *voluntary association* (*Verein*); an organization which imposes, within a specifiable sphere of operations, its order (with relative success) on all action conforming with certain criteria will be called a *compulsory organization* or *association* (*Anstalt*).

1. The concept of the enterprise covers business conducted by political and ecclesiastic organizations as well as by voluntary associations insofar as it has rational continuity.

2. Voluntary as well as compulsory associations are organizations with rationally established rules. More correctly, insofar as an organization has rationaly established rules, it is either a voluntary or a compulsory association. Compulsory organizations are, above all, the state with its subsidiary heterocephalous organizations, and the church insofar as its order is rationally established. The order governing a compulsory association claims to be binding on all persons to whom the particular relevant criteria apply—such as birth, residence, or the use of certain facilities. It makes no difference whether the individual joined volun-

tarily; nor does it matter whether he has taken any part in establishing the order. It is thus a case of imposed order in the most definite sense. Compulsory associations are frequently territorial organizations.

3. The distinction between voluntary and compulsory associations is relative in its empirical application. The rules of a voluntary association may affect the interests of non-members, and recognition of the validity of these rules may be imposed upon them by usurpation and the exercize of naked power, but also by legal regulation, as in the case of the law governing corporate securities.

4. It is hardly necessary to emphasize that the concepts of voluntary and compulsory associations are by no means exhaustive of all conceivable types of organizations. Furthermore, they are to be thought of as polar types, as are sect and church in the religious sphere.

16. *Power and Domination*

A. "Power" (*Macht*) is the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests.

B. "Domination" (*Herrschaft*)[31] is the probability that a command with a given specific content will be obeyed by a given group of persons. "Discipline" is the probability that by virtue of habituation a command will receive prompt and automatic obedience in stereotyped forms, on the part of a given group of persons.[32]

1. The concept of power is sociologically amorphous. All conceivable qualities of a person and all conceivable combinations of circumstances may put him in a position to impose his will in a given situation. The sociological concept of domination must hence be more precise and can only mean the probability that a *command* will be obeyed.

2. The concept of discipline includes the habituation characteristic of uncritical and unresisting mass obedience.

C. The existence of domination turns only on the actual presence of one person successfully issuing orders to others; it does not necessarily imply either the existence of an administrative staff or, for that matter, of an organization. It is, however, uncommon to find it unrelated to at least one of these. A "ruling organization" (*Herrschaftsverband*) exists insofar as its members are subject to domination by virtue of the established order.

1. The head of a household rules without an administrative staff. A Bedouin chief, who levies contributions from the caravans, persons and shipments which pass his stronghold, controls this group of changing individuals, who do not belong to the same organization, as soon and as

long as they face the same situation; but to do this, he needs a following which, on the appropriate occasions, serves as his administrative staff in exercising the necessary compulsion. (However, it is theoretically conceivable that this type of control is exercised by a single individual.)

2. If it possesses an administrative staff, an organization is always to some degree based on domination. But the concept is relative. In general, an effectively ruling organization is also an administrative one. The character of the organization is determined by a variety of factors: the mode in which the administration is carried out, the character of the personnel, the objects over which it exercises control, and the extent of effective jurisdiction. The first two factors in particular are dependent in the highest degree on the way in which domination is legitimized (see ch. III).

17. *Political and Hierocratic Organizations*

A "ruling organization" will be called "political" insofar as its existence and order is continuously safeguarded within a given *territorial* area by the threat and application of physical force on the part of the administrative staff. A compulsory political organization with continuous operations (*politischer Anstaltsbetrieb*) will be called a "state" insofar as its administrative staff successfully upholds the claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of its order. Social action, especially organized action, will be spoken of as "politically oriented" if it aims at exerting influence on the government of a political organization; especially at the appropriation, expropriation, redistribution or allocation of the powers of government.

A "hierocratic organization" is an organization which enforces its order through psychic coercion by distributing or denying religious benefits ("hierocratic coercion"). A compulsory hierocratic organization will be called a "church" insofar as its administrative staff claims a monopoly of the legitimate use of hierocratic coercion.

1. It goes without saying that the use of physical force (*Gewaltsamkeit*) is neither the sole, nor even the most usual, method of administration of political organizations. On the contrary, their heads have employed all conceivable means to bring about their ends. But, at the same time, the threat of force, and in the case of need its actual use, is the method which is specific to political organizations and is always the last resort when others have failed. Conversely, physical force is by no means limited to political groups even as a legitimate method of enforcement. It has been freely used by kinship groups, household groups, consociations and, in the Middle Ages, under certain circumstances by all those entitled to bear arms. In addition to the fact that it uses, among other

means, physical force to enforce its system of order, the political organization is further characterized by the fact that the authority of its administrative staff is claimed as binding within a territorial area and this claim is upheld by force. Whenever organizations which make use of force are also characterized by the claim to territorial jurisdiction, such as village communities or even some household groups, federations of guilds or of workers' associations ("soviets"), they are by definition to that extent political organizations.

2. It is not possible to define a political organization, including the state, in terms of the end to which its action is devoted. All the way from provision for subsistence to the patronage of art, there is no conceivable end which *some* political association has not at some time pursued. And from the protection of personal security to the administration of justice, there is none which *all* have recognized. Thus it is possible to define the "political" character of an organization only in terms of the *means* peculiar to it, the use of force. This means is, however, in the above sense specific, and is indispensable to its character. It is even, under certain circumstances, elevated into an end in itself.

This usage does not exactly conform to everyday speech. But the latter is too inconsistent to be used for technical purposes. We speak of the foreign currency *policy*[33] of a central bank, the financial *policy* of an association, or the educational *policy* of a local authority, and mean the systematic treatment and conduct of particular affairs. It comes considerably closer to the present meaning when we distinguish the "political" aspect or implication of a question. Thus there is the "political" official, the "political" newspaper, the "political" revolution, the "political" club, the "political" party, and the "political" consequences of an action, as distinguished from others such as the economic, cultural, or religious aspect of the persons, affairs or processes in question. In this usage we generally mean by "political," things that have to do with relations of authority within what is, in the present terminology, a political organization, the state. The reference is to things which are likely to uphold, to change or overthrow, to hinder or promote, these authority relations as distinguished from persons, things, and processes which have nothing to do with it. This usage thus seeks to bring out the common features of domination, the way it is exercised by the state, irrespective of the ends involved. Hence it is legitimate to claim that the definition put forward here is only a more precise formulation of what is meant in everyday usage in that it gives sharp emphasis to what is most characteristic of this *means:* the actual or threatened use of force. It is, of course, true that everyday usage applies the term "political," not only to groups which are the direct agents of the legitimate use of force itself, but also to other, often wholly peaceful groups, which attempt to influence the activities of the political organization. It seems best for present purposes to distinguish this type of social action, "politically oriented" action, from political action as such, the actual organized action of political groups.

3. Since the concept of the state has only in modern times reached its full development, it is best to define it in terms appropriate to the modern type of state, but at the same time, in terms which abstract from the values of the present day, since these are particularly subject to change. The primary formal characteristics of the modern state are as follows: It possesses an administrative and legal order subject to change by legislation, to which the organized activities of the administrative staff, which are also controlled by regulations, are oriented. This system of order claims binding authority, not only over the members of the state, the citizens, most of whom have obtained membership by birth, but also to a very large extent over all action taking place in the area of its jurisdiction. It is thus a compulsory organization with a territorial basis. Furthermore, today, the use of force is regarded as legitimate only so far as it is either permitted by the state or prescribed by it. Thus the right of a father to discipline his children is recognized—a survival of the former independent authority of the head of a household, which in the right to use force has sometimes extended to a power of life and death over children and slaves. The claim of the modern state to monopolize the use of force is as essential to it as its character of compulsory jurisdiction and of continuous operation.

4. In formulating the concept of a hierocratic organization, it is not possible to use the character of the religious benefits it offers, whether worldly or other-worldly, material or spiritual, as the decisive criterion. What is important is rather the fact that its control over these values can form the basis of a system of spiritual domination over human beings. What is most characteristic of the church, even in the common usage of the term, is the fact that it is a rational, compulsory association with continuous operation and that it claims a monopolistic authority. It is normal for a church to strive for complete control on a territorial basis and to attempt to set up the corresponding territorial or parochial organization. So far as this takes place, the means by which this claim to monopoly is upheld will vary from case to case. But historically, its control over territorial areas has not been nearly so essential to the church as to political associations; and this is particularly true today. It is its character as a compulsory association, particularly the fact that one beomes a member of the church by birth, which distinguishes the church from a "sect." It is characteristic of the latter that it is a voluntary association and admits only persons with specific religious qualifications. (This subject will be further discussed in the Sociology of Religion.)

NOTES

Unless otherwise noted, all notes in this chapter are by Talcott Parsons. For Parsons' exposition and critique of Weber's methodology, see his introduction to *The Theory of Social and Economic Organization* and his *Structure of Social Action*.

1. "Über einige Kategorien der verstehenden Soziologie," originally in *Logos*, IV, 1913, 253ff; reprinted in *GAzW*, 427–74. However, the reader should be aware from the very beginning that Part Two below, the older and major body of the manuscript, follows the terminology of this essay. For some of the relevant terminology, see Appendix I. (R)

2. It has not seemed advisable to attempt a rigorous use of a single English term whenever Weber employs *Verstehen*. "Understanding" has been most commonly used. Other expressions such as "subjectively understandable," "interpretation in subjective terms," "comprehension," etc., have been used from time to time as the context seemed to demand.

3. In this series of definitions Weber employs several important terms which need discussion. In addition to *Verstehen*, which has already been commented upon, there are four important ones: *Deuten*, *Sinn*, *Handeln*, and *Verhalten*. *Deuten* has generally been translated as "interpret." As used by Weber in this context it refers to the interpretation of subjective states of mind and the meanings which can be imputed as intended by an actor. Any other meaning of the word "interpretation" is irrelevant to Weber's discussion. The term *Sinn* has generally been translated as "meaning"; and its variations, particularly the corresponding adjectives, *sinnhaft*, *sinnvoll*, *sinnfremd*, have been dealt with by appropriately modifying the term *meaning*. The reference here again is always to features of the content of subjective states of mind or of symbolic systems which are ultimately referable to such states of mind.

The terms *Handeln* and *Verhalten* are directly related. *Verhalten* is the broader term referring to any mode of behavior of human individuals, regardless of the frame of reference in terms of which it is analysed. "Behavior" has seemed to be the most appropriate English equivalent. *Handeln*, on the other hand refers to the concrete phenomenon of human behavior only insofar as it is capable of "understanding," in Weber's technical sense, in terms of subjective categories. The most appropriate English equivalent has seemed to be "action." This corresponds to [Parsons'] usage in *The Structure of Social Action* and would seem to be fairly well established. "Conduct" is also similar and has sometimes been used. *Deuten*, *Verstehen*, and *Sinn* are thus applicable to human behavior only insofar as it constitutes action or conduct in this specific sense.

4. Weber's text in Part One is organized in a manner frequently found in the German academic literature of his day, in that he first lays down certain fundamental definitions and then proceeds to comment on them. These comments, which apparently were not intended to be "read" in the ordinary sense, but rather serve as reference material for the clarification and systematization of the theoretical concepts and their implications, are in the German edition printed in a smaller type, a convention which we have followed in the rest of Part One. However, while in most cases the comments are relatively brief, under the definitions of "sociology" and "social action" Weber wrote what are essentially methodological essays (sec. 1:A–B), which because of their length we have printed in the ordinary type. (R)

5. Weber means by "pure type" what he himself generally called and what has come to be known in the literature about his methodology as the "ideal type." The reader may be referred for general orientation to Weber's own essay (to which he himself refers below), "Die 'Objektivität' sozialwissenschaftlicher Erkenntnis" ("'Objectivity' in Social Science and Social Policy," in *Max Weber: The Methodology of the Social Sciences*. Edward Shils and Henry Finch, trans. and eds. (Glencoe: The Free Press, 1949), 50–113; originally published in *AfS*, vol. 19, 1904, reprinted in *GAzW*, 146–214); to two works of Alexander von Schelting, "Die logische Theorie der historischen Kulturwissenschaften von Max

Weber," *AfS*, vol. 49, 1922, 623ff and *Max Webers Wissenschaftslehre*, 1934; Talcott Parsons, *The Structure of Social Action* (New York: McGraw-Hill, 1937), ch. 16; Theodore Abel, *Systematic Sociology in Germany*, (New York: Columbia University Press, 1929). [See now also Raymond Aron, *German Sociology*, trans. by M. and T. Bottomore (New York: The Free Press of Glencoe, 1964), based on 2nd French ed. of 1950.]

6. This is an imperfect rendering of the German term *Evidenz*, for which, unfortunately, there is no good English equivalent. It has hence been rendered in a number of different ways, varying with the particular context in which it occurs. The primary meaning refers to the basis on which a scientist or thinker becomes satisfied of the certainty or acceptability of a proposition. As Weber himself points out, there are two primary aspects of this. On the one hand a conclusion can be "seen" to follow from given premises by virtue of logical, mathematical, or possibly other modes of meaningful relation. In this sense one "sees" the solution of an arithmetical problem or the correctness of the proof of a geometrical theorem. The other aspect is concerned with empirical observation. If an act of observation is competently performed, in a similar sense one "sees" the truth of the relevant descriptive proposition. The term *Evidenz* does not refer to the process of observing, but to the quality of its result, by virtue of which the observer feels justified in affirming a given statement. Hence "certainty" has seemed a suitable translation in some contexts, "clarity" in others, "accuracy" in still others. The term "intuition" is not usable because it refers to the process rather than to he result.

7. Weber here uses the tenn *aktuelles Verstehen*, which he contrasts with *erklärendes Verstehen*. The latter he also refers to as *motivationsmässig*. *"Aktuell"* in this context has been translated as "observational." It is clear from Weber's discussion that the primary criterion is the possibility of deriving the meaning of an act or symbolic expression from immediate observation without reference to any broader context. In *erklärendes Verstehen*, on the other hand, the particular act must be placed in a broader context of meaning involving facts which cannot be derived from immediate observation of a particular act or expression.

8. The German term is *Sinnzusammenhang*. It refers to a plurality of elements which form a coherent whole on the level of meaning. There are several possible modes of meaningful relation between such elements, such as logical consistency, the esthetic harmony of a style, or the ap ropriateness of means to an end. In any case, however, a *Sinnzusammenhang* must be distinguished from a system of elements which are causally interdependent. There seems to be no single English term or phrase which is always adequate. According to variations in context, "context of meaning," "complex of meaning," and sometimes "meaningful system" have been employed.

9. The German is *gemeinter Sinn*. Weber departs from ordinary usage not only in broadening the meaning of this conception. As he states at the end of the present methodological discussion, he does not restrict the use of this concept to cases where a clear self-conscious awareness of such meaning can be reasonably attributed to every individual actor. Essentially, what Weber is doing is to formulate an operational concept. The question is not whether in a sense obvious to the ordinary person such an intended meaning "really exists," but whether the concept is capable of providing a logical framework within which scientifically important observations can be made. The test of validity of the observations is not whether their object is immediately clear to common sense, but whether the results of these technical observations can be satisfactorily organized and related to those of others in a systematic body of knowledge.

10. The above passage is an exceedingly compact statement of Weber's theory of the logical conditions of proof of causal relationship. He developed this most fully in his essay on "'Objectivity' in Social Science . . . ," *op. cit.* It is also discussed in other parts of *GAzW*. The best and fullest secondary discussion is to be found in Schelting's book, *Max Webers Wissenschaftslehre*. There is a briefer discussion in Parsons' *Structure of Social Action*, ch. 16.

11. See Eduard Meyer, *Geschichte des Altertums*, 1901, vol. III, 420, 444ff, and Weber's essay on "Critical Studies in the Logic of the Cultural Sciences," in Shils and Finch, eds., *op. cit.*, 113–188; also in *GAzW*, 215–90. (R)

12. The expression *sinnhafte Adäquanz* is one of the most difficult of Weber's technical terms to translate. In most places the cumbrous phrase "adequacy on the level of meaning" has had to be employed. It should be clear from the progress of the discussion that what Weber refers to is a satisfying level of knowledge for the particular purposes of the subjective state of mind of the actor or actors. He is, however, careful to point out that *causal* adequacy involves in addition to this a satisfactory correspondence between the results of observations from the subjective point of view and from the objective; that is, observations of the overt course of action which can be described without reference to the state of mind of the actor. For a discussion of the methodological problem involved here, see *Structure of Social Action*, chaps. II and V.

13. This is the first occurrence in Weber's text of the term *Chance* which he uses very frequently. It is here translated by "probability," because he uses it as interchangeable with *Wahrscheinlichkeit*. As the term "probability" is used in a technical mathematical and statistical sense, however, it implies the possibility of numerical statement In most of the cases where Weber uses *Chance* this is out of the question. It is, however, possible to speak in terms of higher and lower degrees of probability. To avoid confusion with the technical mathematical concept, the term "likelihood" will often be used in the translation. It is by means of this concept that Weber, in a highly ingenious way, has bridged the gap between the interpretation of meaning and the inevitably more complex facts of overt action.

14. The term "reification" as used by Professor Morris Cohen in his book, *Reason and Nature*, seems to fit Weber's meaning exactly. A concept or system of concepts, which critical analysis can show to be abstract, is "reified" when it is used naively as though it provided an adequate total description of the concrete phenomenon in question. The fallacy of "reification" is virtually another name for what Professor Whitehead has called "the fallacy of misplaced concreteness." See his *Science and the Modern World*.

15. See August Weismann, *Die Allmacht der Naturzüchtung* (Jena: Fischer, 1893); his opponent was probably Alexander Götte (1840–1922), author of *Lehrbuch der Zoologie* (Leipzig: Engelmann, 1902) and of *Tierkunde* (Strasbourg: Trübner, 1904). (R)

16. In the above classification as well as in some of those which follow, the terminology is not standardized either in German or in English. Hence, just as there is a certain arbitrariness in Weber's definitions, the same is true of any corresponding set of definitions in English. It should be kept in mind that all of them are modes of orientation of action to patterns which contain a normative element. "Usage" has seemed to be the most appropriate translation of *Brauch* since, according to Weber's own definition, the principal criterion is that "it is done to conform with the pattern." There would also seem to be good precedent for the translation of *Sitte* by "custom." The contrast with fashion, which Weber takes up in his first comment, is essentially the same in both languages. The term *Interessenlage* presents greater difficulty. It involves

two components: the motivation in terms of self-interest and orientation to the opportunities presented by the situation. It has not seemed possible to use any single term to convey this meaning in English and hence, a more roundabout expression has had to be resorted to.

17. The term "convention" in Weber's usage is narrower than *Brauch*. The difference consists in the fact that a normative pattern to which action is oriented is conventional only insofar as it is regarded as part of a legitimate order, whereas the question of moral obligation to conformity which legitimacy implies is not involved in "usage." The distinction is closely related to that of W. G. Sumner between "mores" and "folkways." It has seemed best to retain the English term closest to Weber's own.

18. It is, in a sense, the empirical reference of this statement which constitutes the central theme of Weber's series of studies in the Sociology of Religion. Insofar as he finds it possible to attribute importance to "ideas" in the determination of action, the most important differences between systems of ideas are not so much those in the degree of rationalization as in the direction which the process of rationalization in each case has taken. This series of studies was left uncompleted at his death, but all the material which was in a condition fit for publication has been assembled in the three volumes of the *Gesammelte Aufsätze zur Religionssoziologie* (*GAzRS*).

19. It has not been possible to identify this reference of Weber's. It refers most probably to a projected conclusion which was never written.

20. The reader may readily become confused as to the basis of the following classification, as compared with that presented in sec. 7. The first classification is one of motives for maintaining a legitimate order in force, whereas the second is one of motives for attributing legitimacy to the order. This explains the inclusion of self-interested motives in the first classification, but not in the second. It is quite possible, for instance, for irreligious persons to support the doctrine of the divine right of kings, because they feel that the breakdown of an order which depends on this would have undesirable consequences. This is not, however, a possible motive on which to base a direct sense of personal moral obligation to conform with the order.

21. Rheinstein's emendation, see his edition, *op. cit.*, 7. (R)

22. In 1745, Maurice de Saxe defeated the British under the Duke of Cumberland even though he sustained heavy losses in the one-sided opening round. (R)

23. A cautionary note is in order here. The definitions of conflict or struggle (*Kampf*) and of power (section 16) have often been wrenched out of context in discussions of Weber as a "power politician." The present section, however, defines the *varieties* of conflict, from the extreme case of violent, unlimited and unregulated struggle to peaceful and regulated competition. In fact, mere conflict and power are not Weber's major concern, which is rather with variously regulated and legitimated actions and their group context. (R)

24. As Weber goes on to explain, he uses *Vergemeinschaftung* and *Vergesellschaftung* in a continuous rather than a dichotomous sense, and thus maintains his critical distance from Tönnies' paired contrast of *Gemeinschaft* and *Gesellschaft*. Similarly, Weber rejected Gierke's invidious contrast between "cold-blooded" Roman law and "communal" Germanic law, even though he started his career as a Germanist rather than a Romanist. (R)

25. This is a reference to the *Betriebsräte* which were formed in German industrial plants during the Revolution of 1918–19 and were recognized in the Weimar Constitution as entitled to representation in the Federal Economic

Council. The standard work in English is W. C. Guillebaud, *The Works Council.* A German Experiment in Industrial Democracy (Cambridge University Press, 1928).

26. Weber's term here is *Nahrungsspielraum.* The concept refers to the scope of economic resources and opportunities on which the standard of living of an individual or a group is dependent. By contrast with this, *Erwerbsspielraum* is a similar scope of resources and economic opportunities seen from the point of view of their possible role as sources of profit. The basic distinction implied in this contrast is of central importance to Weber's analysis later on (see chapter II, sec. 10ff.).

27. The term "corporate group" for *Verband,* as used by Parsons, is open to misunderstandings on both the common-sense and the historical level since Weber's term includes more than either economic groups or self-governing, often professional bodies. Parsons' alternative term, "organized group," has been retained. The term "organization" should be understood literally in the sense of a group with an "organ," but not necessarily of a rationalized kind; the latter would make it an "enterprise" or a "formal organization" (see sec. 15). —For Weber's older definition of *Verband* and *Verbandshandeln* see Appendix I. (R)

28. The concept "objective possibility" (*objektive Möglichkeit*) plays an important technical role in Weber's methodological studies. According to his usage, a thing is "objectively possible" if it "makes sense" to conceive it as an empirically existing entity. It is a question of conforming with the formal, logical conditions. The question whether a phenomenon which is in this sense "objectively possible" will actually be found with any significant degree of probability or approximation, is a logically distinct question.

29. See Ferdinand Lassalle, "Über Verfassungswesen" (1862), in *Gesammelte Reden und Schriften,* Eduard Bernstein, ed. (Berlin: Cassirer, 1919), 7–62. (R)

30. See Otto Gierke, *Geschichte des deutschen Körperschaftsbegriffs* (Berlin: Weidmann, 1873), 829; Hugo Preuss, *Gemeinde, Staat, Reich als Gebietskörperschaft* (1889). Preuss, one of Gierke's pupils, exerted decisive influence on the making of the Weimar constitution, to which Weber also contributed at about the same time that he worked intermittently on these definitions. (W and R)

31. In his translation Parsons pointed out that "the term *Herrschaft* has no satisfactory English equivalent. The term "imperative control," however, as used by N. S. Timasheff in his *Introduction to the Sociology of Law* is close to Weber's meaning" (Parsons, ed., *op. cit.,* 152). Therefore, he borrowed this term "for the most general purposes." At a later time, Parsons indicated that he now preferred the term "leadership." For more specific purposes, however, he used the term "authority." In objecting to "domination" (as used by Bendix and Rheinstein/Shils) Parsons noted: "It is true to be sure that the term *Herrschaft,* which in its most general meaning I should now translate as "leadership," implies that a leader has power *over* his followers. But "domination" suggests that this fact, rather than the integration of the collectivity, in the interest of effective functioning (especially the integration of the crucial *Verband* or corporate group), is the critical factor from Weber's point of view. I do not believe that the former interpretation represents the main trend of Weber's thought, although he was in certain respects a "realist" in the analysis of power. The preferable interpretation, as I see it, is represented especially by his tremendous emphasis on the importance of legitimation. I should therefore wish to stick to my own decision to translate *legitime Herrschaft,* which for Weber was overwhelmingly the most significant case for general structural analysis, as authority." (See T. Parsons' review article

of Reinhard Bendix, *Max Weber: An Intellectual Portrait*, in *American Sociological Review*, 25:5, 1960, 752.)

I prefer the term domination in this section because Weber stresses the fact of mere compliance with a command, which may be due to habit, a belief in legitimacy, or to considerations of expediency. However, Weber emphasizes here as later that, in addition to the willingness of subjects to comply with a command, there is usually a staff, which again may act on the basis of habit, legitimacy or self-interest. Sociologically, a *Herrschaft* is a structure of superordination and subordination, of leaders and led, rulers and ruled; it is based on a variety of motives and of means of enforcement. In ch. III, Weber presents a typology of legitimate *Herrschaft* where the term "authority" is indeed feasible. However, in ch. X, he deals extensively with both faces of *Herrschaft*: legitimacy and force. It should be clear to the reader that both "domination" and "authority" are "correct" although each stresses a different component of *Herrschaft*. Moreover, in Part Two a *Herrschaft* is quite specifically the medieval *seigneurie* or manor or similar structures in patrimonial regimes. This is also the historical derivation of the term. For a major, and sociologically valuable, study see Otto Brunner, *Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter* (Vienna, 1959). (R)

32. For the earlier discussion of discipline, see Part Two, ch. XIV:iii:1, "The Meaning of Discipline."

33. The German is *Devisenpolitik*. Translation in this context is made more difficult by the fact that the German language does not distinguish between "politics" and "policy," *Politik* having both meanings. The remarks which Weber makes about various kinds of policy would have been unnecessary, had he written originally in English.

CHAPTER II

SOCIOLOGICAL CATEGORIES OF ECONOMIC ACTION

Prefatory Note

What follows is not intended in any sense to be "economic theory." Rather, it consists only in an attempt to define certain concepts which are frequently used and to analyze certain of the simplest sociological relationships in the economic sphere. As in the first chapter, the procedure here has been determined entirely by considerations of convenience. It has proved possible entirely to avoid the controversial concept of "value."[1] The usage here, in the relevant sections on the division of labor [see sec. 15ff.], has deviated from the terminology of Karl Bücher only so far as seemed necessary for the purposes of the present undertaking. For the present all questions of dynamic process will be left out of account.

1. *The Concept of Economic Action*

Action will be said to be "economically oriented" so far as, according to its subjective meaning, it is concerned with the satisfaction of a desire for "utilities" (*Nutzleistungen*). "Economic action" (*Wirtschaften*) is any peaceful exercise of an actor's control over resources which is in its main impulse oriented towards economic ends. "Rational economic action" requires instrumental rationality in this orientation, that is, deliberate planning. We will call autocephalous economic action an "economy" (*Wirtschaft*), and an organized system of continuous economic action an "economic establishment" (*Wirtschaftsbetrieb*).

1. It was pointed out above (ch. I, sec. 1:B) that economic action as such need not be social action.

2₃. The definition of economic action must be as general as possible and must bring out the fact that all "economic" processes and objects are characterized as such entirely by the *meaning* they have for human action in such roles as ends, means, obstacles, and by-products. It is not, however, permissible to express this by saying, as is sometimes done, that economic action is a "psychic" phenomenon. The production of goods, prices, or even the "subjective valuation" of goods, if they are empirical processes, are far from being merely psychic phenomena. But underlying this misleading phrase is a correct insight. It is a fact that these phenomena have a peculiar type of subjective *meaning*. This alone defines the unity of the corresponding processes, and this alone makes them accessible to subjective interpretation.

The definition of "economic action" must, furthermore, be formulated in such a way as to include the operation of a modern business enterprise run for profit. Hence the definition cannot be based directly on "consumption needs" and the "satisfaction" of these needs, but must, rather, start out on the one hand from the fact that there is a *desire* (demand) for utilities (which is true even in the case of orientation to purely monetary gains), and on the other hand from the fact that *provision* is being made to furnish the supplies to meet this demand (which is true even in the most primitive economy merely "satisfying needs," and regardless of how primitive and frozen in tradition the methods of this provision are).

3. As distinguished from "economic action" as such, the term "economically oriented action" will be applied to two types: (a) every action which, though primarily oriented to other ends, takes account, in the pursuit of them, of economic considerations; that is, of the consciously recognized necessity for economic prudence. Or (b) that which, though primarily oriented to economic ends, makes use of physical force as a means. It thus includes all primarily non-economic action and all non-peaceful action which is influenced by economic considerations. "Economic action" thus is a *conscious, primary* orientation to economic considerations. It must be conscious, for what matters is not the objective necessity of making economic provision, but the belief that is is necessary. Robert Liefmann has rightly laid emphasis on the subjective understandable orientation of action which makes it economic action. He is not, however, correct in attributing the contrary view to all other authors.[2]

4. Every type of action, including the use of violence, may be economically *oriented*. This is true, for instance, of war-like action, such as marauding expeditions and trade wars. Franz Oppenheimer, in particular, has rightly distinguished "economic" means from "political" means.[3] It is essential to distinguish the latter from economic action. The use of force is unquestionably very strongly opposed to the spirit of economic acquisition in the usual sense. Hence the term "economic action" will not be applied to the direct appropriation of goods by force and the direct coercion of the other party by threats of force. It goes without saying, at

the same time, that exchange is not the *only* economic means, though it is one of the most important. Furthermore, the formally peaceful provision for the means and the success of a projected exercise of force, as in the case of armament production and economic organization for war, is just as much economic action as any other.

Every rational course of political action is economically oriented with respect to provision for the necessary means, and it is always possible for political action to serve the interest of economic ends. Similarly, though it is not necessarily true of every economic system, certainly the modern economic order under modern conditions could not continue if its control of resources were not upheld by the legal compulsion of the state, that is, if its formally "legal" rights were not upheld by the threat of force. But the fact that an economic system is thus dependent on protection by force, does not mean that it is itself an example of the use of force.

How entirely untenable it is to maintain that the economy, however defined, is only a *means*, by contrast, for instance, with the state, becomes evident from the fact that it is possible to define the state itself only in terms of the means which it today monopolizes, namely, the use of force. If anything, the most essential aspect of economic action for practical purposes is the prudent choice *between ends*. This choice is, however, oriented to the scarcity of the means which are available or could be procured for these various ends.

5. Not every type of action which is rational in its choice of means will be called "rational economic action," or even "economic action" in any sense; in particular, the term "economy" will be distinguished from that of "technology."[4] The "technique" of an action refers to the means employed as opposed to the meaning or end to which the action is, in the last analysis, oriented. "Rational" technique is a choice of means which is consciously and systematically oriented to the experience and reflection of the actor, which consists, at the highest level of rationality, in scientific knowledge. What is concretely to be treated as a "technique" is thus variable. The ultimate meaning of a concrete act may, seen in the total context of action, be of a "technical" order; that is, it may be significant only as a means in this broader context. Then the "meaning" of the concrete act (viewed from the larger context) lies in its technical function; and, conversely, the means which are applied in order to accomplish this are its "techniques." In this sense there are techniques of every conceivable type of action, techniques of prayer, of asceticism, of thought and research, of memorizing, of education, of exercising political or hierocratic domination, of administration, of making love, of making war, of musical performances, of sculpture and painting, of arriving at legal decisions. All these are capable of the widest variation in degree of rationality. The presence of a "technical question" always means that there is some doubt over the choice of the most rational *means* to an end. Among others, the standard of rationality for a technique may be the famous principle of "least effort," the achievement of

an optimum in *the relation* between the result and the means to be expended on it (and not the attainment of a result with the *absolute* minimum of means). Seemingly the same principle, of course, applies to economic action—or to any type of rational action. But there it has a different *meaning*. As long as the action is purely "technical" in the present sense, it is oriented only to the selection of the means which, with equal quality, certainty, and permanence of the result, are comparatively most "economical" of effort in the attainment of a *given* end; comparatively, that is, insofar as there are at all directly comparable expenditures of means in different methods of achieving the end. The end itself is accepted as beyond question, and a purely technical consideration ignores other wants. Thus, in a question of whether to make a technically necessary part of a machine out of iron or platinum, a decision on technical grounds alone would, so long as the requisite quantities of both metals for their particular purpose were available, consider only which of the two would in this case best bring about the given result and would at the same time minimize the other comparable expenditure of resources, such as labor. But once consideration is extended to take account of the relative scarcity of iron and platinum in relation to their potential uses, as today every technician is accustomed to do even in the chemical laboratory, the action is no longer in the present sense purely technical, but *also* economic. From the economic point of view, "technical" questions always involve the consideration of "costs." This is a question of crucial importance for economic purposes and in this context always takes the form of asking what would be the effect on the satisfaction of other wants if this particular means were not used for satisfaction of one given want. The "other wants" may be qualitatively different present wants or qualitatively identical future wants. (A similar position is taken by Friedrich von Gottl-Ottlilienfeld in *Grundriss der Sozialökonomik*, Part II, 2; an extensive and very good discussion of this issue in R. Liefmann, *Grundsätze der Volkswirtschaftslehre*, vol. I (3rd ed.), p. 322ff. Any attempt to reduce all means to "ultimate expenditures of labor" is erroneous.)

For the answer to the question, what is, in comparative terms, the "cost" of using various means for a given technical end, depends in the last analysis on their potential usefulness as means to other ends. This is particularly true of labor. A *technical* problem in the present sense is, for instance, that of what equipment is necessary in order to move loads of a particular kind or in order to raise mineral products from a given depth in a mine, and which of the alternatives is the most "suited," that is, among other things, which achieves a given degree of success with the least expenditure of effort. It is, on the other hand, an *economic* problem whether, on the assumption of a market economy, these expenditures will pay off in terms of money obtained through the sale of the goods; or, on the assumption of a planned economy, whether the necessary labor and other means of production can be provided without damage to the satisfaction of other wants held to be more urgent. In both cases, it is a problem of the comparison of *ends*. Economic action

is primarily oriented to the problem of choosing the *end* to which a thing shall be applied; technology, to the problem, given the end, of choosing the appropriate *means*. For purposes of the theoretical (not, of course, the practical) definition of technical rationality it is wholly indifferent whether the product of a technical process is in any sense useful. In the present terminology we can conceive of a rational technique for achieving ends which no one desires. It would, for instance, be possible, as a kind of technical amusement, to apply all the most modern methods to the production of atmospheric air. And no one could take the slightest exception to the purely technical rationality of the action. Economically, on the other hand, the procedure would under normal circumstances be clearly irrational because there would be no demand for the product. (On all this, compare v. Gottl-Ottlilienfeld, *op. cit.*)

The fact that what is called the technological development of modern times has been so largely oriented economically to profit-making is one of the fundamental facts of the history of technology. But however fundamental it has been, this economic orientation has by no means stood alone in shaping the development of technology. In addition, a part has been played by the games and cogitations of impractical ideologists, a part by other-worldly interests and all sorts of fantasies, a part by preoccupation with artistic problems, and by various other non-economic motives. None the less, the main emphasis at all times, and especially the present, has lain in the economic determination of technological development. Had not rational calculation formed the basis of economic activity, had there not been certain very particular conditions in its economic background, rational technology could never have come into existence.

The fact that the aspects of economic orientation which distinguish it from technology were not explicitly brought into the initial definition, is a consequence of the sociological starting point. From a sociological point of view, the weighing of alternative ends in relation to each other and to costs is a consequence of "continuity." This is true at least so far as costs mean something other than altogether giving up one end in favor of more urgent ones. An economic theory, on the other hand, would do well to emphasize this criterion from the start.

6. It is essential to include the criterion of power of control and disposal (*Verfügungsgewalt*)[5] in the sociological concept of economic action, if for no other reason than that at least a modern market economy (*Erwerbswirtschaft*) essentially consists in a complete network of exchange contracts, that is, in deliberate planned acquisitions of powers of control and disposal. This, in such an economy, is the principal source of the relation of economic action to the law. But any other type of organization of economic activities would involve some kind of *de facto* distribution of powers of control and disposal, however different its underlying principles might be from those of the modern private enterprise economy with its legal protection of such powers held by autonomous and autocephalous economic units. Either the central authority, as in the case of socialism, or the subsidiary parts, as in anarchism, must be able

to count on having some kind of control over the necessary services of labor and of the means of production. It is possible to obscure this fact by verbal devices, but it cannot be interpreted out of existence. For purposes of definition it is a matter of indifference in what way this control is guaranteed; whether by convention or by law, or whether it does not even enjoy the protection of any external sanctions at all, but its security rests only on actual expectations in terms of custom or self-interest. These possibilities must be taken into account, however essential legal compulsion may be for the modern economic order. The indispensability of powers of control for the concept of social action in its economic aspects thus does not imply that *legal* order is part of that concept by definition, however important it may be held to be on empirical grounds.

7. The concept of powers of control and disposal will here be taken to include the possibility of control over the actor's own labor power, whether this is in some way enforced or merely exists in fact. That this is not to be taken for granted is shown by its absence in the case of slaves.

8. It is necessary for the purposes of a sociological theory of economic action to introduce the concept of "goods" at an early stage, as is done in sec. 2. For this theory is concerned with a type of action which is given its specific *meaning* by the *results* of the actors' deliberations, which themselves can be isolated only in theory [but cannot be observed empirically]. Economic theory, the theoretical insights of which provide the basis for the sociology of economic action, might (perhaps) be able to proceed differently; the latter may find it necessary to create its own theoretical constructs.

2. *The Concept of Utility*

By "utilities" (*Nutzleistungen*) will always be meant the specific and concrete, real or imagined, advantages (*Chancen*) of opportunities for present or future use as they are estimated and made an object of specific provision by one or more economically acting individuals. The action of these individuals is oriented to the estimated importance of such utilities as means for the ends of their economic action.

Utilities may be the services of non-human or inanimate objects or of human beings. Non-human objects which are the sources of potential utilities of whatever sort will be called "goods." Utilities derived from a human source, so far as this source consists in active conduct, will be called "services" (*Leistungen*). Social relationships which are valued as a potential source of present or future disposal over utilities are, however, also objects of economic provision. The opportunities of economic advantage, which are made available by custom, by the constellation of

interest, or by a conventional or legal order for the purposes of an economic unit, will be called "economic advantages."

On the following comments, compare E. von Böhm-Bawerk, *Rechte und Verhältnisse vom Standpunkt der volkswirtschaftlichen Güterlehre* (Innsbruck 1881).

1. The categories of goods and services do not exhaust those aspects of the environment which may be important to an individual for economic purposes and which may hence be an object of economic concern. Such things as "good will," or the tolerance of economic measures on the part of individuals in a position to interfere with them, and numerous other forms of behavior, may have the same kind of economic importance and may be the object of economic provision and, for instance, of contracts. It would, however, result in a confusion of concepts to try to bring such things under either of these two categories. This choice of concepts is thus entirely determined by consideration of convenience.

2. As Böhm-Bawerk has correctly pointed out, it would be equally imprecise if all *concrete* objects of life and of everyday speech were without distinction designated as "goods," and the concept of a good were then equated to that of a material utility. In the strict sense of utility, it is not a "horse" or a "bar of iron" which is an economic "good," but the specific ways in which they can be put to desirable and practical uses; for instance the power to haul loads or to carry weights, or something of the sort. Nor can we, in the present terminology, call *goods* such potential future advantages (*Chancen*) which appear as objects of exchange in economic transactions, as "good will," "mortgage," "property." Instead, for simplicity's sake, we shall call the services of such potential powers of control and disposal over the utilities of goods and services, promised or guaranteed by the traditional or legal order, "economic advantages" (*Chancen*) or simply "advantages" wherever this is not likely to be misunderstood.

3. The fact that only active conduct, and not mere acquiescence, permission, or omission, are treated as "services" is a matter of convenience. But it must be remembered that it follows from this that goods and services do not constitute an exhaustive classification of all economically significant utilities.

On the concept of "labor," see below, sec. 15.

3. *Modes of the Economic Orientation of Action*

Economic orientation may be a matter of tradition or of goal-oriented rationality. Even in cases where there is a high degree of rationalization of action, the element of traditional orientation remains considerable. For the most part, rational orientation is primarily significant for "managerial" action, no matter under what form of organization. (See below,

sec. 15.) The development of rational economic action from the instinctively reactive search for food or traditional acceptance of inherited techniques and customary social relationships has been to a large extent determined by non-economic events and actions, including those outside everyday routine,[8] and also by the pressure of necessity in cases of increasing absolute or relative limitations on subsistence.

1. Naturally there cannot in principle be any scientific standard for any such concept as that of an "original economic state." It would be possible to agree arbitrarily to take the economic state on a given technological level, as, for instance, that characterized by the lowest development of tools and equipment known to us, and to treat it and analyze it as the most primitive. But there is no scientific justification for concluding from observations of living primitive peoples on a low technological level that the economic organization of all peoples of the past with similar technological standing has been the same as, for instance, that of the Vedda or of certain tribes of the Amazon region. For, from a purely economic point of view, this level of technology has been just as compatible with large-scale organization of labor as with extreme dispersal in small groups (see below, sec. 16). It is impossible to infer from the economic aspects of the natural environment alone, which of these would be more nearly approached. Various non-economic factors, for instance, military, could make a substantial difference.

2. War and migration are not in themselves economic processes, though particularly in early times they have been largely oriented to economic considerations. At all times, however, indeed up to the present, they have often been responsible for radical changes in the economic system. In cases where, through such factors as climatic changes, inroads of sand, or deforestation, there has been an absolute decrease in the means of subsistence, human groups have adapted themselves in widely differing ways, depending on the structure of interests and on the manner in which non-economic factors have played a role. The typical reactions, however, have been a fall in the standard of living and an absolute decrease in population. Similarly, in cases of relative impoverishment in means of subsistence, as determined by a given standard of living and of the distribution of chance of acquisition, there have also been wide variations. But on the whole, this type of situation has, more frequently than the other, been met by the increasing rationalization of economic activities. Even in this case, however, it is not possible to make general statements. So far as the "statistical" information can be relied upon, there was a tremendous increase of population in China after the beginning of the eighteenth century, but it had exactly the opposite effect from the similar phenomenon of about the same time in Europe. It is, however, possible to say at least something about the reasons for this (see below, sec. 11.). The chronic scarcity of the means of subsistence in the Arabian desert has only at certain times resulted in a change in the economic and political structure, and these changes have been

most prominent when non-economic (religious) developme ts have played a part.

3. A high degree of traditionalism in habits of life, such as characterized the laboring classes in early modern times, has not prevented a great increase in the rationalizatio of economic enterprise under capitalistic direction. But it was also compatible with, for instance, the rationalization of public finances in Egypt on a state-socialistic model. Nevertheless, this traditionalistic attitude had to be at least partly overcome in the Western World before the further development to the specifically modern type of rationa capitalistic economy could take place.

4. *Typical Measures of Rational Economic Action*

The following are typical measures of rational economic action:

(1) The systematic allocation as between present and future of utilities, on the control of which the actor for whatever reason feels able to count. (These are the essential features of saving.)

(2) The systematic allocation of available utilities to various potential uses in the order of their estimated relative ur ncy, ranked according to the principle of marginal utility.

These two cases, the most definitely "static," have been most highly developed in times of peace. Today, for the most part, they take the form of the allocation of money incomes.

(3) The systematic procurement through production or transportation of such utilities for which all the necessary means of production are controlled by the actor himself. Where action is rational, this type of action will take place so far as, according to the actor's estimate, the urgency of his demand for the expected result of the action exceeds the necessary expenditure, which may consist in (a) the irksomeness of the requisite labor services, and (b) the other potential uses to which the requisite goods could be put; including, that is, the utility of the potential alternative products and their uses. This is "production" in the broader sense, which includes transportation.

(4) The systematic acquisition, by agreement (*Vergesel chaftung*) with the present possessors or with competing bidders, of assured powers of control and disposal over utilities. The powers of control may or may not be shared with others. The occasion may lie in the fact that utilities themselves are in the control of others, that their means of procurement are in such control, or that third persons desire to acquire them in such a way as to endanger the actor's own supply.

The relevant rational association (*Vergesellschaftung*) with the present possessor of a power of control or disposal may consist in (a) the

establishment of an organization with an order to which the procurement and use of utilities is to be oriented, or (b) in exchange. In the first case the purpose of the organization may be to ration the procurement, use, or consumption, in order to limit competition of procuring actors. Then it is a "regulative organization." Or, secondly, its purpose may be to set up a unified authority for the systematic administration of the utilities which had hitherto been subject to a dispersed control. In this case there is an "administrative organization."

"Exchange" is a compromise of interests on the part of the arties in the course of which goods or other advantages are passed as reciprocal compensation. The exchange may be traditional or conventional,[8] and hence, especially in the latter case, not economically rational. Or, secondly, it may be economically rational both in intention and in result. Every case of a rationally oriented exchange is the resolution of a previously open or latent conflict of interests by means of a compromise. The opposition of interests which is resolved in the compromise involves the actor potentially in two different conflicts. On the one hand, there is the conflict over the price to be agreed upon with the partner in exchange; the typical method is bargaining. On the other hand, there may also be competition with actual or potential rivals, either in the present or in the future, who are competitors in the same market. Here, the typical method is competitive bidding and offering.

1. Utilities, and the goods or labor which are their sources, are under the control (*Eigenverfügung*) of an economically acting individual if he is in a position to be able in fact to make use of them at his convenience (at least, up to a point) without interference from other persons, regardless of whether this ability rests on the legal order, on convention, on custom or on a complex of interests. It is by no means true that only the legal assurance of powers of disposal is decisive, either for the concept or in fact. It is, however, today empirically an indispensable basis for economic activitiy with the *material* means of production.

2. The fact that goods are not as yet consumable may be a result of the fact that while they are, as such, finished, they are not yet in a suitable place for consumption; hence the transportation of goods, which is naturally to be distinguished from trade, a change in the control over the goods, may here be treated as part of the process of production.

3. When there is a lack of control (*Eigenverfügung*) over desired utilities, it is in principle indifferent whether the individual is typically prevented from forcibly interfering with the control of others by a legal order, convention, custom, his own self-interest, or his consciously-held moral standards.

4. Competition in procurement may exist under the most various conditions. It is particularly important when supplies are obtained by seizure, as in hunting, fishing, lumbering, pasturage, and clearing new

land. It may also, and most frequently does, exist within an organization which is closed to outsiders. An order which seeks to restrain such competition then always consists in the rationing of supplies, usually combined with the appropriation of the procurement possibilities thus guaranteed for the benefit of a limited number of individuals or, more often, households. All medieval *Mark-* and fishing associations, the regulation of forest clearing, pasturage and wood gathering rights in the common fields and wastes, the grazing rights on Alpine meadows, and so on, have this character. Various types of hereditary property-rights in land owe their development to this type of regulation.

5. Anything which may in any way be transferred from the control of one person to that of another and for which another is willing to give compensation, may be an object of exchange. It is not restricted to goods and services, but includes all kinds of potential economic advantages; for instance, "good will," which exists only by custom or self-interest and cannot be enforced; in particular, however, it includes all manner of advantages, claims to which are enforceable under some kind of order. Thus objects of exchange are not necessarily presently existing utilities.

For present purposes, by "exchange" in the broadest sense will be meant every case of a formally voluntary agreement involving the offer of any sort of present, continuing, or future utility in exchange for utilities of any sort offered in return. Thus it includes the turning over of the utility of goods or money in exchange for the future return of the same kind of goods. It also includes any sort of permission for, or tolerance of, the use of an object in return for "rent" or "hire," or the hiring of any kind of services for wages or salary. The fact that the last example today involves, from a sociological point of view, the subjection of the "worker," as defined in sec. 15 below, under a form of domination will, for preliminary purposes, be neglected, as will the distinction between loan and purchase.

6. The conditions of exchange may be traditional, partly traditional though enforced by convention, or rational. Examples of conventional exchanges are exchanges of gifts between friends, heroes, chiefs, princes; as, for instance, the exchange of armor between Diomedes and Glaucos. It is not uncommon for these to be rationally oriented and controlled to a high degree, as can be seen in the Tell-el-Amarna documents. Rational exchange is only possible when both parties expect to profit from it, or when one is under compulsion because of his own need or the other's economic power. Exchange may serve either purposes of consumption or of acquisition (see below, sec. 11). It may thus be oriented to provision for the personal use of the actor or to opportunities for profit. In the first case, its conditions are to a large extent differentiated from case to case, and it is in *this* sense irrational. Thus, for instance, household surpluses will be valued according to the individual marginal utilities of the particular household economy and may on occasion be sold very cheaply, and the fortuitous desires of the moment may establish the marginal utility of goods which are sought in ex-

change at a very high level. Thus the exchange ratios, as determined by marginal utility, will fluctuate widely. Rational competition develops only in the case of "marketable goods" (see sec. 8) and, to the highest degree, when goods are used and sold in a profit system (see sec. 11).

7. The modes of intervention of a regulatory system mentioned above under point (4) are not the only possible ones, but merely those which are relevant here because they are the most immediate consequences of a tightening of the supply basis. The regulation of marketing processes will be discussed below.

5. *Types of Economic Organizations*

According to its relation to the economic system, an economically oriented organization may be: (a) an "economically active organization" (*wirtschaftender Verband*) if the primarily non-economic organized action oriented to its order includes economic action; (b) an "economic organization" (*Wirtschaftsverband*) if its organized action, as governed by the order, is *primarily* autocephalous economic action of a given kind; (c) an "economically regulative organization" (*wirtschaftsregulierender Verband*) if the autocephalous economic activity of the members is directly oriented to the order governing the group; that is, if economic action is heteronomous in that respect; (d) an "organization enforcing a formal order" (*Ordnungsverband*)[9] if its order merely guarantees, by means of formal rules, the autocephalous and autonomous economic activities of its members and the corresponding economic advantages thus acquired.

1. The state, except for the socialistic or communist type, and all other organizations like churches and voluntary associations are economically active groups if they manage their own financial affairs. This is also true of educational institutions and all other organizations which are not primarily economic.

2. In the category of "economic organizations" in the present sense are included not only business corporations, co-operative associations, cartels, partnerships, and so on, but all permanent economic establishments (*Betriebe*) which involve the activities of a plurality of persons, all the way from a workshop run by two artisans to a conceivable communistic organization of the whole world.

3. "Economically regulative organizations" are the following: medieval village associations, guilds, trade unions, employers' associations, cartels, and all other groups, the directing authorities of which carry on an "economic policy" which seeks to regulate both the ends and the procedures of economic activity. It thus includes the villages and towns of the Middle Ages, just as much as a modern state which follows such a policy.

4. An example of a group confined to the "enforcement of a formal order" is the pure laissez-faire state, which would leave the economic activity of individual households and enterprises entirely free and confine its regulation to the formal function of settling disputes connected with the fulfillment of free contractual obligations.

5. The existence of organizations "regulating economic activity" or merely "enforcing a formal order" presupposes in principle a certain amount of autonomy in the field of economic activity. Thus there is in principle a sphere of free disposal over economic resources, though it may be limited in varying degrees by means of rules to which the actors are oriented. This implies, further, the (at least relative) appropriation of economic advantages, over which the actors then have autonomous control. The purest type of a group "enforcing a formal order" is thus present when all *human* action is autonomous with respect to content, and oriented to regulation only with respect to form, and when all *non-human* sources of utility are completely appropriated so that individuals can have free disposal of them, in particular by exchange, as is the case in a modern property system. Any other kind of limitation on appropriation and autonomy implies "regulation of economic activity," because it restricts the orientation of human activities.

6. The dividing line between "regulation of economic activity" and mere "enforcement of a formal order" is vague. For, naturally, the type of "formal" order not only may, but must, in some way also exert a material influence on action; in some cases, a fundamental influence. Numerous modern legal ordinances, which claim to do no more than set up formal rules, are so drawn up that they actually exert a material influence (see "Soc. of Law," Part Two, ch. VIII). Indeed, a really strict limitation to purely formal rules is possible only in theory. Many of the recognized "overriding" principles of law, of a kind which cannot be dispensed with, imply to an appreciable degree important limitations on the content of economic activity. Especially "enabling provisions" can under certain circumstances, as in corporation law, involve quite appreciable limitations on economic autonomy.

7. The limits of the material regulation of economic activity may be reached when it results in (a) the abandonment of certain kinds of economic activity, as when a tax on turnover leads to the cultivation of land only for consumption; or (b) in evasion, in such cases as smuggling, bootlegging, etc.

6. *Media of Exchange, Means of Payment, Money*

A material object offered in exchange will be called a "medium of exchange" so far as it is typically accepted primarily by virtue of the fact that the recipients estimate that they will, within the relevant time horizon, be able to utilize it in another exchange to procure other goods at an acceptable exchange ratio, regardless of whether it is exchangable for

all other goods or only for certain specific goods. The probability that the medium of exchange will be accepted at a given rate for specific other goods will be called its "substantive validity" (*materiale Geltung*) in relation to these. The use itself will be called the "formal validity" (*formale Geltung*).

An object will be called a "means of payment" so far as its acceptance in payment of specific agreed or imposed obligations is *guaranteed* by convention or by law. This is the "formal validity" of the means of payment, which may also signify its formal validity as a means of exchange. Means of exchange or of payment will be called "chartal" (*chartal*)[10] when they are artifacts which, by virtue of their specific form, enjoy a definite quantum, conventional or legal, agreed or imposed, of formal validity within the membership of a group of persons or within a territorial area; and when (b) they are divisible in such a way that they represent a particular unit of nominal value or a multiple or a fraction of it, so that it is possible to use them in arithmetical calculations.

"Money" we call a chartal means of payment which is also a means of exchange.

An organization will be called a "means of exchange," "means of payment," or "money" group insofar as it effectively imposes within the sphere of authority of its orders the conventional or legal (formal) validity of a means of exchange, of payment, or money; these will be termed "internal" means of exchange, etc. Means used in transactions with non-members will be called "external" means of exchange.

Means of exchange or of payment which are not chartal are "natural" means. They may be differentiated (a) in technical terms, according to their physical characteristic—they may be ornaments, clothing, useful objects of various sorts—or according to whether their utilization occurs in terms of weight or not. They may also (b) be distinguished economically according to whether they are used primarily as means of exchange or for purposes of social prestige, the prestige of possession. They may also be distinguished according to whether they are used as means of exchange and payment in internal or in external transactions.

Money, means of exchange or of payment are "tokens" so far as they do not or no longer possess a value independent of their use as means of exchange and of payment. They are, on the other hand, "material" means so far as their value as such is influenced by their possible use for other purposes, or may be so influenced.

Money may consist either of coined or of note (document) money. Notes are usually adapted to a system of coinage or have a name which is historically derived from it.

(1) Coined money will be called "free" money or "market" money so far as the monetary metal will be coined by the mint on the initiative

of any possessor of it without limit of amount. This means that in effect the amount issued is determined by the demand of parties to market transactions.

(2) It will be called "limited" money or "administrative" money if the transformation of the metal into its chartal form (coinage) is subject to the formally quite arbitrary decisions of the governing authority of an organization and is in effect primarily oriented to its fiscal needs.

(3) It will be called "regulated" money if, though its issue is limited, the kind and amount of coinage is effectively subject to rules.

The term "means of circulation" will be applied to a document which functions as "note" money, if it is accepted in normal transactions as "provisional" money with the expectation that it can, at any time, be converted into "definitive" money, that is into coins, or a given weight of monetary metal. It is a "certificate" if this is assured by regulations which require maintenance of stocks providing full coverage in coin or bullion.

We call "conversion scales" the conventional or legally imposed exchange ratios valid within an organization for the different "natural" means of exchange or payment.

"Currency money" is the money which by the effective arrangements within an organization has validity as a means of payment without limitation on the amount that need be accepted. "Monetary material" is the material from which money is made; "monetary metal" is this material in the case of market money. "Monetary value scale" we call the relative valuation of the various subdivisions and denominations, consisting of different material substances, of "note" or "administrative" money; the same ratios in the case of types of market money made of different metals we call "exchange ratios."

"International" means of payment are those means of payment which serve to balance accounts between different monetary systems, that is, so far as payments are not postponed by funding operations.

Every reform of the monetary system by an organization must necessarily take account of the fact that certain means of payment have previously been used for the liquidation of debts. It must either accept as legal their continued use as a means of payment, or impose new ones. In the latter case an exchange ratio must be established between the old units, whether natural, by weight, or chartal, and the new ones. This is the principle of the so-called "historical" definition of money as a means of payment. It is impossible here to discuss how far this reacts upon the exchange relation between money as a means of exchange and goods.

It should be strongly emphasized that the present discussion is not an essay in monetary theory, but only an attempt to work out the simplest possible formulations of a set of concepts which will have to be

frequently employed later on. In addition, this discussion is concerned primarily with certain very elementary *sociological* consequences of the use of money. The formulation of monetary theory, which has been most acceptable to the author, is that of von Mises.[11] The *Staatliche Theorie des Geldes* by G. F. Knapp[12] is the most imposing work in the field and in its way solves the formal problem brilliantly. It is, however, as will be seen below, incomplete for substantive monetary problems. Its able and valuable attempt to systematize terminology and concepts will be left out of account at this point.

1. Means of exchange and means of payment very often, though by no means always, coincide empirically. They are, however, particularly likely not to do so in primitive conditions. The means of payment for dowries, tribute, obligatory gifts, fines, wergild, etc., are often specified in convention or by law without regard to any relation to the means of exchange actually in circulation. It is only when the economic affairs of the organization are administered in money terms that von Mises' contention that even the state seeks means of payment only as a means of exchange becomes tenable. This has not been true of cases where the possession of certain means of payment has been primarily significant as a mark of social status. (See Heinrich Schurtz, *Grundriss einer Entstehungsgeschichte des Geldes*, 1898). With the introduction of regulation of money by the state, means of payment becomes the legal concept and means of exchange the economic concept.

2. There seems at first sight to be an indistinct line between a "good" which is purchased solely with a view to its future resale and a medium of exchange. In fact, however, even under conditions which are otherwise primitive there is a strong tendency for particular objects to monopolize the function of medium of exchange so completely that there is no doubt about their status. Wheat futures are traded in terms which imply that there will be a final buyer. Therefore they cannot be treated as means of payment or medium of exchange, let alone money.

3. So long as there is no officially sanctioned money, what is used as means of exchange is primarily determined by the customs, interests, and conventions to which the agreements between the parties to transactions are oriented. The reasons why specific things have become accepted as means of exchange cannot be gone into here. They have, however, been exceedingly various and tend to be determined by the type of exchange which has been of the greatest importance. By no means every medium of exchange, even within the social group where it has been employed, has been universally acceptable for every type of exchange. For instance, cowry shells, though used for other things, have not been acceptable in payment for wives or cattle.

4. Sometimes means of payment which were not the usual means of exchange have played an important part in the development of money to its special status. As G. F. Knapp has pointed out, the fact that various types of debt have existed, such as obligations stemming from tributes, dowries, payments for bride purchase, conventional gifts to kings

or by kings to each other, wergild, etc., and the fact that these have often been payable in certain specific media, has created for these media, by convention or by law, a special position. Very often they have been specific types of artifacts.

5. Money in the meaning of the present terminology may have been the one-fifth shekel pieces bearing the stamp of merchant firms which are mentioned in the Babylonian records, on the assumption, that is, that they were actually used as means of exchange. On the other hand, bars of bullion which were not coined, but weighed, will here not be treated as money, but only as means of payment and exchange. The fact, however, that they were weighed has been enormously important for the development of the habit of economic calculations. There are, naturally, many transitional forms, such as the acceptance of coins by weight rather than by denomination.

6. "Chartal" is a term introduced by Knapp in his *Staatliche Theorie des Geldes*. All types of money which have been stamped or coined, endowed with validity by law or by agreement, belong in this category, whether they were metal or not. It does not, however, seem reasonable to confine the concept to regulations by the state and not to include cases where acceptance is made compulsory by convention or by some agreement. There seems, furthermore, to be no reason why actual minting by the state or under the control of the political authorities should be a decisive criterion. For long periods this did not exist in China at all and was very much limited in the European Middle Ages. As Knapp would agree, it is only the existence of norms regulating the monetary form which is decisive. As will be noted below, validity as a means of payment and formal acceptability as means of exchange in private transactions may be made compulsory by law within the jurisdiction of the political authority.

7. Natural means of exchange and of payment may sometimes be used more for internal transactions, sometimes more for external. The details need not be considered here. The question of the substantive validity of money will be taken up later.

8. This is, furthermore, not the place to take up the substantive theory of money in its relation to prices so far as this subject belongs in the field of economic sociology at all. For present purposes it will suffice to state the fact that money, in its most important forms, is used, and then to proceed to develop some of the most general sociological consequences of this fact, which is merely a formal matter when seen from an economic point of view. It must, however, be emphasized that money can *never* be merely a harmless "voucher" or a purely nominal unit of accounting so long as it *is* money. Its valuation is always in very complex ways dependent also on its scarcity or, in case of inflation, on its overabundance. This has been particularly evident in recent times, but is equally true for all times.

A socialistic regime might issue vouchers, in payment for a given quantity of socially useful "labor," valid for the purchase of certain

types of goods. These might be saved or used in exchange, but their behavior would follow the rules of barter exchange, not of money, though the exchange might be indirect.

9. Perhaps the most instructive case of the far-reaching economic consequences of the relations between the monetary and non-monetary uses of a monetary metal is that of Chinese monetary history, because copper money, with high costs of production and wide fluctuations in output of the monetary metal, permits an especially clear view of the phenomena involved.

7. *The Primary Consequences of the Use of Money. Credit*

The primary consequences of the widespread use of money are:

(1) The so-called "indirect exchange" as a means of satisfying consumers' wants. The use of money makes it possible to obtain goods which are separated from those offered in exchange for them in space, in time, in respect to the persons involved, and, what is very important, in respect to the quantity on each side of the transaction. This results in a tremendous extension of the area of possible exchange relationships.

(2) The valuation in terms of money of delayed obligations, especially of compensatory obligations arising out of an exchange (that is, debts). This is, of course, closely related to the first point.

(3) The so-called "storage of value"; that is, the accumulation of money in specie or in the form of claims to payment collectable at any time as a means of insuring future control over opportunities of advantageous economic exchange.

(4) The increasing transformation of all economic advantages into the ability to control sums of money.

(5) The qualitative individuation of consumption and, indirectly, its expansion for those who have control of money, of claims to money payment, or of opportunities to acquire money. This means the ability to offer money as a means of obtaining goods and services of all kinds.

(6) The orientation of the procurement of utilities, as it has become widespread today, to their bearing on the marginal utility of the sums of money which the directing authorities of an economic unit expect to be able to control in the relevant future.

(7) With this goes the orientation of acquisitive activities to all the opportunities which are made available by the extension of the area of possible exchanges, in time, in place, and with respect to personal agents, as noted above.

(8) All of these consequences are dependent on what is, in principle, the most important fact of all, the possibility of monetary *calculation;* that is, the possibility of assigning money values to all goods and services which in any way might enter into transactions of purchase and sale.

In substantive as distinguished from formal terms, monetary calculation means that goods are not evaluated merely in terms of their immediate importance as utilities at the given time and place and for the given person only. Rather, goods are more or less systematically compared, whether for consumption or for production, with all potential future opportunities of utilization or of gaining a return, including their possible utility to an indefinite number of other persons who can be brought into the comparison insofar as they are potential buyers of the powers of control and disposal of the present owner. Where money calculations have become typical, this defines the "market situation" of the good in question. (The above statement formulates only the simplest and best-known elements of any discussion of "money" and does not need to be further commented upon. The sociology of the "market" will not yet be developed here. On the formal concepts, see secs. 8 and 10.)

The term "credit" in the most general sense will be used to designate any exchange of goods presently possessed against the promise of a future transfer of disposal over utilities, no matter what they may be. The granting of credit means in the first instance that action is oriented to the probability that this future transfer of disposal will actually take place. In this sense the primary significance of credit lies in the fact that it makes it possible for an economic unit to exchange an expected future surplus of control over goods or money against the present control of some other unit over goods which the latter does not now intend to use. Where the action is rational, both parties expect an improvement in their position, regardless of what it consists in, over what it would be under the present distribution of resources without the exchange.

1. It is by no means necessary for the advantages in question to be economic. Credit may be granted and accepted for all conceivable purposes, for instance, charitable and military.

2. Credit may be granted and accepted in kind or in money, and in both cases the promises may be of concrete goods or services or of money payments. Carrying out credit transactions in terms of money, however, means that they become the subject of monetary calculations with all the attendant consequences, which will be discussed below.

3. This definition (of credit) for the most part corresponds to the usual one. It is clear that credit relationships may exist between organizations of all sorts, especially socialist or communist organizations. If there exist side by side several such groups, which are not economically autarkic, credit relationships are unavoidable. When the use of money

is completely absent,[18] there is a difficult problem of finding a rational basis of calculation. For the mere fact of the possibility of transactions involving compensation in the future does not tell us anything about the degree of rationality with which the parties agree on the conditions, especially in the case of long-term credit. Such parties would be in somewhat the same situation as the household economic units (*oikos*) of ancient times which exchanged their surpluses for things they had need of. But there is this difference, that in the present situation the interests of huge masses on a long-tenn basis would be at stake; and for the great masses of the low-income groups, the marginal utility of present consumption is particularly high. Thus there would be a probability that goods urgently needed could only be obtained on unfavorable tenns.

4. Credit may be obtained and used for the purpose of satisfying present consumption needs which are inadequately provided for. Even in that case it will, so far as the action is economically rational, only be granted in exchange for advantages. This is not, however, historically usual for the earliest type of consumption credit and especially for emergency credit, the motives for which more frequently stemmed from an appeal to ethical obligations. This will be discussed in Part Two, chap. III:2.

5. What is the most common basis of credit, in money or in kind, when it is granted for profit, is very obvious. It is the fact that, because the lender is usually in a better economic situation, the marginal utility of future expectations, as compared with present ones, is higher than it is for the borrower. It should, however, be noted that what constitutes a "better" situation is highly relative.

8. *The Market*

By the "market situation" (*Marktlage*) for any object of exchange is meant all the opportunities of exchanging it for money which are known to the participants in exchange relationships and aid their orientation in the competitive price struggle.

"Marketability" (*Marktgängigkeit*) is the degree of regularity with which an object tends to be an object of exchange on the market.

"Market freedom" is the degree of autonomy enjoyed by the parties to market relationships in the price struggle and in competition.

"Regulation of the market," on the contrary, is the state of affairs where there is a substantive restriction, effectively enforced by the provisions of an order, on the marketability of certain potential objects of exchange or on the market freedom of certain participants. Regulation of the market may be determined (1) traditionally, by the actors' becoming accustomed to traditionally accepted limitations on exchange or to traditional conditions; (2) by convention, through social disapproval

of treating certain utilities as marketable or of subjecting certain objects of exchange to free competition and free price determination, in general or when undertaken by certain groups of persons; (3) by law, through legal restrictions on exchange or on the freedom of competition, in general or for particular groups of persons or for particular objects of exchange. Legal regulations may take the form of influencing the market situation of objects of exchange by price regulation, or of limiting the possession, acquisition, or exchange of rights of control and disposal over certain goods to certain specific groups of persons, as in the case of legally guaranteed monopolies or of legal limitations on economic action. (4) By voluntary action arising from the structure of interests. In this case there is substantive regulation of the market, though the market remains formally free. This type of regulation tends to develop when certain participants in the market are, by virtue of their totally or approximately exclusive control of the possession of or opportunities to acquire certain utilities—that is, of their monopolistic powers—in a position to influence the market situation in such a way as actually to abolish the market freedom of others. In particular, they may make agreements with each other and with typical exchange partners for regulating market conditions. Typical examples are market quota agreements and price cartels.

1. It is convenient, though not necessary, to confine the term "market situation" to cases of exchange for money, because it is only then that uniform numerical statements of relationships become possible. Opportunities for exchange *in kind* are best described simply as "exchange opportunities." Different kinds of goods are and have been marketable in widely different and variable degrees, even where a money economy was well developed. The details cannot be gone into here. In general, articles produced in standardized form in large quantities and widely consumed have been the most marketable; unusual goods, only occasionally in demand, the least. Durable consumption goods which can be used up over long periods and means of production with a long or indefinite life, above all, agricultural and forest land, have been marketable to a much less degree than finished goods of everyday use or means of production which are quickly used up, which can be used only once, or which give quick returns.

2. Rationality of the regulation of markets has been historically associated with the growth of formal market freedom and the extension of marketability of goods. The original modes of market regulation have been various, partly traditional and magical, partly dictated by kinship relations, by status privileges, by military needs, by welfare policies, and not least by the interests and requirements of the governing authorities of organizations. But in each of these cases the dominant interests have not been primarily concerned with maximizing the opportunities of acquisition and economic provision of the participants in the market

themselves; have, indeed, often been in conflict with them. (1) Sometimes the effect has been to exclude certain objects from market dealings, either permanently or for a time. This has happened in the magical case, by taboo; in that of kinship, by the entailing of landed property; on the basis of social status, as with knightly fiefs. In times of famine the sale of grain has been temporarily prohibited. In other cases permission to sell has been made conditional on a prior offer of the good to certain persons, such as kinsmen, co-members of the status group, of the guild, or of the town association; or the sale has been limited by maximum prices, as is common in war time, or by minimum prices. Thus, in the interests of their status dignity magicians, lawyers, or physicians may not be allowed to accept fees below a certain minimum. (2) Sometimes certain categories of persons, such as members of the nobility, peasants, or sometimes even artisans, have been excluded from market trade in general or with respect to certain commodities. (3) Sometimes the market freedom of consumers has been restricted by regulations, as by the sumptuary laws regulating the consumption of different status groups, or by rationing in case of war or famine. (4) Another type is the restriction of the market freedom of potential competitors in the interest of the market position of certain groups, such as the professions or the guilds. Finally, (5) certain economic opportunities have been reserved to the political authorities (royal monopolies) or to those holding a charter from such authorities. This was typical for the early capitalistic monopolies.

Of all these, the fifth type of market regulation had the highest "market-rationality," and the first the lowest. By "rationality" we here mean a force which promotes the orientation of the economic activity of strata interested in purchase and sale of goods on the market to the market situations. The other types of regulation fit in between these two with respect to their rationality-impeding effect. The groups which, relative to these forms of regulation, have been most interested in the freedom of the market, have been those whose interests lay in the greatest possible extension of the marketability of goods, whether from the point of view of availability for consumption, or of ready opportunities for sale. Voluntary market regulation first appeared extensively and permanently only on behalf of highly developed profit-making interests. With a view to the securing of monopolistic advantages, this could take several forms: (1) the pure regulation of opportunities for purchase and sale, which is typical of the widespread phenomena of trading monopolies: (2) the regulation of transportation facilities, as in shipping and railway monopolies; (3) the monopolization of the production of certain goods; and (4) that of the extension of credit and of financing. The last two types generally are accompanied by an increase in the regulation of economic activity by organizations. But unlike the primitive, irrational forms of regulation, this is apt to be oriented in a methodical manner to the market situation. The starting point of voluntary market regulation has in general been the fact that certain groups with a far-reaching degree of

actual control over economic resources have been in a position to take advantage of the formal freedom of the market to establish monopolies. Voluntary associations of consumers, such as consumers' co-operatives, have, on the other hand, tended to originate among those who were in an economically weak position. They have hence often been able to accomplish savings for their members, but only occasionally and limited to particular localities have they been able to establish an effective system of market regulation.

9. *Formal and Substantive Rationality of Economic Action*

The term "formal rationality of economic action" will be used to designate the extent of quantitative calculation or accounting which is technically possible and which is actually applied. The "substantive rationality," on the other hand, is the degree to which the provisioning of given groups of persons (no matter how delimited) with goods is shaped by economically oriented social action under some criterion (past, present, or potential) of ultimate values (*wertende Postulate*), regardless of the nature of these ends. These may be of a great variety.

1. The terminology suggested above is thought of merely as a means of securing greater consistency in the use of the word "rational" in this field. It is actually only a more precise form of the meanings which are continually recurring in the discussion of "nationalization" and of the economic calculus in money and in kind.

2. A system of economic activity will be called "formally" rational according to the degree in which the provision for needs, which is essential to every rational economy, is capable of being expressed in numerical, calculable terms, and is so expressed. In the first instance, it is quite independent of the technical form these calculations take, particularly whether estimates are expressed in money or in kind. The concept is thus unambiguous, at least in the sense that expression in money term yields the highest degree of formal calculability. Naturally, even this is true only relatively, so long as other things are equal.

3. The concept of "substantive rationality," on the other hand, is full of ambiguities. It conveys only one element common to all "substantive" analyses: namely, that they do not restrict themselves to note the purely formal and (relatively) unambiguous fact that action is based on "goal-oriented" rational calculation with the technically most adequate available methods, but apply certain criteria of ultimate ends, whether they be ethical, political, utilitarian, hedonistic, feudal (*ständisch*), egalitarian, or whatever, and measure the results of the economic action, however formally "rational" in the sense of correct calculation they may be, against these scales of "value rationality" or "*substantive* goal ration-

ality." There is an infinite number of possible value scales for this type of rationality, of which the socialist and communist standards constitute only one group. The latter, although by no means unambiguous in themselves, always involve elements of social justice and equality. Others are criteria of status distinctions, or of the capacity for power, especially of the war capacity, of a political unit; all these and many others are of potential "substantive" significance. These points of view are, however, significant only as bases from which to judge the *outcome* of economic action. In addition and quit independently, it is possible to judge from an ethical, ascetic, or esth tic point of view the *spirit* of economic activity (*Wirtschaftsgesinnung*) as well as the *instruments* of economic activity. All of these approaches may consider the "purely formal" rationality of calculation in monetary terms as of quite secondary importance or even as fundamentally inimical to their respective ultimate ends, even before anything has been said about the consequ nces of the specifically modern calculating attitude. There is no question in this discussion of attempting value judgments in this field, but only of determining and delimiting what is to be called "fonnal." In tbis context the concept "substantiv " is itself in a c rtain sense "formal;" that is, it is an abstract, generic conc pt.

10. *The Rationality of Monetary Accounting. Management and Budgeting*

From a purely technical point of view, money is the most "perfect" means of economic calculation. That is, it is formally the most rational means of orienting economic activity. Calculation in terms of money, and not its actual use, is thus the specific means of rational, economic provision. So far as it is completely rational, money accounting has the following primary consequences:

(1) The valuation of all the means of achieving a productive purpose in terms of the present or expected market situation. This includes everything which is needed at present or is expected to be needed in the future, everything actually in the actor's control, which he may come to control or may acquire by exchange from the control of others; everything lost, or in danger of damage or destruction; all types of utilities, of means of production, or any other sort of economic advantage.

(2) The quantitative statement of (a) the expected advantages of every projected course of economic action and (b) the actual results of every completed action, in the form of an account comparing money costs and money returns and the estimated net profit to be gained from alternatives of action.

(3) A periodical comparison of all the goods and other assets con-

trolled by an economic unit at a given time with those controlled at the beginning of a period, both in terms of money.

(4) An *ex-ante* estimate and an *ex-post* verification of receipts and expenditures, either those in money itself, or those which can be valued in money, which the economic unit is likely to have available for its use during a period if it maintains the money value of the means at its disposal intact.

(5) The orientation of consumption to these data by the utilization of the money available (on the basis of point 4) during the accounting period for the acquisition of the requisite utilities in accordance with the principle of marginal utility.

The continual utilization and procurement of goods, whether through production or exchange, by an economic unit for purposes of its own *consumption* or to procure other goods for *consumption* will be called "budgetary management" (*Haushalt*).[14] Where rationality exists, its basis for an individual or for a group economically oriented in this way is the "budget" (*Haushaltsplan*), which states systematically in what way the needs expected for an accounting period—needs for utilities or for means of procurement to obtain them—can be covered by the anticipated income.

The "income" of a "budgetary unit" is the total of goods valued in money, which, as estimated according to the principle stated above in point (4), has been available during a previous period or on the availability of which the unit is likely to be able to count on the basis of a rational estimate for the present or for a future period. The total estimated value of the goods at the disposal of a budgetary unit which are normally utilized over a longer period, either directly or as a source of income, will be called its "wealth" (*Vermögen*).[15] The possibility of complete monetary budgeting for the budgetary unit is dependent on the possibility that its income and wealth consist either in money or in goods which are at any time subject to exchange for money; that is, which are in the highest degree marketable.

A rational type of management and budgeting of a budgetary unit is possible also where calculation is carried out in terms of physical units, as will be further discussed below. It is true that in that case there is no such thing as "wealth" capable of being expressed in a single sum of money, nor is there a single "income" in the same sense. Calculation is in terms of "holdings" of concrete goods and, where acquisition is limited to peaceful means, of concrete "receipts" from the expenditure of available real goods and services, which will be administered with a view to attaining the optimum provision for the satisfaction of wants. If the wants are strictly given, this involves a comparatively simple problem

from the technical point of view so long as the situation does not require a very precise estimate of the comparative utility to be gained from the allocation of the available resources to each of a large number of very heterogeneous modes of use. If the situation is markedly different, even the simple self-sufficient household is faced with problems which are only to a very limited degree subject to a formally exact solution by calculation. The actual solution is usually found partly by the application of purely traditional standards, partly by making very rough estimates, which, however, may be quite adequate where both the wants concerned and the conditions of provision for them are well known and readily comparable. When the "holdings" consist in heterogeneous goods, as must be the case in the absence of exchange, a formally exact calculable comparison of the state of holdings at the beginning and the end of a period, or of the comparison of different possible ways of securing receipts, is possible only for categories of goods which are qualitatively identical. The typical result is that all available goods are treated as forming a totality of physical holdings, and certain quantities of goods are treated as available for consumption, so long as it appears that this will not in the long run diminish the available resources. But every change in the conditions of production—as, for instance, through a bad harvest —or any change in wants necessitates a new allocation, since it alters the scale of relative marginal utilities. Under conditions which are simple and adequately understood, this adaptation may be carried out without much difficulty. Otherwise, it is technically more difficult than if money terms could be used, in which case any change in the price situation in principle influences the satisfaction only of the wants which are marginal on the scale of relative urgency and are met with the last increments of money income.

As accounting in kind becomes completely rational and is emancipated from tradition, the estimation of marginal utilities in terms of the relative urgency of wants encounters grave complications; whereas, if it were carried out in terms of monetary wealth and income, it would be relatively simple. In the latter case the question is merely a "marginal" one, namely whether to apply *more* labor or whether to satisfy or sacrifice, as the case may be, one or more wants, rather than others. For when the problems of budgetary management are expressed in money terms, this is the form the "costs" take [opportunity cost]. But if calculations are in physical terms, it becomes necessary to take into account, besides the scale of urgency of the wants, also (1) the alternative modes of utilization of *all* means of production, including the *entire* amount of labor hitherto expended, which means different (according to the mode of utilization) and variable ratios between want satisfaction and the expenditure of resources, and therefore, (2), requires a consideration of

the volume and type of *additional* labor which the householder would have to expend to secure additional receipts and, (3), of the mode of utilization of the material expenditures if the goods to be procured can be of various types. It is one of the most important tasks of economic theory to analyse the various possible ways in which these evaluations can be rationally carried out. It is, on the other hand, a task for economic history to pursue the ways in which the budgetary management in physical terms has been actually worked out in the course of various historical epochs. In general, the following may be said: (1) that the degree of formal rationality has, generally speaking, fallen short of the level which was even empirically possible, to say nothing of the theoretical maximum. As a matter of necessity, the calculations of money-less budgetary management have in the great majority of cases remained strongly bound to tradition. (2) In the larger units of this type, precisely because an expansion and refinement of everyday wants has not taken place, there has been a tendency to employ surpluses for uses of a non-routine nature—above all, for artistic purposes. This is an important basis for the artistic, strongly stylized cultures of epochs with a "natural economy."

1. The category of "wealth" includes more than physical goods. Rather, it covers *all* economic advantages over which the budgetary unit has an assured control, whether that control is due to custom, to the play of interests, to convention, or to law. The "good will" of a profit-making organization, whether it be a medical or legal practice, or a retail shop, belongs to the "wealth" of the owner if it is, for whatever reason, relatively stable since, if it is legally appropriated, it can constitute "property" in the terms of the definition in ch. I:10 above.

2. Monetary calculation can be found without the actual use of money or with its use limited to the settlement of balances which cannot be paid in kind in the goods being exchanged on both sides. Evidence of this is common in the Egyptian and Babylonian records. The use of money accounting as a measure for payments in kind is found in the permission in Hammurabi's Code and in provincial Roman and early Medieval law that a debtor may pay an amount due expressed in money "in whatever form he will be able" (*in quo potuerit*). The establishment of equivalents must in such cases have been carried out on the basis of traditional prices or of prices laid down by decree.

3. Apart from this, the above discussion contains only commonplaces, which are introduced to facilitate the formulation of a precise concept of the rational budgetary unit as distinguished from that of a rational profit-making enterprise—the latter will be discussed presently. It is important to state explicitly that both can take rational forms. The satisfaction of needs is not something more "primitive" than profit-seeking; "wealth" is not necessarily a more primitive category

than capital; "income," than profit. It is, however, true that historically the budgetary unit has been prior and has been the dominant form in most periods of the past.

4. It is indifferent what unit is the bearer of a budgetary management economy. Both the budget of a state and the family budget of a worker fall under the same category.

5. Empirically the administration of budgetary units and profit-making are not mutually exclusive alternatives. The business of a consumers' cooperative, for instance, is normally oriented to the economical provision for wants; but in the form of its activity, it is a "profit-making organization" without being oriented to profit as a substantive end. In the action of an individual, the two elements may be so intimately intertwined, and in the past have typically been so, that only the concluding act—namely, the sale or the consumption of the product—can serve as a basis for interpreting the meaning of the action. This has been particularly true of small peasants. Exchange may well be a part of the process of budgetary management where it is a matter of acquiring consumption goods by exchange and of disposing of surpluses. On the other hand, the budgetary economy of a prince or a landed lord may include profit-making enterprises in the sense of the following discussion. This has been true on a large scale in earlier times. Whole industries have developed out of the heterocephalous and heteronomous auxiliary enterprises which seigneurial landowners, monasteries, princes, etc., have established to exploit the products of their lands and forests. All sorts of profit-making enterprises today are part of the economy of such budgetary units as local authorities or even states. In these cases it is legitimate to include in the "income" of the budgetary units, if they are rationally administered, only the net profits of these enterprises. Conversely, it is possible for profit-making enterprises to establish various types of heteronomous budgetary units under their direction for such purposes as providing subsistence for slaves or wage workers—among them are "welfare" organizations, housing and eating facilities. Net profits in the sense of point (2) of this section are money surpluses after the deduction of all money costs.

6. It has been possible here to give only the most elementary starting points for analysing the significance of economic calculations in kind for general social development.

11. *The Concept and Types of Profit-Making. The Role of Capital*

"Profit-making" (*Erwerben*)[19] is activity which is oriented to opportunities for seeking new powers of control over goods on a single occasion, repeatedly, or continuously. "Profit-making activity" is activity which is oriented at least in part to opportunities of profit-making. Profit-

making is "economic" if it is oriented to acquisition by peaceful methods. It may be oriented to the exploitation of market situations. "Means of profit-making" (*Erwerbsmittel*) are those goods and other economic advantages which are used in the interests of economic profit-making. "Exchange for profit" is that which is oriented to market situations in order to increase control over goods rather than to secure means for consumption (budgetary exchange). "Business credit" is that credit which is extended or taken up as a means of increasing control over the requisites of profit-making activity.

There is a form of monetary accounting which is peculiar to rational economic profit-making; namely, "capital accounting." Capital accounting is the valuation and verification of opportunities for profit and of the success of profit-making activity by means of a valuation of the total assets (goods and money) of the enterprise at the beginning of a profit-making venture, and the comparison of this with a similar valuation of the assets still present and newly acquired, at the end of the process; in the case of a profit-making organization operating continuously, the same is done for an accounting period. In either case a balance is drawn between the initial and final states of the assets. "Capital" is the money value of the means of profit-making available to the enterprise at the balancing of the books; "profit" and correspondingly "loss," the difference between the initial balance and that drawn at the conclusion of the period. "Capital risk" is the estimated probability of a loss in this balance. An economic "enterprise" (*Unternehmen*) is autonomous action capable of orientation to capital accounting. This orientation takes place by means of "calculation", ex-ante calculation of the probable risks and chances of profit, ex-post calculation for the verification of the actual profit or loss resulting. "Profitability" means, in the rational case, one of two things: (1) the profit estimated as possible by ex-ante calculations, the attainment of which is made an objective of the entrepreneur's activity; or (2) that which the ex-post calculation shows actually to have been earned in a given period, and which is available for the consumption uses of the entrepreneur without prejudice to his chances of future profitability. In both cases it is usually expressed in ratios—today, percentages—in relation to the capital of the initial balance.

Enterprises based on capital accounting may be oriented to the exploitation of opportunities of acquisition afforded by the market, or they may be oriented toward other chances of acquisition, such as those based on power relations, as in the case of tax farming or the sale of offices.

Each individual operation undertaken by a rational profit-making enterprise is oriented to estimated profitability by means of calculation. In the case of profit-making activities on the market, capital accounting

requires: (1) that there exist, subject to estimate beforehand, adequately extensive and assured opportunities for sale of the goods which the enterprise procures; that is, normally, a high degree of marketability; (2) that the means of carrying on the enterprise, such as the potential means of production and the services of labor, are also available in the market at costs which can be estimated with an adequate degree of certainty; and finally, (3) that the technical and legal conditions, to which the process from the acquisition of the means of production to final sale, including transport, manufacturing operations, storage, etc., is subjected, give rise to money costs which in principle are calculable.

The extraordinary importance of the highest possible degree of calculability as the basis for efficient capital accounting will be noted time and again throughout the discussion of the sociological conditions of economic activity. It is far from the case that only economic factors are important to it. On the contrary, it will be shown that the most varied sorts of external and subjective barriers account for the fact that capital accounting has arisen as a basic form of economic calculation only in the Western World.

As distinguished from the calculations appropriate to a budgetary unit, the capital accounting and calculations of the market entrepreneur are oriented not to marginal utility, but to profitability. To be sure, the probabilities of profit are in the last analysis dependent on the income of consumption units and, through this, on the marginal utility structure of the disposable money incomes of the final consumers of consumption goods. As it is usually put, it depends on their "purchasing power" for the relevant commodities. But from a technical point of view, the accounting calculations of a profit-making enterprise and of a consumption unit differ as fundamentally as do the ends of want satisfaction and of profit-making which they serve. For purposes of economic theory, it is the marginal *consumer* who determines the direction of production. In actual fact, given the actual distribution of power, this is only true in a limited sense for the modern situation. To a large degree, even though the consumer has to be in a position to buy, his wants are "awakened" and "directed" by the entrepreneur.

In a market economy every form of rational calculation, especially of capital accounting, is oriented to expectations of prices and their changes as they are determined by the conflicts of interests in bargaining and competition and the resolution of these conflicts. In profitability-accounting this is made particularly clear in that system of bookkeeping which is (up to now) the most highly developed one from a technical point of view, in the so-called double-entry bookkeeping. Through a system of individual accounts the fiction is here created that different depart-

ments within an enterprise, or individual accounts, conduct e change operations with each other, thus permitting a check in the technically most perfect manner on the profitability of each individual step or measure.

Capital accounting in its formally most rational shape thus presupposes the *battle of man with man.* And this in turn involves a further very specific condition. No economic system can directly translate subjective "feelings of need" into effective demand, that is, into demand which needs to be taken into account and satisfied through the production of goods. For whether or not a subjective want can be satisfied depends, on the one hand, on its place in the scale of relative urgency; on the other hand, on the goods which are estimated to be actually or potentially available for its satisfaction. Satisfaction does not take place if the utilities needed for it are applied to other more urgent uses, or if they either cannot be procured at all, or only by such sacrifices of labor and goods that future wants, which are still, from a present point of view, adjudged more urgent, could not be satisfied. This is true of consumption in every kind of economic system, including a communist one.

In an economy which makes use of capital accounting and which is thus characterized by the appropriation of the means of production by individual units, that is by "property" (see ch. I, sec. 10), profitability depends on the prices which the "consumers," according to the marginal utility of money in relation to their income, can and will pay. It is possible to produce profitably only for those consumers who, in these terms, have sufficient income. A need may fail to be satisfied not only when an individual's own demand for other goods takes precedence, but also when the greater purchasing power of others for *all* types of goods prevails. Thus the fact that the battle of man against man on the market is an essential condition for the existence of rational money-accounting further implies that the outcome of the economic process is decisively influenced by the ability of persons who are more plentifully supplied with money to outbid the others, and of those more favorably situated for production to underbid their rivals on the selling side. The latter are particularly those well supplied with goods essential to production or with money. In particular, rational money-accounting presupposes the existence of effective prices and not merely of fictitious prices conventionally employed for technical accounting purposes. This, in turn, presupposes money functioning as an effective medium of exchange, which is in demand as such, not mere tokens used as purely technical accounting units.[17] Thus the orientation of action to money prices and to profit has the following consequences: (1) that the differences in the distribution of money or marketable goods between the individual parties in the market is de-

cisive in determining the direction taken by the production of goods, so far as it is carried on by profit-making enterprises, in that it is only demand made effective through the possession of purchasing power which is and can be satisfied. Further, (2) the question, what type of demand is to be satisfied by the production of goods, becomes in turn dependent on the profitability of production itself. Profitability is indeed *formally* a rational category, but for that very reason it is indifferent with respect to *substantive* postulates unless these can make themselves felt in the market in the form of sufficient purchasing power.

"Capital goods," as distinguished from mere possessions or parts of wealth of a budgetary unit, are all such goods as are administered on the basis of capital accounting. "Capital interest," as distinct from various other possible kinds of interest on loans, is: (1) what is estimated to be the minimum normal profitability of the use of material means of profit-making; (2) the rate of interest at which profit-making enterprises can obtain money or capital goods.

This exposition only repeats generally known things in a somewhat more precise form. For the technical aspects of capital accounting, compare the standard textbooks of accountancy, which are, in part, excellent. E.g. those of Leitner, Schär, etc.

1. The concept of capital has been defined strictly with reference to the individual private enterprise and in accordance with private business-accounting practice, which was, indeed, the most convenient method for present purposes. This usage is much less in conflict with everyday speech than with the usage which in the past was frequently found in the social sciences and which has by no means been consistent. In order to test the usefulness of the present business-accounting term, which is now being increasingly employed in scientific writings again, it is necessary only to ask the following questions: (1) What does it mean when we say that a corporation has a "basic capital" (net worth) of one million pounds? And (2), what when we say that capital is "written down"? What, (3), when corporation law prescribes what objects may be "brought in" as capital and in what manner? The first statement means that only that part of a surplus of assets over liabilities, as shown on the balance-sheet after proper inventory control and verification, which *exceeds* one million pounds can be accounted as "profit" and distributed to the share-holders to do with as they please (or, in the case of a one-man enterprise, that only this excess can be consumed in the household). The second statement concerns a situation where there have been heavy business losses, and means that the distribution of profit need not be postponed until perhaps after many years a surplus exceeding one million pounds has again been accumulated, but that the distribution of "profits" may begin at a lower surplus. But in order to do this, it is necessary to "write down" the capital, and this is the purpose of the operation. Finally, the purpose

of prescriptions as to how basic capital (net worth, or ownership) can be "covered" through the bringing into the company of material assets, and how it may be "written up" or "written down," is to give creditors and purchasers of shares the guarantee that the distribution of profits will be carried out "correctly" in accordance with the rules of rational business accounting, i.e., in such a way that (a) long-run profitability is maintained and, (b), that the security of creditors is not impaired. The rules about "bringing in" are all concerned with the admissability and valuation of objects as paid-in capital. (4) What does it mean when we say that as a result of unprofitability capital "seeks different investments"? Either we are talking about "wealth," for "investment" (*Anlegen*) is a category of the administration of wealth, not of profit-making enterprise. Or else, more rarely, it may mean that real capital *goods* on the one hand have ceased to be such by being sold, for instance as scrap or junk, and on the other have regained that quality in other uses. (5) What is meant when we speak of the "power of capital"? We mean that the possessors of control over the means of production and over economic advantages which can be used as capital *goods* in a profit-making enterprise enjoy, by virtue of this control and of the orientation of economic action to the principles of capitalistic business calculation, a specific position of power in relation to others.

In the earliest beginnings of rational profit-making activity capital appears, though not under this name, and only as a sum of money used in accounting. Thus in the *commenda* relationship various types of goods were entrusted to a travelling merchant to sell in a foreign market and at times for the purchase of other goods wanted for sale at home. The profit or loss was then divided in a particular proportion between the travelling merchant and the entrepreneur who had advanced the capital. For for this to take place it was necessary to value the goods in money; that is, to strike balances at the beginning and the conclusion of the venture. The "capital" of the *commenda* or the *societas maris* was simply this money valuation, which served only the purpose of settling accounts between the parties and no other.

What do we mean by the term "capital market"? We mean that certain "goods," including in particular money, are in demand in order to be used as capital goods, and that there exist profit-making enterprises, especially certain types of "banks," which derive their profit from the business of providing these goods. In the case of so-called "loan capital," which consists in handing over money against a promise to return the same amount at a later time with or without the addition of interest, the term "capital" will be used only if lending is the object of a profit-making enterprise. Otherwise, the term "money loans" will be used. Everyday speech tends to talk about "capital" whenever "interest" is paid, because the latter is usually expressed as a percentage of the basic sum; only because of this calculatory function is the amount of a loan or a deposit called a "capital." It is true, of course, that this was the origin of the term: *capitale* was the principal sum of a loan; the term is said,

though it cannot be proved, to derive from the heads counted in a loan of cattle. But this is irrelevant. Even in very early times a loan of real goods was reckoned in money terms, on which basic interest was then calculated, so that already here capital goods and capital accounting are typically related, as has been true in later times. In the case of an ordinary loan, which is made simply as a phase in the administration of budgetary wealth and so far as it is employed for the needs of a budgetary unit, the term "loan capital" will not be used. The same, of course, applies to the recipient of the loan.

The concept of an "enterprise" is in accord with the ordinary usage, except for the fact that the orientation to capital accounting, which is usually taken for granted, is made explicit. This is done in order to emphasize that not every case of search for profit as such constitutes an "enterprise," but only when it is capable of orientation to capital accounting, regardless of whether it is on a large or a small scale. At the same time it is indifferent whether this capital accounting is in fact rationally carried out according to rational principles. Similarly the terms "profit" and "loss" will be used only as applying to enterprises oriented to capital accounting. The money earned without the use of capital by such persons as authors, physicians, lawyers, civil servants, professors, clerks, technicians, or workers, naturally is also "acquisition" (*Erwerb*), but shall here not be called "profit." Even everyday usage would not call it profit. "Profitability" is a concept which is applicable to every discrete act which can be individually evaluated in terms of business accounting technique with respect to profit and loss, such as the employment of a particular worker, the purchase of a new machine, the determination of rest periods in the working day, etc.

It is not expedient in defining the concept of interest on capital to start with contracted interest returns on any type of loan. If somebody helps out a peasant by giving him seed and demands an increment on its return, or if the same is done in the case of money loaned to a household to be returned with interest, we would hardly want to call this a "capitalistic" process. It is possible, where action is rational, for the lender to secure an additional amount because his creditor is in a position to expect benefits from the use of the loan greater than the amount of the interest he pays; when, that is, the situation is seen in terms of what it would be if he had to do without the loan. Similarly, the lender, being aware of the situation, is in a position to exploit it, in that for him the marginal utility of his present control over the goods he lends is exceeded by the marginal utility at the relevant future time of the repayment with the addition of the interest. These are essentially categories of the administration of budgetary units and their wealth, not of capital accounting. Even a person who secures an emergency loan for his urgent personal needs from a "Shylock" is not for purposes of the present discussion said to be paying interest on capital, nor does the lender receive such interest. It is rather a case of return for the loan. The person who makes a business of lending charges *himself* interest on

his business capital if he acts rationally, and must consider that he has suffered a "loss" if the returns from loans do not cover this rate of profitability. *This* interest we will consider "interest on capital"; the former is simply "interest." Thus for the present terminological purposes, interest on capital *is* always that which is calculated *on* capital, not that which is a payment *for* capital. It is always oriented to money valuations, and thus to the sociological fact that disposal over profit-making means, whether through the market or not, is in private hands; that is, appropriated. Without this, capital accounting, and thus calculation of interest, would be unthinkable.

In a rational profit-making enterprise, the interest, which is charged on the books to a capital sum, is the minimum of profitability. It is in terms of whether or not this minimum is reached that a judgment of the advisability of this particular mode of use of capital goods is arrived at. Advisability in this context is naturally conceived from the point of view of profitability. The rate for this minimum profitability is, it is well known, only approximately that which it is possible to obtain by giving credit on the capital market at the time. But nevertheless, the existence of the capital market is the reason why calculations are made on this basis, just as the existence of market exchange is the basis for making entries against the different accounts. It is one of the fundamental phenomena of a capitalistic economy that entrepreneurs are *permanently* willing to pay interest for loan capital. This phenomenon can only be explained by understanding how it is that the average entrepreneur may hope in the long run to earn a profit, or that entrepreneurs on the average in fact do earn it, over and above what they have to pay as interest on loan capital—that is, under what conditions it is, on the average, rational to exchange 100 at the present against 100 *plus* X in the future.

Economic theory approaches this problem in terms of the relative marginal utilities of goods under present and under future control. So far, so good. But the sociologist would then like to know in what human *actions* this supposed relation is reflected in such a manner that the actors can take the consequences of this differential valuation [of present and future goods], in the form of an "interest rate," as a criterion for their own operations. For it is by no means obvious that this should happen at all times and places. It does indeed happen, as we know, in profit-making economic units. But here the primary cause is the economic power distribution (*Machtlage*) between profit-making enterprises and budgetary units (households), both those consuming the goods offered and those offering certain means of production (mainly labor). Profit-making enterprises will be founded and operated continuously (capitalistically) *only if* it is expected that the minimum rate of interest on capital can be earned. Economic theory—which could, however, also be developed along very different lines—might then very well say that this exploitation of the power distribution (which itself is a consequence of the institution of private property in goods and the

means of production) permits it only to this particular class of economic actors to conduct their operations in accordance with the "interest" criterion.

2. The administration of budgetary "wealth" and profit-making enterprises may be outwardly so similar as to appear identical. They are in fact in the analysis only distinguishable in terms of the difference in *meaningful* orientation of the corresponding economic activities. In the one case, it is oriented to maintaining and improving profitability and the market position of the enterprise; in the other, to the security and increase of wealth and income. It is, however, by no means necessary that this fundamental orientation should always, in a concrete case, be turned exclusively in one direction or the other; sometimes, indeed, this is impossible. In cases where the private wealth of an entrepreneur is identical with this business control over the means of production of his firm and his private income is identical with the profit of the business, the two things seem to go entirely hand in hand. But all manner of personal considerations may in such a case cause the entrepreneur to enter upon business policies which, in terms of the rationality of the conduct of enterprise, are irrational. Yet very generally private wealth and control of the business are not identical. Furthermore, such factors as personal indebtedness of the proprietor, his personal demand for a higher present income, division of an inheritance, and the like, often exert what is, in terms of business considerations, a highly irrational influence on the business. Such situations often lead to measures intended to eliminate these influences altogether, as in the incorporation of family businesses.

The tendency to separate the sphere of private affairs from the business is thus not fortuitous. It is a consequence of the fact that, from the point of view of business interest, the interest in maintaining the private wealth of the owner is often irrational, as is his interest in income receipts at any given time from the point of view of the profitability of the enterprise. Considerations relevant to the profitability of a business are also not identical with those governing the private interests of persons who are related to it as workers or as consumers. Conversely, the interests growing out of the private fortunes and income of persons or organizations having powers of control over an enterprise do not necessarily lie in the same direction as the long-run considerations of optimizing its profitability and its market power position. This is definitely, even especially, also true when a profit-making enterprise is controlled by a producers' co-operative association. The objective interests of rational management of a business enterprise and the personal interest of the individuals who control it are by no means identical and are often opposed. This fact implies the separation as a matter of principle of the budgetary unit and the enterprise, even where both, with respect to powers of control and the objects controlled, are identical.

The sharp distinction between the budgetary unit and the profit-making enterprise should also be clearly brought out in the terminology. The purchase of securities on the part of a private investor who wishes

to consume the proceeds is not a "*capital*-investment," but a "*wealth*-investment." A money loan made by a private individual for obtaining the interest is, when regarded from the standpoint of the lender, entirely different from one made by a bank to the same borrower. On the other hand, a loan made to a consumer and one to an entrepreneur for business purposes are quite different from the point of view of the borrower. The bank is investing *capital* and the entrepreneur is borrowing *capital;* but in the first case, it may be for the borrower a matter simply of borrowing for purposes of budgetary management; in the second it may be, for the lender, a case of investment of private *wealth*. This distinction between private wealth and capital, between the budgetary unit and the profit-making enterprise, is of far-reaching importance. In particular, without it it is impossible to understand the economic development of the ancient world and the limitations on the development of the capitalism of those times. (The well-known articles of Rodbertus are, in spite of their errors and incompleteness, still important in this context, but should be supplemented by the excellent discussion of Karl Bücher.)[18]

3. By no means all profit-making enterprises with capital accounting are doubly oriented to the market in that they both purchase means of production on the market and sell their product or final services there. Tax farming and all sorts of financial operations have been carried on with capital accounting, but without selling any products. The very important consequences of this will be discussed later. It is a case of capitalistic profit-making which is not oriented to the market.

4. For reasons of convenience, acquisitive activity (*Erwerbstätigkeit*) and profit-making enterprise (*Erwerbsbetrieb*) have been distinguished. Anyone is engaged in acquisitive activity so far as he seeks, among other things, in given ways to acquire goods—money or others—which he does not yet possess. This includes the civil servant and the worker, no less than the entrepreneur. But the term "profit-making enterprise" will be confined to those types of acquisitive activity which are continually oriented to market advantages, using goods as means to secure profit, either (a) through the production and sale of goods in demand, or (b) through the offer of services in demand in exchange for money, be it through free exchange or through the exploitation of appropriated advantages, as has been pointed out above under (3). The person who is a mere rentier or investor of private wealth is, in the present terminology, not engaged in profit-making, no matter how rationally he administers his resources.

5. It goes without saying that in terms of *economic* theory the direction in which goods can be profitably produced by profit-making enterprises is determined by the marginal utilities for the last consumers in conjunction with the latter's incomes. But from a *sociological* point of view it should not be forgotten that, to a large extent, in a capitalistic economy (a) new wants are created and others allowed to disappear and (b) capitalistic enterprises, through their aggressive advertising policies,

exercise an important influence on the demand functions of consumers. Indeed, these are essential traits of a capitalistic economy. It is true that this applies primarily to wants which are not of the highest degree of necessity, but even types of food provision and housing are importantly determined by the producers in a capitalistic economy.

12. *Calculations in Kind*

Calculations in kind can occur in the most varied form. We speak of a "money economy," meaning an economy where the use of money is typical and where action is typically oriented to market situations in terms of money prices. The term "natural economy" (*Naturalwirtschaft*), on the other hand, means an economy where money is not used. The different economic systems known to history can be classified according to the degree to which they approximate the one or the other.

The concept "natural economy" is not, however, very definite, since it can cover systems with widely varying structures. It may mean (a) an economy where no exchange at all takes place or (b) one where exchange is only by barter, and thus money is not used as a medium of exchange. The first type may be an individual economic unit organized on a completely communistic basis, or with some determinate distribution of rights of participation. In both cases, there would be a complete lack of autonomy or autocephaly of the component parts. This may be called a "closed household economy." Or, secondly, it may be a combination of otherwise autonomous and autocephalous individual units, all of which, however, are obligated to make contributions in kind to a central organization which exists for the exercise of authority or as a communal institution. This is an "economy based on payments in kind" (*oikos* economy, "liturgically" organized political group). In both cases, so far as the pure type is conformed to, there is only calculation in kind.

In the second case, type (b), where exchange is involved, there may be natural economies where exchange is only by barter without either the use of money or calculation in money terms. Or there may be economies where there is exchange in kind, but where calculation is occasionally or even typically carried out in money terms. This was typical of the Orient in ancient times and has been common everywhere.

For the purposes of analysing calculation in kind, it is only the cases of type (a) which are of interest, where the unit is either completely self-sufficient, or the liturgies are produced in rationally organized permanent units, such as would be inevitable in attempting to employ modern technology in a completely "socialized" economy.

Calculation in kind is in its essence oriented to consumption, the satisfaction of wants. It is, of course, quite possible to have something analogous to profit-making on this basis. This may occur (a) in that, without resort to exchange, available material means of production and labor are systematically applied to the production and transportation of g s on the basis of calculations, according to which the state of want satisfaction thus attained is compared with the state which would exist without these measures or if the resources were used in another way, and thus a judgment as to the most advantageous procedure is arrived at. Or (b) in a barter economy, g s may be disposed of and acquired by exchange, perhaps in systematically repeated barters, though strictly without the use of money. Such action would be systematically oriented to securing a supply of g s which, as compared with the state which would exist without these measures, is judged to establish a more adequate provision for the needs of the unit. It is, in such cases, only when quantities of goods which are qualitatively similar are compared that it is possible to use numerical terms unambiguously and without a wholly subjective valuation. It is possible, of course, to set up a system of in-kind wages consisting of typical bundles of consumer goods (*Konsum-Deputate*), such as were the in-kind salaries and benefices particularly of the ancient Orient (where they even became objects of exchange transactions, similar to our government bonds). In the case of certain very homogenous commodities, such as the grain of the Nile valley, a system of storage and trade purely in terms of paper claims to certain quantities of the commodity was of course technically just as possible as it is with silver bars under the conditions of *banco* currencies.[19] What is more important, it is in that case also possible to express the technical efficiency of a process of production in numerical terms and thereby compare it with other types of technical processes. This may be done, if the final product is the same, by comparing the relative requirements of different processes in both the quantity and the type of means of production. Or, where the means of production are the same, the different products which result from different production processes may be compared. It is often, though by no means always, possible in this way to secure numerical comparisons for the purposes of important, though sectorally restricted, problems. But the more difficult problems of calculation begin when it becomes a question of comparing different *kinds* of means of production, their different possible modes of use, and qualitatively different final products.

Every capitalistic enterprise is, to be sure, continually concerned with calculations in kind. For instance, given a certain type of loom and a certain quality of yarn, it is a question of ascertaining, given certain

other relevant data such as the efficiency of machines, the humidity of the air, the rate of consumption of coal, lubricating oil, etc., what will be the product per hour per worker and thus the amount of the product which is attributable to any individual worker for each unit of time. For industries with typical waste products or by-products, this can be determined without any use of money accounting and is in fact so determined. Similarly, under given conditions, it is possible to work out, in technical terms without the use of money, the normally expected annual consumption of raw materials by the enterprise according to its technical production capacity, the depreciation period for buildings and machinery, the typical loss by spoiling or other forms of waste. But the comparison of different kinds of processes of production, with the use of different kinds of raw materials and different ways of treating them, is carried out today by making a calculation of comparative profitability in terms of money costs. For accounting in kind, on the other hand, there are formidable problems involved here which are incapable of objective solution. Though it does not at first sight seem to be necessary, a modern enterprise tends to employ money terms in its capital calculations even where such difficulties do not arise. But this is not entirely fortuitous. In the case of depreciation write-offs, for example, money accounting is used because this is the method of assuring the conditions of future productivity of the business which combines the greatest degree of certainty with the greatest flexibility in relation to changing circumstances; with any storing of real stocks of materials or any other mode of provision in kind such flexibility would be irrationally and severely impeded. It is difficult to see, without money accounting, how "reserves" could be built up without being specified in detail. Further, an enterprise is always faced with the question as to whether any of its parts is operating irrationally: that is, unprofitably, and if so, why. It is a question of determining which components of its real physical expenditures (that is, of the "costs" in terms of capital accounting) could be saved and, above all, could more rationally be used elsewhere. This can be determined with relative ease in an ex-post calculation of the relation between accounting "costs" and "receipts" in money terms, the former including in particular the interest charge allocated to that account. But it is exceedingly difficult to do this entirely in terms of an in-kind calculation, and indeed it can be accomplished at all only in very simple cases. This, one may believe, is not a matter of circumstances which could be overcome by technical improvements in the methods of calculation, but of fundamental limitations, which make really exact accounting in terms of calculations in kind impossible in principle.

It is true this might be disputed, though naturally not with arguments

drawn from the Taylor system and from the possibility of achieving improvements in efficiency by employing a system of bonus points without the use of money. The essential question is that of how it is possible to discover *at what point* in the organization it would be profitable to employ such measures because there existed at that point certain elements of irrationality. It is in finding out these points that accounting in kind encounters difficulties which an ex-post calculation in money terms does not have to contend with. The fundamental limitations of accounting in kind as the *basis* of calculation in enterprises—of a type which would include the heterocephalous and heteronomous units of production in a planned economy—are to be found in the problem of imputation, which in such a system cannot take the simple form of an ex-post calculation of profit or loss on the books, but rather that very controversial form which it has in the theory of marginal utility. In order to make possible a rational utilization of the means of production, a system of in-kind accounting would have to determine "value"-indicators of some kind for the individual capital goods which could take over the role of the "prices" used in book valuation in modern business accounting. But it is not at all clear how such indicators could be established and, in particular, verified; whether, for instance, they should vary from one production unit to the next (on the basis of economic location), or whether they should be uniform for the entire economy, on the basis of "social utility," that is, of (present *and future*) consumption requirements?

Nothing is gained by assuming that, if only the problem of a non-monetary economy were seriously enough attacked, a suitable accounting method would be discovered or invented. The problem is fundamental to any kind of complete socialization. We cannot speak of a *rational* "planned economy" so long as in this decisive respect we have no instrument for elaborating a rational "plan."

The difficulties of accounting in kind become more marked when the question is considered of whether, from the point of view of efficiently satisfying the wants of a given group of persons, it is rational to locate a certain enterprise with a given productive function at one or an alternative site. The same difficulties arise if we want to determine whether a given economic unit, from the point of view of the most rational use of the labor and raw materials available to it, would do better to obtain certain products by exchange with other units or by producing them itself. It is true that the criteria for the location of industries consist of "natural" considerations and its simplest data are capable of formulation in non-monetary terms. (On this point, see Alfred Weber in the *Grundriss der Sozialökonomik*, Part IV [English ed.: *The Theory of Location*, trsl. C. J. Friedrich, Chicago 1929]). Nevertheless, the concrete determina-

tion of whether, according to the relevant circumstances of its particular location, a production unit with a given set of output possibilities or one with a different set would be rational, is in terms of calculation in kind capable of solution only in terms of very crude estimates, apart from the few cases where the solution is given by some natural peculiarity, such as a unique source of a raw material. But in spite of the numerous unknowns which may be present, the problem in money terms is always capable of a determinate solution in principle.

Finally, there is the independent problem of the comparative importance of the satisfaction of different wants, provision for which is, under the given conditions, equally feasible. In the last analysis, this problem is, in at least some of its implications, involved in every particular case of the calculations of a productive unit. Under conditions of money accounting, it has a decisive influence on profitability and thereby on the direction of production of profit-making enterprises. But where calculation is only in kind, it is in principle soluble only in one of two ways: by adherence to tradition or by an arbitary dictatorial regulation which, on whatever basis, lays down the pattern of consumption *and* enforces obedience. Even when that is resorted to, it still remains a fact that the problem of imputation of the part contributed to the total output of an economic unit by the different factors of production and by different executive decisions is not capable of the kind of solution which is at present attained by calculations of profitability in terms of money. It is precisely the process of provision for mass demand by mass production so typical of the present day which would encounter the greatest difficulties.

1. The problems of accounting in kind have been raised in a particularly penetrating form by Dr. Otto Neurath in his numerous works[20] apropos of the tendencies to "socialization" in recent years. The problem is a central one in any discussion of *complete* socialization; that is, that which would lead to the disappearance of effective prices. It may, however, be explicitly noted that the fact that it is incapable of rational solution serves only to point out some of the "costs," including economic ones, which would have to be incurred for the sake of enacting this type of socialism; however, this does not touch the question of the justification of such a program, so far as it does not rest on *technical* considerations. but, like most such movements, on *ethical* postulates or other forms of absolute value. A "refutation" of these is beyond the scope of any science. From a purely technical point of view, however, the possibility must be considered that the maintenance of a certain density of population within a given area may be possible only on the basis of accurate calculation. Insofar as this is true, a limit to the possible degree of socialization would be set by the necessity of maintaining a system of effective prices. That cannot, however, be considered here. It may be

noted, though, that the distinction between "socialism" and "social reform," if there is any such, should be made in these terms.

2. It is naturally entirely correct that mere money accounts, whether they refer to single enterprises, to any number of them, or to all enterprises—indeed, even the most complete statistical information about the movement of goods in money terms—tell us nothing whatever about the nature of the real provision of a given group with what it needs; namely, real articles of consumption. Furthermore, the much discussed estimates of "national wealth" in money terms are only to be taken seriously so far as they serve fiscal ends; that is, as they determine taxable wealth. This stricture does not apply, of course, in any similar degree to income statistics in money terms, provided the prices of goods in money are known. But even then there is no possibility of checking real welfare in terms of substantive rationality. It is further true, as has been convincingly shown for the case of extensive farming in the Roman *campagna* by Sismondi and Sombart,[21] that satisfactory profitability, which in the *campagna* existed for all participants, in numerous cases has nothing to do with an optimum use of the available productive resources for the provision of consumers' goods for a given population. The mode of appropriation, especially that of land (this much must be conceded to Franz Oppenheimer),[22] leads to a system of claims to rent and earnings of various kinds which may well obstruct permanently the development of a technical optimum in the exploitation of productive resources. This is, however, very far from being a peculiarity of capitalistic economies. In particular, the much-discussed limitation of production in the interest of profitability was very highly developed in the economy of the Middle Ages, and the modern labor movement is acquiring a position of power which may lead to similar consequences. But there is no doubt that this phenomenon exists in the modern capitalistic economy.

The existence of statistics (or estimates) of money flows has not, as some writers have tended to give the impression, hindered the development of statistics of physical quantities. This is true, however much fault we may find with the available statistics when measured by ideal standards. Probably more than nine-tenths of economic statistics are not in terms of money, but of physical quantities.

The work of a whole generation of economists has been concentrated almost entirely on a critique of the orientation of economic action to profitability with respect to its effects on the provision of the population with real goods. All the work of the so-called "socialists of the lectern" (*Kathedersozialisten*) was, in the last analysis, quite consciously concerned with this. They have, however, employed as a standard of judgment a mode of social reform oriented to social welfare, implying (in contrast to a moneyless economy) the continued existence of effective prices, rather than full socialization, as the only solution possible either at the present or at any time in an economy at the stage of mass production. It is, of course, quite possible to consider this merely a half-measure, but it is not in itself a nonsensical attitude. It is true that the problems of a non-monetary economy, and especially of the possibility

of rational action in terms of calculations in kind, have not received much attention. Indeed most of the attention they have received has been historical and not concerned with present problems. But the World War, like every war in history, has brought these problems emphatically to the fore in the form of the problems of war economy and the post-war adjustment. It is, indeed, one of the merits of Otto Neurath to have produced an analysis of just these problems, which, however much it is open to criticism both in principle and in detail, was one of the first and was very penetrating. That "the profession" has taken little notice of his work is not surprising because until now he has given us only stimulating suggestions, which are, however, so very broad that it is difficult to use them as a basis of intensive analysis. The problem only begins at the point where his public pronouncements up to date have left off.

3. It is only with the greatest caution that the results and methods of war economy can be used as a basis for criticizing the substantive rationality of forms of economic organization. In wartime the whole economy is oriented to what is in principle a single clear goal, and the authorities are in a position to make use of powers which would generally not be tolerated in peace except in cases where the subjects are "slaves" of an authoritarian state. Furthermore, it is an economy with an inherent attitude of "going for broke": the overwhelming urgency of the immediate end overshadows almost all concern for the post-war economy. Only on the engineering level does preciseness of calculations exist, but economic constraints on the consumption, especially of labor and of all materials not directly threatened with exhaustion, are only of the roughest nature. Hence calculation has predominantly, though not exclusively, a technical character. So far as it has a genuinely economic character—that is, so far as it takes account of alternative ends and not only of means for a given end—it is restricted to what is, from the standpoint of careful monetary calculation, a relatively primitive level of calculation on the marginal utility principle. In type this belongs to the class of budgetary calculations, and it is not meant to guarantee long-run rationality for the chosen allocation of labor and the means of production. Hence, however illuminating the experience of war-time and post-war adjustments is for the analysis of the possible range of variation of economic forms, it is unwise to draw conclusions from the type of in-kind accounting associated with it for its suitability in a peacetime economy with its long-run concerns.

It may be freely conceded: (1) That it is necessary also in money accounting to make arbitrary assumptions in connection with means of production which have no market price. This is particularly common in the case of agricultural accounting; (2) that to a less extent something similar is true of the allocation of overhead costs among the different branches of a complicated enterprise; (3) that the formation of cartel agreements, no matter how rational their basis in relation to the market situation may be, immediately diminishes the stimulus to accurate calculation on the basis of capital accounting, because calculation declines in the absence of an enforced objective need for it. If calculation were in kind, however, the situation described under (1) would be universal;

any type of accurate allocation of overhead costs, which, however roughly, is now somehow achieved in money terms, would become impossible; and, finally, every stimulus to exact calculation would be eliminated and would have to be created anew by artificial means, the effectiveness of which would be questionable.

It has been suggested that the huge clerical staff of the private sector of the economy, which is actually to a large extent concerned with calculations, should be turned into a universal Statistical Office which would have the function of replacing the monetary business accounting of the present system with a statistical accounting in kind. This idea not only fails to take account of the fundamentally different motives underlying "statistics" and "business accounting," it also fails to distinguish their fundamentally different functions. They differ just like the bureaucrat differs from the entrepreneur.

4. Both calculation in kind and in money are rational techniques. They do not, however, by any means exhaust the totality of economic action. There also exist types of action which, though actually oriented to economic considerations, do not know calculation. Economic action may be traditionally oriented or may be affectually determined. In its more primitive aspects, the search for food on the part of human beings is closely related to that of animals, dominated as the latter is by instinct. Economically oriented action dominated by a religious faith, by war-like passions, or by attitudes of personal loyalty and similar modes of orientation, is likely to have a very low level of rational calculation, even though the motives are fully self-conscious. Haggling is excluded "between brothers," whether they be brothers in kinship, in a guild, or in a religious group. It is not usual to be calculating within a family, a group of comrades, or of disciples. At most, in cases of necessity, a rough sort of rationing is resorted to, which is a very modest beginning of calculation. In Part Two, ch. IV, the process by which calculation gradually penetrates into the earlier form of family communism will be taken up. Everywhere it has been money which was the propagator of calculation. This explains the fact that calculation in kind has remained on an even lower technical level than the actual nature of its problems might have necessitated; hence in this respect Otto Neurath appears to be right.

During the printing of this work an essay by Ludwig von Mises dealing with these problems came out. See his "Die Wirtschaftsrechnung im sozialistischen Gemeinwesen," *Archiv für Sozialwissenschaft*, vol. 47 (1920).[28]

13. *Substantive Conditions of Formal Rationality in a Money Economy*

It is t us clear that the formal rationality of money calculation is dependent on certain quite specific substantive conditions. Those which are of a particular sociological importance for present purposes are the

following: (1) Market struggle of economic units which are at least relatively autonomous. Money prices are the product of conflicts of interest and of compromises; they thus result from power constellations. Money is not a mere "voucher for unspecified utilities," which could be altered at will without any fundamental effect on the character of the price system as a struggle of man against man. "Money" is, rather, primarily a weapon in this struggle, and prices are expressions of the struggle; they are instruments of calculation only as estimated quantifications of relative chances in this struggle of interests. (2) Money accounting attains the highest level of rationality, as an instrument of calculatory orientation of economic action, when it is applied in the form of capital accounting. The substantive precondition here is a thorough market freedom, that is, the absence of monopolies, both of the imposed and economically irrational and of the voluntary and economically rational (i.e., market-oriented) varieties. The competitive struggle for customers, which is associated with this state, gives rise to a great volume of expenditures, especially with regard to the organization of sales and advertising, which in the absence of competition—in a planned economy or under complete monopolization—would not have to be incurred. Strict capital accounting is further associated with the social phenomena of "shop discipline" and appropriation of the means of production, and that means: with the existence of a "system of domination" (*Herrschaftsverhältniss*). (3) It is not "demand" (wants) as such, but "effective demand" for utilities which, in a substantive respect, regulates the production of goods by profit-making enterprises through the intermediary of capital accounting. What is to be produced is thus determined, given the distribution of wealth, by the structure of marginal utilities in the income group which has both the inclination and the resources to purchase a given utility. In combination with the complete indifference of even the formally most perfect rationality of capital accounting towards all substantive postulates, an indifference which is absolute if the market is perfectly free, the above statement permits us to see the ultimate limitation, inherent in its very structure, of the rationality of monetary economic calculation. It is, after all, of a purely formal character. Formal and substantive rationality, no matter by what standard the latter is measured, are always in principle separate things, no matter that in many (and under certain very artificial assumptions even in all) cases they may coincide empirically. For the formal rationality of money accounting does not reveal anything about the actual distribution of goods. This must always be considered separately. Yet, if the standard used is that of the provision of a certain minimum of subsistence for the maximum size of population, the experience of the last few decades would seem to show

that formal and substantive rationality coincide to a relatively high degree. The reasons lie in the nature of the incentives which are set into motion by the type of economically oriented social action which alone is adequate to money calculations. But it nevertheless holds true under all circumstances that formal rationality itself does not tell us anything about real want satisfaction unless it is combined with an analysis of the distribution of income.[24]

14. *Market Economies and Planned Economies*

Want satisfaction will be said to take place through a "market economy" so far as it results from action oriented to advantages in exchange on the basis of self-interest and where co-operation takes place only through the exchange process. It results, on the other hand, from a "planned economy" so far as economic action is oriented systematically to an established substantive order, whether agreed or imposed, which is valid within an organization.

Want satisfaction through a market economy normally, and in proportion to the degree of rationality, presupposes money calculation. Where capital accounting is used it presupposes the economic separation of the budgetary unit (household) and the enterprise. Want satisfaction by means of a planned economy is dependent, in ways which vary in kind and degree according to its extensiveness, on calculation in kind as the ultimate basis of the *substantive* orientation of economic action. Formally, however, the action of the producing individual is oriented to the instructions of an administrative staff, the existence of which is indispensable. In a market economy the individual units are autocephalous and their action is autonomously oriented. In the administration of budgetary units (households), the basis of orientation is the marginal utility of money holdings and of anticipated money income; in the case of intermittent entrepreneurship (*Gelegenheitserwerben*), the probabilities of market gain, and in the case of profit-making enterprises, capital accounting are the basis of orientation. In a planned economy, all economic action, so far as "planning" is really carried through, is oriented heteronomously and in a strictly "budgetary" manner, to rules which enjoin certain modes of action and forbid others, and which establish a system of rewards and punishments. When, in a planned economy, the prospect of additional individual income is used as a means of stimulating self-interest, the type and direction of the action thus rewarded is substantively heteronomously determined. It is possible for the same thing to be true of a market economy, though in a formally voluntary

way. This is true wherever the unequal distribution of wealth, and particularly of capital goods, forces the non-owning group to comply with the authority of others in order to obtain any return at all for the utilities they can offer on the market—either with the authority of a wealthy householder, or with the decisions, oriented to capital accounting, of the owners of capital or of their agents. In a purely capitalistic organization of production, this is the fate of the entire working class.

The following are decisive as elements of the motivation of economic activity under the conditions of a market economy: (1) For those without substantial property: (a) the fact that they run the risk of going entirely without provisions, both for themselves and for those personal dependents, such as children, wives, sometimes parents, whom the individual typically maintains on his own account; (b) that, in varying degrees subjectively they value economically productive work as a mode of life. (2) For those who enjoy a privileged position by virtue of wealth or the education which is usually in turn dependent on wealth: (a) opportunities for large income from profitable undertakings; (b) ambition; (c) the valuation as a "calling" of types of work enjoying high prestige, such as intellectual work, artistic performance, and work involving high technical competence. (3) For those sharing in the fortunes of profit-making enterprises: (a) the risk to the individual's own capital, and his own opportunities for profit, combined with (b) the valuation of rational acquisitive activity as a "calling." The latter may be significant as a proof of the individual's own achievement or as a symbol and a means of autonomous control over the individuals subject to his authority, or of control over economic advantages which are culturally or materially important to an indefinite plurality of persons—in a word, power.

A planned economy oriented to want satisfaction must, in proportion as it is radically carried through, weaken the incentive to labor so far as the risk of lack of support is involved. For it would, at least so far as there is a rational system of provision for wants, be impossible to allow a worker's dependents to suffer the full consequences of his lack of efficiency in production. Furthermore, autonomy in the direction of organized productive units would have to be greatly reduced or, in the extreme case, eliminated. Hence it would be impossible to retain capital risk and proof of merit by a formally autonomous achievement. The same would be true of autonomous power over other individuals and important features of their economic situation. Along with opportunities for special material rewards, a planned economy may have command over certain ideal motives of what is in the broadest sense an altruistic type, which can be used to stimulate a level of achievement in economic production comparable to that which autonomous orientation to opportunities for

profit, by producing for the satisfaction of effective demand, has empirically been able to achieve in a market economy. Where a planned economy is radically carried out, it must further accept the inevitable reduction in formal, calculatory rationality which would result from the elimination of money and capital accounting. Substantive and formal (in the sense of exact *calculation*) rationality are, it should be stated again, after all largely distinct problems. This fundamental and, in the last analysis, unavoidable element of irrationality in economic systems is one of the important sources of all "social" problems, and above all, of the problems of socialism.

The following remarks apply to both secs. 13 and 14.

1. The above exposition obviously formulates only things which are generally known, in a somewhat more precise form. The market economy is by far the most important case of typical widespread social action predominantly oriented to "self-interest." The process by which this type of action results in the satisfaction of wants is the subject matter of economic theory, knowledge of which in general terms is here presupposed. The use of the term "planned economy" (*Planwirtschaft*) naturally does not imply acceptance of the well-known proposals of the former German Minister of Economic Affairs.[26] The term has been chosen because, while it does not do violence to general usage, it has, since it was used officially, been widely accepted. This fact makes it preferable to the term used by Otto Neurath, "administered economy" (*Verwaltungswirtschaft*), which would otherwise be suitable.

2. So far as it is oriented to profit-making, the economic activity of organizations, or that regulated by organizations, is not included in the concept of "planned economy," whether the organization be a guild, a cartel, or a trust. "Planned economy" includes the economic activity of organizations only so far as it is oriented to the provision for needs. Any system of economic activity oriented to profit-making, no matter how strictly it is regulated or how stringently controlled by an administrative staff, presupposes effective prices, and thus capital accounting as a basis of action; this includes the limiting case of total cartellization, in which prices would be determined by negotiation between the cartel groups and by negotiated wage agreements with labor organi ations. In spite of the identity of their objectives, *complete* sociali ation in the sense of a planned economy administered purely as a budgetary unit and *partial* sociali ation of various branches of production with the retention of capital accounting are technically examples of quite different types. A preliminary step in the direction of the budgetary planned economy is to be found wherever consumption is rationed or wherever measures are taken to effect the direct "in-kind" distribution of goods. A planned direction of *production*, whether it is undertaken by voluntary or authoritatively imposed cartels, or by agencies of the government, is primarily concerned with a rational organization of the use of means of production and labor resources and cannot, on its own terms, do without prices--

or at least, not yet. It is thus by no means fortuitous that the "rationing-type" of socialism gets along quite well with the "works councils" (*Betriebsräte*) type of socialism which, against the will of its leading personalities (who are in favor of a rationalistic solution), must pursue the income interests of the workers.

3. It will not be possible to enter at this point into a detailed discussion of the formation of such economic organizations as cartels, corporations or guilds. Their general tendency is orientation to the regulation or monopolistic exploitation of opportunities for profit. They may arise by voluntary agreement, but are more generally imposed even where formally voluntary. Compare in the most general terms, chap. I, sec. 10, and also the discussion of the appropriation of economic advantages, sec. 19ff. of the present chapter.

The conflict between two rival forms of socialism has not died down since the publication of Marx's *Misère de la Philosophie*. On the one hand, there is the type, which includes especially the Marxists, which is evolutionary and oriented to the problem of production; on the other, the type which takes the problem of distribution as its starting point and advocates a rational planned economy. The latter is again today coming to be called "communism." The conflict within the Russian socialist movement, especially as exemplified in the passionate disputes between Plekhanov and Lenin, was, after all, also concerned with this issue. While the internal divisions of present-day socialism are very largely concerned with competition for leadership and for "benefices," along with these issues goes the same set of problems. In particular, the economic experience of the War has given impetus to the idea of a planned economy, but at the same time to the development of interests in appropriation.

The question of whether a planned economy, in whatever meaning or extent, *should* be introduced, is naturally not in this form a scientific problem. On scientific grounds it is possible only to inquire, what would be the probable results of any given specific proposal, and thus what consequences would have to be accepted if the attempt were made. Honesty requires that all parties should admit that, while some of the factors are known, many of those which would be important are only very partially understood. In the present discussion, it is not possible to enter into the details of the problem in such a way as to arrive at concretely conclusive results. The points which will be taken up can be dealt with only in a fragmentary way in connection with forms of organizations, particularly the state. It was possible above only to introduce an unavoidably brief discussion of the most elementary aspects of the technical problem. The phenomenon of a *regulated* market economy has, for the reasons noted above, not yet been taken up.

4. The organization of economic activity on the basis of a market economy presupposes the appropriation of the material sources of utilities on the one hand, and market freedom on the other. The effectiveness of market freedom increases with the degree to which these sources of utility, particularly the means of transport and production, are ap-

propriated. For, the higher the degree of marketability, the more will economic action be oriented to market situations. But the effectiveness of market freedom also increases with the degree to which appropriation is limited to *material* sources of utility. Every case of the appropriation of human beings through slavery or serfdom, or of economic advantages through market monopolies, restricts the range of human action which can be market-oriented. Fichte, in his *Der geschlossene Handelsstaat* (Tübingen, 1800), was right in treating this limitation of the concept of "property" to material goods, along with the increased autonomy of control over the objects which do fall under this concept, as characteristic of the modern market-oriented system. All parties to market relations have had an interest in this expansion of property rights because it increased the area within which they could orient their action to the opportunities of profit offered by the market situation. The development of this type of property is hence attributable to their influence.

5. For reasons of accuracy of expression, we have avoided the term "communal economy" (*Gemeinwirtschaft*), which others have frequently used [in the German discussions of 1918–1920], because it pretends the existence of a "common interest" or of a "feeling of community" (*Gemeinschaftsgefühl*) as the normal thing, which conceptually is not required: the economic organization of a feudal lord exacting *corvée* labor or that of rulers like the Pharaohs of the New Kingdom belongs to the same category as a family household. Both are equally to be distinguished from a market economy.

6. For the purposes of the definition of a "market economy," it is indifferent whether or to what extent economic action is "capitalistic," that is, is oriented to capital accounting. This applies also to the normal case of a market economy, that in which the satisfaction of wants is effected in a monetary economy. It would be a mistake to assume that the development of capitalistic enterprises must occur proportionally to the growth of want satisfaction in the monetary economy, and an even larger mistake to believe that this development must take the form it has assumed in the Western world. In fact, the contrary is true. The extension of money economy might well go hand in hand with the increasing monopolization of the larger sources of profit by the *oikos* economy of a prince. Ptolemaic Egypt is an outstanding example. According to the evidence of the accounts which have survived, it was a highly developed money economy, but its accounting remained budgetary accounting and did not develop into capital accounting. It is also possible that with the extension of a money economy could go a process of "feudalization" (*Verpfründung*) of fiscal advantages resulting in a traditionalistic stabilization of the economic system. This happened in China, as will have to be shown elsewhere. Finally, the capitalistic utilization of money resources could take place through investment in sources of potential profit which were not oriented to opportunities of exchange in a free commodity market and thus not to the production of goods. For reasons which will be discussed below, this has been almost universally true outside the area of the modern Western economic order.

15. *Types of Economic Division of Labor*

Every type of social action in a group which is oriented to economic considerations and every associative relationship of economic significance involves to some degree a particular mode of division and organization of human services in the interest of production. A mere glance at the facts of economic action reveals that different persons perform different types of work and that these are combined in the service of common ends, with each other and with the non-human means of production, in the most varied ways. The complexity of these phenomena is extreme, but yet it is possible to distinguish a few types.

Human services for economic purposes may be distinguished as (a) "managerial," or (b) oriented to the instructions of a managerial agency. The latter type will be called "labor" for purposes of the following discussion.

It goes without saying that managerial activity constitutes "labor" in the most definite sense if labor is taken to mean the expenditure of time and effort as such. The use of the term "labor" in the sense defined above, as something distinct from managerial activity, has, however, come to be generally accepted for social reasons, and this usage will be followed in the present discussion. For more general purposes, the terms "services" or "work" (*Leistungen*) will be used.

Within a social group the ways in which labor or other work may be carried on may be classified in the following way: (1) *technically*, according to the way in which the services of a plurality of co-operating individuals are divided up and combined, with each other and with the non-human means of production, to carry out the technical procedures of production; (2) *socially*. In the first place, classification may be according to whether particular services do or do not fall within the jurisdiction of autocephalous and autonomous economic units, and according to the economic character of these units. Closely connected with this is classification according to the modes and extent to which the various services, the material means of production, and the opportunities for economic profit used as sources of profit or as means of acquisition, are or are not appropriated. These factors determine the mode of occupational differentiation, a social phenomenon, and the organization of the market, an economic phenomenon; (3) finally, an *economic* criterion: for every case of combination of services with each other and with material means of production, of division among different types of economic units, and of mode of appropriation, one must ask separately whether they are used in a context of budgetary administration or of profit-making enterprise.

For this and the following section, compare the authoritative discussion by Karl Bücher in his article "Gewerbe" in the *Handwörterbuch*

der Staatwissenschaften and in his book, *Die Entstehung der Volkswirtschaft.*[26] These are fundamentally important works. Both the terminology and the classification here presented have departed from Bücher's only where it seemed necessary for reasons of convenience. There is little reason to cite other references, for the following exposition does not pretend to achieve new results, but only to provide a scheme of analysis useful for the purposes of this work.

1. It should be emphatically stated that the present discussion is concerned only with a brief summary of the *sociological* aspects of these phenomena, so far as they are relevant to its context. The *economic* aspect is included only insofar as it is expressed in what are formally sociological categories. The presentation would be economic in the *substantive* sense only if the price and market conditions, which so far have been dealt with only on the theoretical level, were brought in. But these substantive aspects of the general problem could be worked into such a summary introduction only in the form of terse theses, which would involve some very dubious distortions. The explanatory methods of *pure* economics are as tempting as they are misleading. To take an example: It might be argued that for the development of medieval, corporately regulated, but "free" labor the decisive period should be seen in the "dark" ages from the tenth to the twelfth century, and in particular in the situation during that period of the skilled (peasant, mining, and artisan) labor force whose production activity was oriented to the revenue chances of the feudal lords with rights over the land, the persons, and the courts—powers which were fighting for their separate interests and competing for these revenue sources. The decisive period for the development of capitalism could be claimed to be the great chronic price revolution of the sixteenth century. The argument would be that this led both to an absolute and a relative increase in the prices of almost all products of the soil in the West, and hence—on the basis of well-known principles of agricultural economics—provided both incentives and possibilities for market production and thus for production on a large scale; in part, as in England, this took the form of capitalistic enterprise, and in part, as in the lands between the Elbe river and Russia, that of *corvée*-labor estates. For non-agricultural products, this inflation signified in most cases a rise in absolute prices, but, it would be argued, rarely one in relative prices; typically, relative prices for industrial goods would fall, thus stimulating, so far as the necessary organizational and other external and subjective preconditions were given, attempts to create market enterprises able to stand up under competitive conditions. The claim that these preconditions were not given in Germany would be adduced to account for the economic decline which started there about that time. The later consequence of all this, the argument would run, was the development of capitalist industrial entrepreneurship. A necessary prerequisite for this would be the development of mass markets. An indication that this was actually happening could be seen in certain changes of English commercial policy, to say nothing of other phenomena.

In order to verify *theoretical* reasoning about the *substantive* eco-

nomic conditions of the development of economic structure, theses such as these and similar ones would have to be utilized. But this is simply not admissible. These and numerous other equally controversial theories, even so far as they could be proved not to be wholly erroneous, cannot be incorporated into the present scheme which is intentionally limited to sociological *concepts*. In renouncing any attempt of this sort, however, the following exposition in this chapter explicitly repudiates any claim to concrete "explanation" and restricts itself to working out a sociological typology. The same is true of the previous discussion in that it consciously omitted to develop a theory of money and price determination. This must be strongly emphasized. For only the facts of the economic situation provide the flesh and blood for a genuine explanation of also that process of development relevant for sociological theory. What can be done here is only to supply a scaffolding adequate to provide the analysis with relatively unambiguous and definite concepts.

It is obvious not only that no attempt is made here to do justice to the historical aspect of economic development, but also that the typology of the genetic sequence of possible forms is neglected. The present aim is only to develop a schematic system of classification.

2. A common and justified objection to the usual terminology of economics is that it frequently fails to make a distinction between the business "establishment" (*Betrieb*) and the "firm" (*Unternehmung*).[27] In the area of economically oriented action, "establishment" is a *technical* category which designates the continuity of the combination of certain types of services with each other and with material means of production. The antithesis of this category is either intermittent action, or action which is constitutionally discontinuous (such as is found in every household). By contrast, the antithesis to "firm," which is a category of *economic* orientation (to profit), is the "budgetary unit" (*Haushalt*), which is economically oriented to provision for needs. But the classification in terms of "firm" and "budgetary unit" is not exhaustive, for there exist actions oriented to acquisition which cannot be subsumed under the category "firm." All activity in which earnings are due purely to "work," such as the activity of the writer, the artist, the civilservant, is neither the one nor the other. The drawing and consumption of rents and annuities, however, obviously belong into the category of "budgetary administration."

In spite of this distinction [between the "establishment" and the "firm"], we have in the earlier discussion used the term "profit-making establishment" (*Erwerbsbetrieb*) wherever continuously coordinated, uninterrupted entrepreneurial activity was meant;[28] such activity is in fact unthinkable without the constitution of an "establishment," if only one consisting of nothing but the entrepreneur's own activity without the aid of a staff. Our concern so far was mainly to stress the separation of the household (budgetary unit) and the continuously organized business establishment. It should now be noted that use of the term "profit-making establishment" as a substitute for "continuously organized business firm" is fitting and unambiguous only in the simplest case where the technical unit, the "establishment," coincides with the economic unit, the "firm."

In the market economy this need not be the case, for several technically separate "establishments" can be combined into a single "firm." The latter is not, of course, constituted through the mere relationship of the various technical units to the same entrepreneur, but through the fact that in their exploitation for profit these units are oriented to a coordinated plan; hence transitional forms are possible. When the term "establishment" or "enterprise" (*Betrieb*) is used by itself, it will always refer to such *technical* units consisting of buildings, equipment, labor, and a *technical* management, the latter possibly heterocephalous and heteronomous—units such as exist even in the communist economy (as the terminology presently in use also recognizes). The term "profit-making establishment or enterprise" will henceforth be used only in cases where the technical and the economic unit (the "firm") are identical.

The relation between "establishment" and "firm" raises particularly difficult terminological questions in the analysis of such categories as "factory" and "putting-out enterprise." The latter is quite clearly a type of "firm." In terms of "establishments," it consists of two types of units: a commercial establishment, and establishments which are component parts of the workers' households (in the absence of larger workshops such as might be organized by master craftsmen as intermediaries under a "hiring-boss" system); the household establishments perform certain specified functions for the commercial establishment, and vice versa. Viewed only from the point of view of "establishments," the process as a whole cannot be understood at all; for this it is necessary to employ additional categories, such as: market, firm, household (of the individual workers), commercial exploitation of purchased services.

The concept of "factory" could, as has been proposed, be defined in entirely non-economic terms as a mode of technical organization, leaving aside consideration of the status of the workers, whether free or unfree, the mode of division of labor, involving the extent of internal technical specialization, and the type of means of production, whether machines or tools. That is, it would be defined simply as an organized workshop. However, it would seem necessary in addition to include in the definition the mode of appropriation of premises and means of production—namely: to *one* owner—, for otherwise the concept would become as vague as that of the *ergasterion*.[29] But once this is done, it would as a matter of principle seem more expedient to classify "factory" and "putting-out enterprise" as two strictly *economic* categories of the "firm" conducted on the basis of capital accounting. In a fully socialist order the category "factory" could then occur as little as that of "putting-out enterprise," but only such categories as: workshops, buildings, tools, shop labor services and domestic labor services of all kinds.

3. The question of stages of economic development will be considered only insofar as it is absolutely necessary, and then only incidentally. The following points will suffice for the present.

It has fortunately become more common lately to distinguish types of economic system from types of economic policy.[30] The stages which Schönberg first suggested and which, in a somewhat altered form, have

become identified with Schmoller's name, "domestic economy," "village economy," with the further stages of "seigneurial and princely patrimonial household economy," "town economy," "territorial economy," and "national economy,"[31] were in his terminology defined by the type of organization regulating economic activity. But it is not claimed that even the *types* of regulation, to which economic activity has been subjected by the different organizations thus classified in terms of the extent of their jurisdiction, were at all different. Thus the so-called territorial economic policies in Germany consisted to a large extent simply of an adoption of the measures developed in the town economy. Furthermore, such innovations as did occur were not greatly different from the "mercantilist" policies of those of the patrimonial states which had already achieved a relatively high level of rationality; they were thus to that extent "national economic policies," to use the common term, which, however, is not very appropriate. This classification, further, clearly does not claim that the inner structure of the economic system, the modes in which work roles were assigned, differentiated, and combined, the ways in which these different functions were divided between independent economic units, and the modes of appropriation of control over labor, means of production, and opportunities for profit, in any way were correlated with the dimensions of the organizations which were (potential) agents of an economic policy; above all this classification does not claim that they always changed in the same direction with changes in these dimensions. A comparison of the Western World with Asia, and of the modern West with that of Antiquity, would show the untenability of such an assumption. At the same time, in considering economic structure, it is by no means legitimate to ignore the existence or absence of organizations with substantive powers of regulation of economic activity, nor to ignore essential purposes of their regulation. The modes of profit-making activity are strongly influenced by such regulation, but it is by no means only political organizations which are important in this respect.

4. In this connection, as well as others, the purpose of the discussion has been to determine the optimum conditions for the *formal* rationality of economic activity and its relation to the various types of *substantive* demands which may be made on the economic system.

16. *Types of the Technical Division of Labor*

From a *technical* point of view the division of labor may be classified as follows: (1) In the first place, it may vary according to modes of differentiation and combination of work services as such: (a) They may vary according to the type of functions (*Leistungen*) undertaken by the same person. He may combine managerial functions with those of carrying out specifications; or his work may be specialized in terms of one or the other.

The distinction is naturally relative. It is common for an individual who normally supervises to take a hand in the work from time to time, as in the case of the peasants with larger holdings. The type cases of combination of the two functions are: The small peasant, the independent artisan, or the small boatman.

Further, a given individual may (b) perform functions which are *technically* different and contribute to different results, or he may perform only technically specialized functions. In the first case, the lack of specialization may be due to the technical level of work which does not permit further dividing up, to seasonal variation, or to the exploitation of labor services as a side line at times when they are not taken up by their primary occupation. In the second case, the function may be specialized in terms of the product in such a way that the same worker carries out all the processes necessary for this product, though they differ technically from each other. In a sense, this involves a combination of different functions and will be called the "specification of function." On the other hand, the functions may be differentiated according to the type of work, so that the product is brought to completion only by combining, simultaneously or successively, the work of a number of persons. This is the "specialization of function." The distinction is to a large extent relative, but it exists in principle and is historically important.

The case where there is little division of labor because of the low technical level is typical of primitive household economies. There, with the exception of the differentiation of sex roles (of which more in Part Two, ch. III) every individual performs every function as the occasion arises. Seasonal variation has been common in the alternation of agricultural work in the summer with the crafts in the winter. An example of side lines is the tendency for urban workers to take up agricultural work at certain times, such as the harvest, and also the various cases of secondary functions undertaken in otherwise free time, which is common even in modern offices.

The case of specification of function is typical of the occupational structure of the Middle Ages: a large number of crafts, each of which specialized in the production of a single article, completely unperturbed by the technical heterogeneity of the functions involved. There was thus a combination of functions. The specialization of functions, on the other hand, is crucial to the modern development of the organization of labor. There are, however, important physiological and psychological reasons why it has virtually never been pushed to the absolute extreme of isolation, even on the highest levels of specialization. There is almost always an element of specification of function involved. It is not, however, as in the Middle Ages, oriented to the final product.

(2) The differentiation and combination of different functions may further vary according to the modes in which the services of a plurality of persons are combined to achieve a co-ordinated result. There are two

main possibilities: (a) the "accumulation" of functions; that is the employment of a number of persons all performing the same function to achieve a result. This may take the form either of identical, but technically independent efforts co-ordinated in parallel, or of identical efforts organized technically into a single collective effort.

Examples of the first case are the functions performed by mowers or road pavers, several of whom work in parallel. The second type was exemplified on a grand scale in ancient Egypt in such cases as the transportation of huge stones by thousands of workers, large numbers of them performing the same acts, such as pulling on ropes, on the same object.

The second type, (b) is the "combination" of functions—that is, of efforts which are qualitatively different, and thus specialized—in order to achieve a result. These efforts may be technically independent and either simultaneous or successive; or they may involve technically organized co-operation in the simultaneous performance of technically complementary efforts.

1. A particularly simple example of simultaneous, technically independent functions is furnished by the parallel spinning of the warp and the woof for a given cloth. In the same class are to be placed a very large number of processes which are, from a technical point of view, undertaken independently, but are all designed as part of the production of the same final product.

2. An example of the successive type of technically independent processes is furnished by the relation of spinning, weaving, fulling, dyeing, and finishing. Similar examples are to be found in every industry.

3. The combination of specialized functions is found all the way from the case of an assistant holding a piece of iron while a blacksmith forges it, a case which is repeated in every modern foundry, to the complicated situations, which, though not specific to modern factories, are an important characteristic of them. One of the most highly developed types outside the factory is the organization of a symphony orchestra or of the cast of a theatrical production.

17. *Types of the Technical Division of Labor—(Continued)*

The division of labor efforts varies also, from a technical point of view, in terms of the extent and nature of combinations with complementary material means of production.

1. Forms may vary according to whether they consist purely in personal services, as in the case of wash-women, barbers, the performance of

actors, or whether they produce or transform goods by "working up" or transporting raw materials. The latter may consist in construction work, as that of plasterers, decorators, and stucco workers, in production of commodities and in transport of commodities. There are many transitional forms between them.

2. They may be further distinguished according to the stage at which they stand in the progression from original raw material to consumption: thus, from the original products of agriculture and mining to goods which are not only ready to be consumed, but available at the desired place for consumption.

3. The forms may further vary according to the ways in which they use: (a) Fixed plant and facilities (*Anlagen*). These may consist in sources of power; that is, means of harnessing energy, either that of natural forces, such as the power of water, wind, or heat from fire, or that which is produced mechanically, especially steam and electrical power, or in special premises for work, or they may use (b) implements of work (*Arbeitsmittel*), which include tools, apparatus, and machines. In some cases only one or another of these means of production may be used, or none. "Tools" are those aids to labor, the design of which is adapted to the physiological and psychological conditions of manual labor. "Apparatus" is something which is "tended" by the worker. "Machines" are mechanized apparatus. These rather vague distinctions have a certain significance for characterizing epochs in the development of industrial technology.

The use of mechanized sources of power and of machinery, characteristic of modern industry, is from a *technical* point of view due to their specific productivity and the resulting saving of human labor, and also to the uniformity and calculability of performance, both in quality and quantity. It is thus rational only where there exists a sufficiently wide demand for the particular types of products. In the case of a market economy, this means adequate purchasing power for the relevant goods; and this in turn depends on a certain type of income distribution.

It is quite out of the question here to undertake to develop even the most modest outline of a theory of the evolution of the technology and economics of tools and machinery. The concept of "apparatus" refers to such things as the type of loom which was operated by a foot-pedal and to numerous other similar devices. These already involve a certain relative independence on the part of the mechanical process, as distinguished from the functioning of the human or, in some cases, the animal organism. Without such apparatus—which included in particular various devices for moving materials in mines—machines, with their importance in modern technology, would never have come into existence. Leonardo's famous inventions were types of apparatus.

18. *Social Aspects of the Division of Labor*

From the social point of view, types of the division of labor may be classified in the following way: In the first place, according to the ways in which qualitatively different, especially complementary functions, are distributed among more or less autocephalous and autonomous economic units, which may further be distinguished economically according to whether these are budgetary units or profit-making enterprises. There are two polar possibilities:

(1) A "unitary" economy (*Einheitswirtschaft*) where the specialization (or specification) of functions is wholly internal, completely heterocephalous and heteronomous and determined on a purely technical basis. The same would be true of the coordination of functions. A unitary economy may, from an economic point of view, be either a budgetary unit or a profit-making enterprise.

> On the largest possible scale, a communist national economy would be a unitary budgetary economy; on the smallest scale it was the primitive family unit, which included all or the great majority of production functions in a "closed household economy." The type case of a "unitary" profit-making enterprise with purely internal specialization and coordination of functions is naturally the great vertical combination[82] which treats with outsiders only as an integrated unit. These two distinctions will suffice for the moment as a treatment of the development of autonomous unitary economy.

(2) The distribution of functions may, on the other hand, take place between autocephalous economic units. (a) It may consist in the specialization or specification of functions between heteronomous, but autocephalous units which are oriented to an order established by agreement or imposed. The order, in turn, may be substantively oriented in a variety of ways. Its main concern may be to provide for the needs of a superior economic unit, which may be the budgetary unit (household) of a lord, an *oikos*, or it may be oriented to profit-making for an economic unit controlled by a political body or lord. The order may, on the other hand, be concerned with providing for the needs of the members of some closed group (*genossenschaftlicher Verband*). From an economic point of view, this may be accomplished either in the "budgetary" (household) or in the "profit-making" mode. The organization in all these cases may either be confined to the mere regulation of economic activity or it may, at the same time, be engaged in economic action on its own account. (b) The other main type is the specialization of autocephalous and autonomous units in a market economy, which are oriented on the one hand substantively only to their own self-interest, formally only to the

order of an organization such as the laissez-faire state, which enforces only formal, rather than substantive rules (See above, chap. II, sec. 5:d).

1. A typical example of the organization which, limiting its function to the regulation of economic activity, takes the form of a budgetary unit administered by an association of the members under case 2(a), is the organization of village handicrafts in India ("establishment"). An organization with autocephalous but heteronomous units oriented in their economic activity to the household of a lord, as under 2(a), may be illustrated by structures which provide for the household wants of princes or landlords (in the case of princes, also for the political wants) by means of contributions from the individual holdings of subjects, dependents, serfs, slaves, cottars, or sometimes "demiurgic" (see below) village artisans, such are found everywhere in the world. The exactions of services or products for a landlord or a town corporation should usually be classified as "mere regulation of economic activity," insofar as they usually served only fiscal, not substantive ends. A case of market order with units oriented to profit-making for the lord exists where putting-out type production tasks contracted for are reallocated to the individual households.

The types where there is specialization and specification of function between heteronomous units under the aegis of a co-operative organization can be illustrated by the specialization common in many very old small-scale industries. The Solingen metal trades were originally organized in terms of a voluntary association determining the division of labor by agreement. It was only later that they became organized in terms of domination, namely as a "putting-out industry." The type where the autocephalous economic units are subject only to regulation by an organization is illustrated by innumerable cases of the rules established by village communities and town corporations for the regulation of trade, so far at least as these have a substantive influence on the processes of production.

The case of specialization as between autonomous and autocephalous units in a market economy is best illustrated by the modern economic order.

2. A few further details may be added. The order of the organizations which attempt to provide for the wants of their members on a budgetary basis is "budgetary" in a particular way—that is, it is oriented to the prospective needs of the individual members, not of the organized group, such as a village itself. Specified service obligations of this kind will be called "demiurgic liturgies,"[83] and this type of provision for needs, correspondingly, "demiurgic provision." It always is a question of corporate regulation governing the division of labor and, in some cases, the mode of combination of labor services.

This term will not, on the other hand, be applied to an organization, whether it is based on domination or on voluntary co-operation, if it carries on economic activity on its own account, contributions to which are sub-allocated on a specialized basis. The type cases of this category

are the specialized and specified contributions in kind of *corvée* estates (*Fronhöfe*), seigneurial estates, and other types of large household units. But sub-allocated obligations are also common in various types of organizations which are not primarily oriented to economic ends, such as the households of princes, political groups and the budgetary administration of local communities. These contributions are generally for the benefit of the budgetary needs of the governing authority or for corporate purposes. These in-kind obligations of services and products imposed on peasants, artisans, and tradesmen will be called "*oikos* liturgies in kind" when they are owed to the household establishment of an individual, and "corporate liturgies in kind" when they are payable to the budgetary unit of an organization as such. The principle governing this mode of provision for the budgetary needs of an organization engaged in economic action, is called "liturgical provision." This mode of organization has played an exceedingly important historical role and will have to be discussed frequently. In political organizations, it held the place of modern "public finances," and in economic groups it made possible a decentralization of the main household by providing for its needs through actors who were no longer maintained and utilized in it. Each sub-unit managed its own affairs, but assumed the obligation to fulfill certain functions for the central unit and to that extent was dependent on it. Examples are peasants and serfs subject to various kinds of labor services and payments in kind; craftsmen attached to an estate; and a large number of other types. Rodbertus[34] was the first to apply the term "*oikos*" to the large-scale household economies of Antiquity. He accepted as the principal criterion the essential autarky of want satisfaction through utilization of the services of household members or of dependent labor, material means of production being made available on a non-exchange basis. It is a fact that the landed estates, and still more the royal households, of Antiquity, especially of the New Kingdom in Egypt, were cases where the greater part of the needs of the unit were provided by services and payments in kind, which were obligations of dependent household units, although the degree of approach to the pure type varies widely. The same phenomena are to be found at times in China and India, and to a less extent in our own Middle Ages, beginning with the *capitulare de villis*.[35] It is true that exchange with the outside was generally not entirely lacking, but it tended to have the character of budgetary exchange. Obligations to money payment have also not been uncommon, but have generally played a subsidiary part in the main provision for needs and have tended to be traditionally fixed. For the economic units subject to liturgical obligations it also has not been uncommon to be involved in exchange relations. But the decisive point is that the bulk of the subsistence of these units was covered by the in-kind benefits—either in the form of certain quotas of products, or in that of the use of pieces of land—which they received in compensation for the liturgical deliveries imposed on them. There are, of course, many transitional forms. But in each case there is some kind of regula-

tion of functions by an organization which is concerned with the mode of division of labor and of its co-ordination.

3. The cases where an organization regulating economic activity is oriented to considerations of economic profit are well illustrated by those economic regulations of the communes of medieval Europe, and by the guilds and castes of China and India, which restricted the number of master craftsmen and their functions and also the techniques of the crafts, that is, the way in which labor was oriented in the handicrafts. They belonged to this type so far as the rules were intended not primarily to secure provision of the consumer with the products of the craftsmen, but, as was often though not always the case, to secure the market position of the artisans by maintaining the quality of performance and by dividing up the market. Like every other type of economic regulation, this type also involved limitations on market freedom and hence on the fully autonomous business orientation of the craftsmen. It was unquestionably intended to maintain the "livings" for the existing craft shops, and to that extent, in spite of its apparent "business" character, it was more closely related to the budgetary mode of orientation.

4. The case of an organization itself engaged in economic activity with an orientation to profit-making can be illustrated, apart from the pure type of putting-out industry already discussed, by the agricultural estates of the German East with a labor force holding small plots of estate land on a service tenure and entirely oriented to the order of the estate (*Instleute*), or by those of the German North-West with similar types of tenant labor (*Heuerlinge*) who, however, hold their plots on a rental basis. The agricultural estates, just like the putting-out industries, are profit-making organizations of the landlord and the entrepreneur, respectively. The economic units of the tenants and home-industry workers are oriented, both in the imposed division of functions and in the mode of combining work efforts, as in the whole of their economic conduct, primarily to the obligations which the order of the estate or the putting-out relationship dictates to them. Apart from that, they are households. Their acquisitive efforts are not autonomous, but heteronomous efforts oriented to the enterprise of the landlord or the entrepreneur. Depending upon the degree to which this orientation is substantively standardized, the division of functions may approach the purely technical type of division within one and the same enterprise which is typical of the factory.

19. *Social Aspects of the Division of Labor— (Continued)*

From a social point of view, the modes of the division of labor may be further classified according to the mode in which the economic advantages, which are regarded as returns for the different functions, are ap-

propriated. Objects of appropriation may be: the opportunities of disposing of, and obtaining a return from, human labor services (*Leistungsverwertungschancen*); the material means of production;[56] and the opportunities for profit from managerial functions.[57] (On the sociological concept of appropriation, see above, chap. I, sec. 10).

When the utilization rights for labor services are appropriated, the services themselves may either, (1) go to an individual recipient (a lord) or to an organization, or (2) they may be sold on the market. In either case one of the following four, radically different, possibilities may apply:

(a) Monopolistic appropriation of the opportunities for disposal of labor services by the individual worker himself: the case of "craft-organized free labor." The appropriated rights may either be hereditary and alienable, in which case type (1) above is illustrated by the Indian village artisan and type (2) by certain medieval non-personal craft rights; or they may be strictly personal and inalienable, as under type (1) all "rights to an office"; or, finally, they may be hereditary, but inalienable, as under types (1) and (2) certain medieval, but above all Indian, craft rights, and medieval "offices" of the most diverse kind. In all these cases appropriation may be unconditional or subject to certain substantive conditions.

(b) The second possibility is that the right of utilization of labor services is appropriated to an "owner" of the worker: the case of "unfree labor." The property rights in the worker may be both hereditary and alienable—the case of slavery proper. Or, though it is hereditary, it may not be freely alienable, but, e.g., only together with the material means of production, particularly the land. This includes serfdom and hereditary dependency.

> The appropriation of the use of labor by a lord may be limited by substantive conditions, as in serfdom. The worker cannot leave his status of his own free will, but neither can it arbitrarily be taken from him.

The appropriated rights of disposal of labor services may be used by the owner for purposes of budgetary administration, as a source of income in kind or in money, or as a source of labor services in his household, as in the case of domestic slaves or serfs. Or it may be used as a means of profit. In that case the dependent may be obligated to deliver goods or to work on raw materials provided by the owner. The owner will then sell the product. This is unfree domestic industry. He may, finally, use his laborer in an organized shop—a slave or serf workshop.

> The person herein designated as the "owner" may be involved in the work process himself in a managerial capacity or even in part as a work-

er, but this need not be true. It may be that his position as owner, *ipso facto*, makes him the managing agent. But this is by no means necessary and is very generally not the case.

The use of slaves and serfs, the latter including various types of dependents, as part of a process of budgetary administration and as source of rent revenue, but not as workers in a profit-making enterprise, was typical of Antiquity and of the early Middle Ages. There are, for instance, cuneiform inscriptions which mention slaves of a Persian prince who were bound out as apprentices, possibly to be used later for labor services in the household, but perhaps to be set to work in substantive freedom for their own customers, making a regular payment to the owner (an early equivalent of the Greek ἀποφορά, the Russian *obrok*, and the German *Hals-* or *Leibzins*). Though by no means without exception, this tended to be the rule for Greek slaves; and in Rome this type of independent economic activity with a *peculium* or *merx peculiaris* and, naturally, payments to the owner, found reflection in various legal institutions. In the Middle Ages, body serfdom (*Leibherrschaft*) frequently involved merely a right to claim payments from otherwise almost independent persons. This was usual in western and southern Germany. In Russia, also, *de facto* limitation to the receipt of these payments (*obrok*) from an otherwise independent serf was, if not universal, at least very common, although the legal status of these persons remained precarious.

The use of unfree labor for "business" purposes has taken the following principal forms, particularly in the domestic industries on seigneurial estates, including various royal estates, among them probably those of the Pharaohs: (1) Unfree obligation to payments in kind—the delivery of goods in kind, the raw material for which was produced by the workers themselves as well as worked on by them. Flax is an example; (2) unfree domestic industry—work on material provided by the lord. The product could be sold at least in part for money by the lord. But in many cases, as in Antiquity, the tendency was to confine market sale to occasional instances. In early modern times, however, particularly in the German-Slavic border regions this was not the case; it was there, though not only there, that domestic industries developed on the estates of landlords. The utilization in a continuous organization could take the form of unfree home-industry labor or of unfree workshop labor. Both forms are common. The latter was one of the various forms of the *ergasterion* of Antiquity. It was found on the estates of the Pharaohs, in temple workshops, and according to the testimony of tomb frescoes, also on the estates of private owners or lords, in the Orient, in Greece (Demosthenes' shops in Athens), in the Roman estate workshops (see the description by Gummerus), in the Carolingian *genitium* (that is, a *gynaikeion*), and in more recent times for example in the Russian serf factories (see Tugan-Baranovskii's book on the Russian factory).[38]

(c) The third possibility is the absence of any sort of appropriation: formally "free" labor, in this sense that the services of labor are the sub-

ject of a contractual relationship which is formally free on both sides. The contract may, however, be substantively regulated in various ways through a conventional or legal order governing the conditions of labor.

Freely contracted labor may be used in various ways. In the first place, in a budgetary unit, as occasional labor (what Bücher calls *Lohnwerk*), either in the household of the employer (*Stör*) or in that of the worker himself (*Heimwerk* in Bücher's terminology). Or it may be permanent, again performed in the household of the employer, as in the case of domestic service, or in that of the worker, as typical of the colonate. It may, on the other hand, be used for profit, again on an occasional or a permanent basis; and in both cases either in the worker's own home or on premises provided by the employer. The latter is true of workers on an estate or in a workshop, but especially of the factory.

Where the worker is employed in a budgetary unit, he is directly in the service of a consumer who supervises his labor. Otherwise, he is in the service of a profit-making entrepreneur. Though the form is often legally identical, economically the difference is fundamental. *Coloni* may be in either status; but it is more typical for them to be workers in an *oikos*.

(d) The fourth possibility is that opportunities for disposal of labor services may be appropriated by an organization of workers, either without any appropriation by the individual worker or with important limitations on such appropriation. This may involve absolute or relative closure against outsiders and also prohibition of the dismissal of workers from employment by management without consent of the workers, or at least some kind of limitations on power of dismissal.

Examples of the type of appropriation involving closure of the group are castes of workers or the type of miners' association found in the Medieval mining industry, the organized groups or retainers sometimes found at courts, or the "thresher tenure" (*Dreschgärtner*) on landed estates in Germany. This type of appropriation is found throughout the social history of all parts of the world in an endless variety of forms. The second type involving limitations on powers of dismissal, which is also very widespread, plays an important part in the modern situation in the "closed shop" of trade unions and especially in the "works councils."

Every form of appropriation of jobs in profit-making enterprises by workers, like the converse case of appropriation of the services of workers by owners, involves limitations on the free recruitment of the labor force. This means that workers cannot be selected solely on grounds of their technical efficiency, and to this extent there is a limitation on the *formal* rationalization of economic activity. Appropriation of jobs also imposes substantive limitations on *technical* rationality, namely: (1) if the ex-

ploitation for profit of the products of labor is appropriated by an owner, through the tendency to restrict the work effort, either by tradition, or by convention, or by contract; also through the reduction or complete disappearance (if the worker is fully owned, a slave) of the worker's own interest in optimal effort; (2) if the exploitation for profit of the products is also appropriated by the workers, there may be a conflict of the worker's self-interest, which lies in the maintenance of his traditional mode of life, with the attempts of his employer to get him to produce at the optimum technical level or to use other means of production in place of labor. For employers, there is always the possibility of transforming their exploitation of labor into a mere source of income. Any appropriation of the exploitation of products by the workers thus generally leads under otherwise favorable circumstances to a more or less complete expropriation of the owner from management. But it also regularly tends to place workers in a state of dependence on people with whom they deal who enjoy a more favorable market position. These, such as putting-out entrepreneurs, then tend to assume a managerial position.

1. The very opposite forms of appropriation—that of jobs by workers and that of workers by owners—nevertheless have in practice very similar results. This should not be surprising. In the first place, the two tendencies are very generally formally related. This is true when appropriation of the workers by an owner coincides with appropriation of opportunities for jobs by a closed organization of workers, as has happened in the manor associations. In such cases it is natural that exploitation of labor services should, to a large extent, be stereotyped; hence, that work effort should be restricted and that the workers have little self-interest in the output. The result is generally a successful resistance of workers against any sort of technical innovation. But even where this does not occur, the fact that workers are appropriated by an owner means in practice that he is obliged to make use of this particular labor force. He is not in a position, like the modern factory manager, to select according to technical needs, but must utilize those he has without selection. This is particularly true of slave labor. Any attempt to exact performance from appropriated workers beyond that which has become traditionally established encounters traditional obstacles. These could only be overcome by the most ruthless methods, which are not without their danger from the point of view of the owner's self-interest, since they might undermine the traditionalistic bases of his authority. Hence almost universally the work effort of appropriated workers has shown a tendency to restriction. Even where, as was particularly true of eastern Europe at the beginning of the modern age, this was broken by the power of the lords, the development of higher technical levels of production was impeded by the absence of the selective process and by the absence of any element of self-interest or own risk-taking on the part of the appropriated workers.

When jobs have been formally appropriated by workers, the same result has come about even more rapidly.

2. Appropriation by workers was typical for the development in the early Middle Ages (10th to 13th century). The Carolingian *Beunden*[39] and all other beginnings of large-scale agricultural enterprise declined and disappeared. The rents and dues paid to landlords and lords holding rights over persons became stereotyped at a low level; and an increasing proportion of the products in kind, in agriculture and mining, and of the money proceeds from the handicrafts, went to the workers. In just this form this development was peculiar to the Western world. The principal circumstances which favored it were as follows: (a) The fact that the propertied classes were heavily involved in political and military activity; (b) the absence of a suitable administrative staff. These two circumstances made it impossible for them to utilize these workers in any other way than as a source of rent payments; (c) the fact that the freedom of movement of workers between the potential employers competing for their services could not easily be restricted; (d) the numerous opportunities of opening up new land, new mines, and new local markets; (e) the primitive level of the technical tradition. The more the appropriation of profit opportunities *by* the workers replaced the appropriation *of* workers *by* owners, the more the owners were dispossessed of their rights of control and became mere recipients of rents and dues. Classical examples are the mining industry and the English guilds. Even at this early period the process tended to go further, to the point of redemption or repudiation of the obligation to make payments to a lord altogether, on the principle that "A townsman is a freeman." Almost immediately all this led to a differentiation of the opportunities of making profit by market transactions, arising either from within the group of workers themselves or from without through the development of trade.

20. *Social Aspects of the Division of Labor: The Appropriation of the Material Means of Production*

The material means of production may be appropriated by workers as individuals or as organizations, by owners, or by regulating groups consisting of third parties.

When appropriated by workers, it may be by the individual worker who then becomes the "owner" of the material means of production; or the appropriation may be carried out by a completely or relatively closed group of workers so that, though the individual worker is not the owner, the organization is. Such an organization may carry out its functions as a unitary economy on a "communist" basis, or with appropriation of shares (*genossenschaftlich*). In all these cases, appropriation may be used for the purposes of budgetary administration or for profit making.

Appropriation of the means of production by individual workers may exist in a system of complete market freedom of the small peasants, artisans, boatmen, or carters, or under the aegis of a regulating group. Where it is not the individual but an organization which owns the means of production, there is a wide variety of possibilities, varying particularly with the extent to which the system is of a budgetary or a profit-making character. The household economy, which is in principle not necessarily by origin or in fact communistic (see Part Two, ch. III), may be oriented wholly to provision for its own needs. Or it may, perhaps only occasionally, dispose of surpluses of certain types of raw material accumulated by virtue of a favorable location, or of products derived from some particular technical skill, as a means to better provision. This occasional sale may then develop into a regular system of profit-making exchange. In such cases it is common for "tribal" crafts to develop, with interethnic functional specialization and trade between the tribes, since the chances of finding a market often depend on maintaining a monopoly, which in turn is usually secured by inherited trade secrets. From this may develop ambulatory crafts or possibly pariah[40] crafts or, where these groups are united in a political structure and where there are ritual barriers between the ethnic elements, castes, as in India.

The case where members of the group possess appropriated shares is that of "producers' co-operation."[41] Household economies may, with the development of money accounting, approach this type. Otherwise, it is occasionally found as an organization of workmen. It was of great significance in one important case, that of the mining industry of the early Middle Ages.

Since appropriation by organized groups of workers has already been dealt with, appropriation by "owners" or organized groups of them can only mean the expropriation of the workers from the means of production, not merely as individuals, but as a whole. An owner may in this connection appropriate one or more of the following items: land, including water; subterranean wealth; sources of power; work premises; labor equipment, such as tools, apparatus and machinery; and raw materials. In any given case all these may be concentrated in a single ownership or they may be appropriated by different owners. The owners may employ the means of production they appropriate in a context of budgetary administration, either as means to provide for their own needs or as sources of income by lending them out. In the latter case, the loans may in turn be used by the borrower for budgetary purposes or as means for earning a profit, either in a profit-making establishment without capital accounting or as capital goods (in their own enterprise). Finally, the owner may use them as capital goods in his own enterprise.

The appropriating agency may be an organization engaged in economic activity. In this case, all the alternatives just outlined are open to it.

It is, finally, also possible that the means of production should be appropriated by an organization which only *regulates* economic activity, which does not itself use them as capital goods or as a source of income, but places them at the disposal of its members.

I. When *land* is appropriated by individual economic units, it is usually for the period of actual cultivation until the harvest or, so far as, by virtue of clearing or irrigation, land is itself an artifact, for the period of continuous cultivation. It is only when scarcity of land has become noticeable that it is common for rights of cultivation, pasturage and use of timber to be reserved to the members of a settlement group, and for the extent of their use to be limited.

(1) When that happens, appropriation may be carried out by an organization. This may be of differing sizes, according to the mode of use, to which the land is put—for gardens, meadows, arable land, pastures, or woodland. These have been appropriated by progressively larger groups, from the individual household to the whole tribe. Typical cases are the appropriation of arable land, meadows, and pastures by a kinship group or a neighborhood group, usually a village. Woodland has usually been appropriated by broader territorial groups, differing greatly in character and extent. The individual household has typically appropriated garden land and the area around the house and has had shares in the arable fields and meadows. The system of shares may find expression (i) in the *de facto* egalitarianism of the assignment of newly tilled fields where cultivation is "ambulatory" (as in the so-called field-grass husbandry), or (ii) in rationally systematic redistribution under sedentary cultivation. The latter is usually the consequence of either fiscal claims for which the village members are collectively held responsible, or of political claims of the members for equality. The unit of the production organization has usually been the household (on which see Part Two, ch. III and IV).

(2) Appropriation of the land may also be to a lord or seigneur (*Grundherr*). This seigneurial position, as will be discussed later, may be based primarily on the individual's position of authority in a kinship group or as tribal chieftain with claims to exact labor services (see Part Two, ch. IV), or on fiscal or military authority, or on some form of organization for the systematic exploitation of new land or an irrigation project. Seigneurial domination over land (*Grundherrschaft*) may be made a source of utilities by the employment of the unfree labor of slaves or serfs. This, in turn, may be administered as part of a budgetary unit, through deliveries in kind or labor services, or as a means of profit, as a "plantation." On the other hand, it may be exploited with free labor. Here again it may be treated in budgetary terms, drawing income from the land in the form of payments in kind or from share-cropping by tenants or of money rents from tenants. In both cases the equipment used may be provided by the tenant himself, or by the seigneur (colo-

nate). A lord may also exploit his holdings as a source of profit in the form of a large-scale rational economic enterprise.

Where the land is used as part of a budgetary economy with unfree labor, the lord is apt to be bound traditionally in his exploitation of it, both with respect to his labor personnel, which is not subject to selection, and to their functions. The use of unfree labor in a profit-making establishment, the "plantation," occurred only in a few cases, notably in Antiquity in Carthage and in Rome, and in modern times in the plantations of colonial areas and in the Southern States of North America. The use of land in large-scale profit-making enterprises with free labor has occurred only in the modern Western World. It is the mode of development of the medieval landlordship or seigneurie (*Grundherrschaft*), in particular the way in which it was broken up, which has been most decisive in determining the modern forms of land appropriation. The modern pure type knows only the following categories: the owner of the land, the capitalistic tenant, and the propertyless agricultural laborer. But this pure type is exceptional, found principally in England.

II. Sources of wealth adapted to exploitation by *mining* may be appropriated in the following ways: (a) By the owner of the land, who in the past has usually been a seigneur; (b) by a political overlord (owner of the regal prerogatives or "royalties"); (c) by any person discovering deposits worthy of mining (*Bergbaufreiheit*); (d) by an organization of workers; and (e) by a profit-making enterprise. Seigneurs and owners of "royalties" may administer their holdings themselves, as they did occasionally in the early Middle Ages; or they may use them as a source of income, by leasing them to an organized group of workers or to any discoverer whatever or to anyone who was a member of a given group. This was the case with the "freed mountains" (*gefreite Berge*) of the Middle Ages and was the origin of the institution of "mining freedom" (*Bergbaufreiheit*).[42]

In the Middle Ages, the groups of organized mine workers were typically closed membership groups with shares held by the members, where each member was under obligation, either to the seigneurial owner, or to the other members collectively responsible to him, to work in the mine. This obligation was balanced by a right to a share in the products. There was also a type of a pure "owners" association, each sharing in the proceeds or the contributions required due to losses. The tendency was for the seigneurial owners to be progressively expropriated in favor of the workers; but these, in turn, as their need for investment in installations increased, became more and more dependent on groups with command over capital goods. Thus in the end, the appropriation took the form of a capitalistic *Gewerkschaft*, a limited liability company.

III. Means of production which are *fixed installations*, such as sources of power, particularly water power, "mills" for various different purposes, and workshops, sometimes including the fixed apparatus in them, have in the past, particularly in the Middle Ages, generally been

appropriated in one of the following ways: (a) by princes or seigneurs; (b) by towns (either as economically active or merely regulating organizations); (c) by associations of workers, such as guilds (as "regulating" groups), without the development, in any of them, of a unified production organization (*Betrieb*).

In the first two cases, they were usually exploited as a source of income, a charge being made for their use. This has often been combined with interdiction of rival facilities and the compulsory use of those belonging to the lord. Each production unit would make use of the facilities in turn, according to need or, under certain circumstances, it was made the monopoly of a closed, regulative group. Baking ovens, various kinds of grinding mills for grain or oil, fulling mills, polishing installations, slaughter-houses, dye-works, bleaching installations, forges—which were usually, to be sure, leased—, breweries, distilleries, other installations including particularly shipyards in the possession of the Hanseatic towns, and all kinds of market stalls have been appropriated in this pre-capitalistic way, to be exploited by allowing workers to use them in return for a payment; they were thus used as part of the budgetary wealth (*Vermögen*), rather than as capital of the owners (individuals or organizations, including town corporations). This type of production and budgetary exploitation of fixed installations as a source of investment income for the owning individual or group, or possibly production by a producers' co-operative group, has preceded the creation of "fixed capital" of individual business units. Those *using* such installations have tended to treat them in part as means of meeting their own household needs, especially in the case of baking ovens and of brewing and distilling installations, and in part for profit-making operations.

IV. For maritime transport the typical arrangement in the past has been the appropriation of the *ship* by a plurality of owners, who tended to become more and more sharply differentiated from the actual seafarers. The fact that the organization of maritime enterprise then tended to develop into a system of risk-sharing with shippers, in which ship owners, officers, and even the crew, were associated as shippers of freight, did not, however, produce any fundamentally new forms of *appropriation*. It affected only the forms of settling accounts and hence the distribution of profit-making possibilities.

V. Today, it is usual for the installations of all kinds and the tools to be appropriated under *one* controlling agency, as is essential to the modern factory; but in earlier times, this has been exceptional. In particular, the economic character of the Greek and Byzantine *ergasterion* and the corresponding Roman *ergastulum* has been highly ambiguous, a fact which historians have persistently ignored. It was a "workshop" which might, (i) be a part of a budgetary unit in which slaves would carry out production for the owner's own needs, as for the needs of a landed estate, or subsidiary production of goods for sale. But (ii) the workshop might also be used as a source of rent revenue, part of the holdings of a private individual or of an organization, which latter might be a town,

as was true of the *ergasteria* of the Piraeus. Such *ergasteria* would then be leased to individuals or to organized closed groups of workers. Thus, when it is stated that an *ergasterion* was exploited, especially a municipal one, it is always necessary to inquire further to whom it belonged and who was the owner of the other means of production necessary for the work process. Did free labor work there? Did they work for their own profit? Or did slaves work there, in which case it is necessary to know who their owners were, and whether they were working on their own account, making ἀποφορά payments to their master, or directly for their master. According to the ways in which these questions are answered, the structure would be radically different from an economic point of view. In the great majority of cases, as late as the Byzantine and Mohammedan types, the *ergasterion* seems to have been primarily a source of rent revenue, and was hence fundamentally different from the modern factory or even its early predecessors. From an economic point of view, this category is, in its economic ambiguity, most closely comparable to the various types of mills found in the Middle Ages.

VI. Even in cases where the workshop and the means of production are appropriated by an individual owner who hires labor, the situation is not, from an economic point of view, necessarily what would usually be called a "factory" today. For this it would be necessary in addition to have the use of mechanical power, of machinery, and of an elaborate internal differentiation and combination of functions. The factory today is a category of the capitalistic economy. Hence in the present discussion the concept "factory" will be confined to a type of establishment which is at least potentially under the control of a profit-making firm with fixed capital, which thus takes the form of an organized workshop with internal differentiation of function, with the appropriation of *all* non-human means of production and with a high degree of mechanization of the work process by the use of mechanical power and machinery. The great workshop of "Jack of Newbury"[48] of the early sixteenth century, which was sung about by balladeers of a later day, did not have any of these features. It is alleged to have contained hundreds of hand looms, which were his property and for the workers of which he bought the raw materials, and also all manner of "welfare" arrangements. But each worker worked independently as if he were at home. Internal differentiation and combination of functions could, to be sure, exist in an Egyptian, Greek, Byzantine or Mohammedan *ergasterion* which a master worked with his unfree laborers. But the Greek texts show clearly that even in such cases is was common for the master to be content with the payment of an ἀποφορά from each worker and perhaps a higher one from the foreman. This alone is sufficient to warn us not to consider such a structure economically equivalent to a factory or even to a workshop like that of "Jack of Newbury." The closest approximation to the factory in the usual sense is found in royal manufactories, like the imperial Chinese porcelain manufactory and the European manufactories of court luxuries, which were modelled on it, and especially those for the

production of military equipment. No one can be blamed for calling these "factories." And the Russian workshops operating with serf labor seem at first sight to stand even closer to the modern factory. Here the appropriation of the workers themselves is added to that of the means of production. Nevertheless, for present purposes the concept "factory" will, for the reasons stated, be limited to organized workshops where the material means of production are fully appropriated by an owner, but the workers are not; where there is internal specialization of functions, and where mechanical power and machines which must be "tended" are used. All other types of organized workshops will be designated by that word, with the appropriate adjectives.

21. *Social Aspects of the Division of Labor: The Appropriation of Managerial Functions*

(1) In all cases of the management of traditional budgetary (household) units, it is typical for the appropriation of managerial functions to take place either by the titular head himself, such as the head of the family or the kinship group, or by members of an administrative staff appointed for the management of the unit, as in the case of service fiefs of household officials.

(2) In the case of profit-making enterprises, it occurs in the following situations: (a) When management and ordinary labor are entirely or very nearly identical. In this case there is usually also appropriation of the material means of production by the worker. This type of appropriation may be unlimited, that is, hereditary and alienable on the part of the individual, with or without a guaranteed market. It may, on the other hand, be appropriation to an organized group, with appropriation of the function by the individual restricted to personal tenure[44] or subject to substantive regulation, thus limited and dependent on various conditions. Again, a market may or may not be guaranteed. (b) Where management and ordinary work are separated, there may be a monopolistic appropriation of entrepreneurial functions in various possible forms, notably to closed membership groups, such as guilds, or to monopolies granted by the political authority.

(3) In cases where managerial functions are, from a formal point of view, wholly unappropriated, the appropriation of the means of production or of the credit necessary for securing control over them is in practice, in a capitalistic form of organization, identical with appropriation of control of management by the owners of the means of production. Owners can, in such cases, exercise their control by personally managing the business or by appointment of the actual managers. Where there is

a plurality of owners, they will co-operate in the selection. These points are so obvious that there is no need of comment.

Wherever there is appropriation of technically complementary means of production, it generally means, in practice, at least some degree of effective voice in the selection of management and, to a relative extent at least, the expropriation of the workers from management. The expropriation of the individual workers, however, does not necessarily imply the expropriation of workers in general. Though they are formally expropriated, it is possible for an association of workers to be in fact in a position to exact for itself an effective share in management or in the selection of managing personnel.

22. *The Expropriation of Workers from the Means of Production*

The expropriation of the individual worker from ownership of the means of production is determined by purely *technical* factors in the following cases: (a) if the means of production require the services of many workers, at the same time or successively; (b) if sources of power can be rationally exploited only by using them simultaneously for many similar types of work under a unified control; (c) if a technically rational organization of the work process is possible only by combining many complementary processes under continuous common supervision; (d) if special technical training is needed for the management of co-ordinated processes of labor which, in turn, can only be exploited rationally on a large scale; (e) if unified control over the means of production and raw materials creates the possibility of subjecting labor to a stringent discipline and hence of controlling the speed of work and of attaining standardization of effort and of product quality.

These factors, however, do not exclude the possibility of appropriation by an organized group of workers, a producers' co-operative. They necessitate only the separation of the *individual* worker from the means of production.

The expropriation of workers *in general*, including clerical personnel and technically trained persons, from possession of the means of production has its *economic* reasons above all in the following factors: (a) The fact that, other things being equal, it is generally possible to achieve a higher level of economic rationality if the management has extensive control over the selection and the modes of use of workers, as compared with the situation created by the appropriation of jobs or the existence of

rights to participate in management. These latter conditions produce technically irrational obstacles as well as economic irrationalities. In particular, considerations appropriate to small-scale budgetary administration and the interests of workers in the maintenance of jobs ("livings") are often in conflict with the rationality of the organization. (b) In a market economy a management which is not hampered by any established rights of the workers, and which enjoys unrestricted control over the goods and equipment which underlie its borrowings, is of superior credit-worthiness. This is particularly true if the management consists of individuals experienced in business affairs and with a good reputation for "safety" derived from their continuous conduct of business. (c) From a historical point of view, the expropriation of labor has arisen since the sixteenth century in an economy characterized by the progressive extensive and intensive expansion of the market system on the one hand, because of the sheer superiority and actual indispensability of a type of management oriented to the particular market situations, and on the other because of the structure of power relationships in the society.

In addition to these general conditions, the effect of the fact that enterprise has been oriented to the exploitation of market advantages has in the following ways favored such expropriation: (a) because it put a premium on capital accounting—which can be effected in the technically most rational manner only with full appropriation of capital goods to the owner—as against any type of economic behavior with less rational accounting procedures; (b) because it put a premium on the purely commercial qualities of the management, as opposed to the technical ones, and on the maintenance of technical and commercial secrets; (c) because it favored a speculative business policy, which again requires expropriation. Further, and in the last analysis quite regardless of the degree of technical rationality, this expropriation is made possible, (d) by the sheer bargaining superiority which in the labor market any kind of property ownership grants vis-à-vis the workers, and which in the commodity markets accrues to any business organization working with capital accounting, owned capital equipment and borrowed funds vis-à-vis any type of competitor operating on a lower level of rationality in methods of calculation or less well situated with respect to capital and credit resources. The fact that the maximum of *formal* rationality in capital accounting is possible only where the workers are subjected to domination by entrepreneurs, is a further specific element of *substantive* irrationality in the modern economic order. Finally, (e), a further economic reason for this expropriation is that free labor and the complete appropriation of the means of production create the most favorable conditions for discipline.

23. *The Expropriation of Workers from the Means of Production—(Continued)*

The expropriation of *all* the workers from the means of production may in practice take the following forms: (1) Management is in the hands of the administrative staff of an organization. This would be true very particularly also of any rationally organized socialist economy, which would retain the expropriation of all workers and merely bring it to completion by the expropriation of the private owners. (2) Managerial functions are, by virtue of their appropriation of the means of production, exercised by the owners or by persons they appoint. The appropriation of control over the persons exercising managerial authority by the interests of ownership may have the following forms: (a) Management by one or more entrepreneurs who are at the same time owners —the immediate appropriation of entrepreneurial functions. This situation, however, does not exclude the possibility that a wide degree of control over the policies of management may rest in hands outside the enterprise, by virtue of their powers over credit or financing—for instance, the bankers or financiers who finance the enterprise; (b) separation of managerial functions from appropriated ownership, especially through limitations of the functions of owners to the appointment of management and through shared free (that is, alienable) appropriation of the enterprise as expressed by shares of the nominal capital (stocks, mining shares). This state, which is related to the purely personal form of appropriation through various types of intermediate forms, is rational in the *formal* sense in that it permits, in contrast to the case of permanent and hereditary appropriation of the management itself of accidentally inherited properties, the selection for managerial posts of the persons best qualified from the point of view of profitability. But in practice it may mean a number of things, such as: That control over the managerial position may come, through appropriation, into the hands of "outside interests" representing the resources of a budgetary unit, or mere wealth (*Vermögen;* see above, ch. II, sec. 10), and seeking above all a high rate of income; or that control over the managerial position comes, through temporary stock acquisitions, into the hands of speculative "outside interests" seeking gains only through the resale of their shares; or that disposition over the managerial position comes into the hands of outside business interests, by virtue of power over markets or over credit, such as banks or "financiers," which may pursue their own business interests, often foreign to those of the organization as such.

We call "outside interests" those which are not primarily oriented to the long-run profitability of the enterprise. This may be true of any kind

of budgetary "wealth" interests. It is particularly true, however, of interests which consider their control over the plant and capital goods of the enterprise or of a share in it not as a permanent investment, but as a means of making a purely short-run speculative profit. The types of outside interest which are most readily reconciled with those of the enterprise—that is, its interests in present *and* long-run profitability—are those seeking only income (*rentiers*).

The fact that such "outside" interests can affect the mode of control over managerial positions, even and especially when the highest degree of *formal* rationality in their selection is attained, constitutes a further element of *substantive* irrationality specific to the modern economic order. These might be entirely private "wealth" interests, or business interests which are oriented to ends having no connection whatsoever with the organization, or finally, pure gambling interest. By gaining control of shares, all of these can control the appointment of the managing personnel and, more important, the business policies imposed on this management. The influence exercised by speculative interests outside the producing organizations themselves on the market situation, especially that for capital goods, and thus on the orientation of the production of goods, is *one* of the sources of the phenomena known as the "crises" of the modern market economy. This cannot, however, be further discussed here.

24. *The Concept of Occupation and Types of Occupational Structure*

The term "occupation" (*Beruf*) will be applied to the mode of specialization, specification, and combination of the functions of an individual so far as it constitutes for him the basis of a continuous opportunity for income or earnings. The distribution of occupations may be achieved in the following ways: (1) by means of a heteronomous assignment of functions and of provisions for maintenance within an organization regulating economic activity—unfree differentiation of occupations—or through autonomous orientation to the state of the market for occupational services—free differentiation of occupations; (2) it may rest on the specification or the specialization of functions; (3) it may involve economic exploitation of the services by their bearers on either an autocephalous or a heterocephalous basis.

The structure of occupational differentiation and that of opportunities for business income are closely related. This will be discussed in relation to the problems of "class" and "status" stratification.

On occupation a a basis of status, and on classes in general, see chap. IV, below.[45]

1. Unfree organization of occupations exists in cases where there i compulsory assignment of functions within the organization of a royal estate, a state, a feudal manor, or a commune on the basis of liturgies or of the oikos type of structure. The free type of di tribution arises from the successful offer of occupational services on the labor market or successful application for free "positions."

2. As was pointed out above in sec. 16, pecification of functions was typical of the handicrafts in the Middle Ages; specialization i characteristic of the modern rational business organization. The distribution of occupations in a market economy consists to a large extent of technically irrational specification of functions, rather than of rational specialization of functions, because uch an economy i oriented to the market situation and hence to the interests of purchasers and consumers. This orientation determines [the uses to which] the entire bundle of labor services offered by a given productive unit will be put in a manner often different from the specialization of function [of the given labor force], thus making necessary modes of combination of functions which are technically irrational.

3. Cases of autocephalous occupational specialization are the independent "business" of an artisan, a physician, a lawyer, or an artist. The factory worker and the government official, on the other hand, occupy heterocephalous occupational positions.

The occupational structure of a given social group may vary in the following ways: (a) According to the degree in which well-marked and stable occupations have developed at all. The following circum tances are particularly important in thi connection: the development of consumption standards, the development of techniques of production, and the development of large-scale budgetary units in the case of unfree occupational organization, or of market systems in that of free organization; (b) according to the mode and degree of occupational specification or pecialization of individual economic units. Thi will be decisively influenced by the market situation for the services or products of pecialized units, which is in turn dependent on adequate purchasing power. It will also be influenced by the mode of distribution of control over capital goods; (c) according to the extent and kind of continuity or change in occupational tatu . Thi in turn depends above all on two factors: on the one hand, on the amount of training required for the specialized function , and on the other hand the degree of stability or in tability of opportunities for earnings from them. The latter is in turn dependent on the type and stability of distribution of income and on the state of technology.

Finally, it i always important in tudying occupational structure to know the tatus stratification, with the attendant status-tied types of education and other advantages and opportunities which it creates for certain kind of killed occupations.

It is only functions which require a certain minimum of training and

for which opportunity of continuous remuneration is available which become the objects of independent and stable occupations. The choice of occupation may rest on tradition, in which case it is usually hereditary; on goal-oriented rational considerations, especially the possibility of returns; on charismatic or on affectual grounds; and finally, in particular, on grounds of prestige with particular reference to status. Originally, the more directly individual "callings" have been dependent primarily on charismatic (magical) elements, while all the rest of the occupational structure, so far as in a differentiated form it existed at all, was traditionally fixed. The requisite charismatic qualities, so far as they were not specifically personal, tended to become the object of a traditional "training" in closed groups, or of hereditary transmission. Individual occupations which were not of a strictly charismatic character first appeared on a liturgical basis in the large-scale households of princes and landed lords, and then in the market economy of the towns. Alongside of this, however, a large role in their development was always played by the literary forms of education with a high status esteem, which arose in close connection with magical, ritual, or priestly ("clerical") professional training.

From what has been said it will be seen that occupational specialization does not necessarily imply continuous rendering of services, either on a liturgical basis for an organization—in a royal household or a workshop—or for a completely free market. Other forms are not only possible but common: (1) Propertyless occupationally specialized workers may be employed on an occasional basis as needed in the service of a relatively stable group of either consumers in household units or employers in profit-making enterprises. In the case of work for *households*, we have the possibility of the expropriation from the worker of at least the raw materials (and hence of the control over the final product); services may be rendered on this basis either on the consumer's premises (*Stör*), whether it be by itinerant workers or by sedentary workers moving around the households of a local clientele, or on the workers' premises: shop or household ("wage work" [in Bücher's terminology][46]). In either case the consumer household provides the raw materials, but it is customary for the worker to own his tools—the mower his scythe, the seamstress her sewing equipment, etc. The cases of *Stör* involve temporary membership in the consumer's household.

The case, contrasting with the above, in which the worker owns *all* means of production, Bücher terms "price work."

Occupationally specialized workers may be employed on an occasional basis by *profit-making enterprises* when at least the raw material, and thus also control over the product, belongs to the employer. In this case there may be migratory labor for a variety of different employers in different units, or occasional or seasonal work for an employer, the work

being done in the worker's own household. Migratory harvest labor is an example of the first type. The second type may be illustrated by any type of occasional work at home which supplements the work in the workshop.

Occupational specialization without continuous engagement of the types noted above can also exist if: (2) Economic activity is conducted with appropriated means of production and (i) there is capital accounting and *partial* appropriation—especially, appropriation restricted to the fixed installations—by owners. Examples are workshops and factories transforming raw materials owned by others (*Lohnfabriken*) and, above all, factories producing under contract for an outside entrepreneur who takes charge of sales and other entrepreneurial functions (*verlegte Fabriken*); the former have existed for a long time, while the latter have recently become common. Or, if (ii) there is complete appropriation of the means of production by the workers, with the following possibilities: (a) in small-scale units without capital accounting, either producing for households ("price work" for customers), or producing for commercial enterprises. The latter is a case of domestic industry without expropriation of the means of production. The worker is formally a free craftsman, but is actually bound to a monopolistic group of merchants who are buyers for his product; (b) on a large scale with capital accounting and production for a fixed group of purchasers. This is usually, though not always, the result of market regulation by cartels.

Finally, it must be pointed out that not every case of acquisitive action is necessarily part of an occupational profit-making activity; nor is it necessary that involvement in acquisitive action, however frequent, should imply a continuous specialization with a constant meaningful orientation. With respect to the first observation, we note that "occasional acquisition" is found as a result of the disposal of surpluses produced in a budgetary unit. Corresponding to these is occasional trading of goods by large-scale budgetary units, especially seigneurial estates. From this starting point, it is possible to develop a continuous series of possible "occasional acquisitive acts," such as the occasional speculation of a *rentier*, occasional publication of an article or a poem by a person who is not a professional author, and similar modern phenomena, to the case where such things constitute a "subsidiary occupaiton" (*Nebenberuf*).

As to the second observation, it should be remembered that there are ways of making a living which are continually shifting and fundamentally unstable. A person may shift continually from one type of "occasional" profitable activity to another; or even between normal legitimate earning and begging, stealing, or highway robbery.

The following must be treated in special terms: (a) Support from

purely charitable sources; (b) maintenance in an institution on other than a charitable basis, notably a penal institution; (c) regulated acquisition by force; and (d) criminal acquisition; that is, acquisition by force or fraud in violation of the rules of an order. The cases of (b) and (d) are of relatively little interest; (a) has often been of tremendous importance for hierocratic groups, such as mendicant orders; while (c) has been crucial for many political groups in the form of the booty gained from war, and in both cases the economy was profoundly affected. It is characteristic of both these cases that they lie outside the realm of economic activity as such. Hence this is not the place to enter into a more detailed classification. The forms will be treated elsewhere. For reasons which are in part the same, the earnings of civil servants, including military officers, have been mentioned below (sec. 38) only in order to give them a place as a sub-type of the earnings of labor, but without going into the details. To do this, it would be necessary to discuss the structure of relations of domination in the context of which these types of earnings are to be placed.

24a. *The Principal Forms of Appropriation and of Market Relationship*

According to the theoretical schemes which have been developed starting with sec. 15, the classification of the modes of appropriation in their technical, organizational aspects, and of the market relationships, is exceedingly complex. But actually, only a few of the many theoretical possibilities play a really dominant role.

(1) With respect to agricultural land: (a) There is the "ambulatory" cultivation by household units, which changes its location whenever the land has been exhausted. The land is usually appropriated by the tribe while its use is temporarily or permanently appropriated by neighborhood groups, with only temporary appropriation of the use of land to individual households.

The extent of the household group may vary from the individual conjugal family, through various types of extended family groups, to organized kin groups or a widely extended household community. (Agriculture is "ambulatory" as a rule only in relation to arable land, much less commonly and at longer intervals for farmyard sites.)

(b) Sedentary agriculture. The use of arable fields, meadows, pastures, woodland, and water is usually regulated by territorial or village associations for the smaller family household. Gardens and the land

immediately surrounding the buildings are normally appropriated by the immediate family; arable fields, usually meadows, and pastures, by the village organization; woodland, by more extensive territorial groups. Redistribution of land is usually possible according to the law, but has generally not been systematically carried through and is hence usually obsolete. Economic activities have generally been regulated by a system of rules applying to the whole village. This is a "primary village economy."

It is only in exceptional cases, such as China, that the extended kinship group has constituted an economic unit. Where this is the case, it has generally taken the form of a rationalized organization, such as a clan association.

(c) Seigneurial rights over land (*Grundherrschaft*) and persons (*Leibherrschaft*) with a central manor of the lord (*Fronhof*) and dependent peasant farms obligated to deliveries in kind and labor services. The land itself and the workers are appropriated by the lord, the *use* of the land and rights to work by the peasants. This is a simple case of *manorial organization based on income in kind.*

(d) Seigneurial or fiscal monopoly of control over the land, with collective responsibility of the peasant community for meeting fiscal obligations. This leads to communal control over and regular systematic redistribution of the land. The land is, as a correlate of the fiscal burden, by decree permanently appropriated to the organized peasant community, not to the individual household; the latter enjoys only rights of use and these are subject to redistribution. Economic activity is regulated by the rules imposed by the manorial or the political lord. This is *manorial* or *fiscal field community* (*Feldgemeinschaft*).

(e) *Unrestricted seigneurial land proprietorship* with exploitation of the dependent peasants as a source of rent income. The land is appropriated by the lord; but *coloni,*[47] sharecroppers, or tenants paying money rent carry out the actual economic activities.

(f) The *plantation.* The land is freely appropriated and worked by purchased slaves. The owner uses both as means of profit-making in a capitalistic enterprise with unfree labor.

(g) The *"estate economy"* (*Gutswirtschaft*). The land is appropriated to owners who either draw rent from it by leasing it to large-scale tenant farmers or farm it themselves for profit. In either case free labor is used, living in their own homesteads or those supplied by the landlord, and—in both cases again—conducting some agricultural production or, in the marginal case, none at all on own account.

(h) Absence of seigneurial ownership (*Grundherrschaft*): a peasant economy with appropriation of the land by the farmer (peasant). In practice this form of appropriation may mean that the land farmed is

predominantly inherited land, or, on the other hand, that land lots are freely bought and sold. The former is typical of settlements with scattered farms and large-scale peasant proprietors; the latter, where settlement is in villages and the scale is small.[48]

Where tenants pay a money rent and where peasant proprietors buy and sell land, it is necessary to presuppose an adequate local market for the products of peasant agriculture.

(2) In the field of industry and transport, including mining, and of trade:

(a) *Household industry* carried on primarily as a means of occasional exchange of surpluses, only secondarily as a means of profit. This may involve an *inter-ethnic division of labor*, out of which in turn *caste occupations* have occasionally developed. In both cases appropriation of the sources of raw materials, and hence of the raw material production, is normal; purchase of raw materials and transformation of non-owned raw material ("wage work") are secondary phenomena. In the case of inter-ethnic specialization, *formal* appropriation is often absent. There is, however, generally, and in the case of caste, always, hereditary appropriation of the opportunities for earnings from specified functions by kinship or household groups.

(b) *"Tied" craft production* directly for customers: specification of functions in the service of an organized group of consumers. This may be a dominating group (*oikos* or seigneurial specification), or it may be a closed membership group (demiurgic specification).

There is no market sale. In the first case, we find organization of functions on a budgetary basis, or of labor in a workshop, as in the *ergasterion* of the lord. In the second case, there is hereditary appropriation of the status of the workers which may, however, become alienable, and work is carried out for an appropriated group of customers (consumers). There are the following very limited possibilities of development: (i) Appropriated (*formally* unfree) workers who are carriers of specified functions—of a trade—may be used either as a source of income payments to their owner, in which case they are usually and in spite of their formal servility *substantively* free, working in most cases directly for their own customers (rent slaves); or again, they might be used as unfree domestic craft producers, producing for the owner's profit; or, finally, as workers in the owner's workshop or *ergasterion*, also producing for profit. (ii) This may also develop into a liturgical specification of functions for fiscal purposes, similar to the type of caste occupations.

In the field of mining, there are similar forms, notably the use of unfree labor, slaves or serfs, in productive units controlled by princes or seigneurial owners.

In inland transportation, it is common for transportation installations [roads] to be appropriated by a seigneurial owner as a source of rent revenue. Maintenance services are then compulsorily imposed on specified small peasant holdings. Another possibility is small-scale caravan trade regulated by closed membership groups. The traders would then appropriate the goods themselves.

In the field of maritime transportation: (i) The ownership of ships by an *oikos*, a seigneur or a patrician trading on own account; (ii) co-operative construction and ownership of ships, captain and crew participating in trade on their own account, small travelling merchants constituting the shippers, all parties sharing the risks, and voyages made in strictly regulated "caravans." In all these cases "trade" was still identical with inter-local trade, that is, with transport.

(c) *Free non-agricultural trades.* Free production for consumers in return for a wage, either on the customer's premises or on that of the worker. Usually the raw materials were appropriated by the customer, the tools by the worker, premises and installations, if any were involved, by a lord as a source of income or by organized groups with rights of use in rotation. Another possibility is that both raw materials and tools should be appropriated by the worker who thus managed his own work, whereas premises and stationary equipment belonged to an organized group of workers, such as a guild. In all these cases, it is usual for the regulation of profit-making activity to be carried on by guilds.

In mining, deposits have usually been appropriated by political authorities or by seigneurial owners as sources of rent, while the rights of exploitation have been appropriated by organized groups of workers. Mining operations have been regulated on a guild basis with participation in the work an obligation of the members to the lord, who was interested in the rent, and to the working group (*Berggemeinde*), which was collectively responsible to him and had an interest in the proceeds.

In the field of inland transport, we find boatmen and teamster guilds with fixed rotation of travel assignments among the members and regulation of their opportunities for profit.

In the field of maritime transport, shared ownership of ships, travelling in convoys, and travelling merchants acting as *commenda* partners for businessmen staying at home are typical everywhere.

There are the following stages in the development toward capitalism:

(a) Effective monopolization of money capital by entrepreneurs, used as a means to make advances to labor. Connected with this is the assumption of powers of management over the process of production by virtue of the extension of credit, and of control over the product in spite of the fact that appropriation of the means of production has continued for-

mally in the hands of the workers, as in the handicrafts and in mining; (b) appropriation of the right of marketing products on the basis of previous monopolization both of knowledge of the market and hence of market opportunities and of money capital. This was made possible by the imposition of a monopolistic system of guild regulation or by privileges granted by the political authority in return for periodical payments or for loans; (c) the subjective disciplining of workers who stood in a dependent relationship in the putting-out system, via the supply of raw materials and apparatus by the entrepreneur. A special case is that of the rational monopolistic organization of domestic industries on the basis of privileges granted in the interests of public finances or of the employment of the population. The conditions of work were thereby regulated by imposition from above as part of the concession which made profit-making activity possible; (d) the development of workshops *without* a rational specialization of labor in the process of production, by means of the appropriation by the entrepreneur of all the material means of production. In mining this included the appropriation by individual owners of mineral deposits, galleries, and equipment. In transportation, shipping enterprises fell into the hands of large owners. The universal result was the expropriation of the workers from the means of production; (e) the final step in the transition to capitalistic organization of production was the mechanization of the productive process and of transportation, and its orientation to capital accounting. All material means of production become fixed or working capital; all workers become "hands." As a result of the transformation of enterprises into associations of stock holders, the manager himself becomes expropriated and assumes the formal status of an "official." Even the owner becomes effectively a trustee of the suppliers of credit, the banks.

Of all these various types, the following instances may be noted:

1. In agriculture, type (a), migratory agriculture, is universal. But the sub-type where the effective unit has been the large-scale household or kinship group, is found only occasionally in Europe, quite frequently in East Asia, particularly China. Type (b), sedentary agriculture with land-use-regulating village associations, has been common in Europe and India. Type (c), seigneurial rights over the land with restrictions due to mutual obligations, has been found everywhere and is still common in some parts of the Orient. Type (d), seigneurial or fiscal rights over the land with systematic redistribution of the fields by the peasants, has existed in the more seigneurial type in Russia and in a variant involving the redistribution of land rents in India,[49] and in the more fiscal form in East Asia, the Near East, and Egypt. Type (e), unrestricted seigneurial land ownership drawing rent from small tenants, is typical of Ireland,

but also occurs in Italy, southern France, China, and the eastern parts of the Hellenistic world in Antiquity. Type (f), the plantation with unfree labor, was characteristic of Carthage and Rome in Antiquity, of modern colonial areas, and of the Southern States of the United States. Type (g), the "estate economy" in the form which involves separation of ownership and exploitation, has been typical of England; in the form of owner management, of eastern Germany, parts of Austria, Poland, and western Russia. Finally, type (h), peasant proprietorship, has been found in France, southern and western Germany, parts of Italy, Scandinavia, with certain limitations in south-western Russia, and with modifications particularly in modern China and India.

These wide variations in the forms which the organization of agriculture has finally assumed are only partially explicable in economic terms, that is, from such factors as the difference between the cultivation of forest clearings and of areas requiring irrigation. Special historical circumstances played a large role, and especially the forms taken by political and fiscal obligations and military organization.

2. In the field of industry, the following outline of the distribution of types may be given. Our knowledge of the situation in transportation and mining is not sufficiently complete to give such an outline for those fields.

(a) The first type, tribal crafts, has been found universally; (b) organization on the basis of occupational castes became general only in India. Elsewhere it has existed only for occupations considered discreditable and sometimes ritually impure; (c) the organization of industry on the basis of the *oikos* is found in all royal households in early times, but has been most highly developed in Egypt. It has also existed on seigneurial manors all over the world. Production by demiurgic crafts was occasionally found everywhere, including the Western World, but has developed into a pure type only in India. The special case of the use of control over unfree persons simply as a source of rent was common in Mediterranean Antiquity. The liturgical specification of functions was characteristic of Egypt, of the Hellenistic period, of the later Roman Empire, and has been found at times in China and India; (d) the free handicraft organization with guild regulations is classically illustrated in the European Middle Ages and became the predominant form only there. It has, however, been found all over the world; and guilds, in particular, have developed very widely, especially in China and the Near East. It is notable, however, that this type was entirely absent from the economic organization of the period of Mediterranean "classical" Antiquity. In India, the caste took the place of the guild. Of the stages in the development toward capitalism, only the second was reached on a

large scale outside the Western World. This difference cannot be explained entirely in purely economic terms.

25. *Conditions Underlying the Calculability of the Productivity of Labor*

1. In the three typical communist forms of organization, non-economic motives play a predominant part (see below, sec. 26). But apart from these cases, there are three primary conditions affecting the optimization of calculable performance by labor engaged in carrying out specifications: (a) The optimum of aptitude for the function; (b) the optimum of skill acquired through practice; (c) the optimum of inclination for the work.

Aptitude, regardless of whether it is the product of hereditary or environmental and educational influences, can only be determined by testing. In business enterprises in a market economy this usually takes the form of a trial period. The Taylor system involves an attempt to work out rational methods of accomplishing this.

Practice, and the resulting skill, can only be perfected by rational and continuous specialization. Today, it is worked out on a basis which is largely empirical, guided by considerations of minimizing costs in the interest of profitability, and limited by these interests. Rational specialization with reference to physiological conditions is only in its beginnings (witness again the Taylor system).

Inclination to work may be oriented to any one of the ways which are open to any other mode of action (see above, ch. I, sec. 2). But in the specific sense of incentive to execute one's own plans or those of persons supervising one's work, it must be determined either by a strong self-interest in the outcome, or by direct or indirect compulsion. The latter is particularly important in relation to work which executes the dispositions of others. This compulsion may consist in the immediate threat of physical force or of other undesirable consequences, or in the probability that unsatisfactory performance will have an adverse effect on earnings.

The second type, which is essential to a market economy, appeals immensely more strongly to the worker's self-interest. It also necessitates freedom of selection according to performance, both qualitatively and quantitatively, though naturally from the point of view of its bearing on profit. In this sense it has a higher degree of formal rationality, from the point of view of technical considerations, than any kind of direct compulsion to work. It presupposes the expropriation of the workers from the

means of production by owners is protected by force. As compared with direct compulsion to work, this system involves the transferral, in addition to the responsibility for reproduction (in the family), of part of the worries about selection according to aptitude to the workers themselves. Further, both the need for capital and the capital risks are, as compared with the use of unfree labor, lessened and made more calculable. Finally, through the payment of money wages on a large scale, the market for goods which are objects of mass consumption is broadened.

Other things being equal, positive motives for work are, in the absence of direct compulsion, not obstructed to the same extent as they are for unfree labor. It is true, however, that whenever technical specialization has reached very high levels, the extreme monotony of operations tends to limit incentives to purely material wage considerations. Only when wages are paid in proportion to performance on a piece-rate basis is there an incentive to increasing productivity. In the capitalistic system, the most immediate bases of willingness to work are opportunities for high piece-rate earnings and the danger of dismissal.

The following observations may be made about the situation of free labor separated from the means of production: (a) Other things being equal, the likelihood that people will be willing to work on *affectual* grounds is greater in the case of specification of functions than in that of specialization of functions. This is true because the product of the individual's own work is more clearly evident. In the nature of the case, this is almost equally true wherever the quality of the product is important; (b) *traditional* motivations to work are particularly common in agriculture and in home industries—both cases where also the *general* attitude toward life is traditional. It is characteristic of this that the level of performance is oriented either to products which are stereotyped in quantity and quality or to a traditional level of earnings, or both. Where such an attitude exists, it is difficult to manage labor on a rational basis, and production cannot be increased by such incentives as piece rates. Experience shows, on the other hand, that a traditional patriarchal relationship to a lord or owner is capable of maintaining a high level of affectual incentive to work; (c) motivations based on *absolute values* are usually the result of religious orientations or of the high social esteem in which the particular form of work as such is held. Observation seems to show that all other sources of motivations directed to ultimate values are only transitional.

It goes without saying that the "altruistic" concern of the worker for his own family is a typical element of duty contributing to willingness to work generally.

2. The appropriation of the means of production and personal con-

trol, however formal, over the process of work constitute one of the strongest incentives to unlimited willingness to work. This is the fundamental basis of the extraordinary importance of small units in agriculture, whether in the form of small-scale proprietorship or small tenants who hope to rise to the status of owner. The classical locus of this type of organization is China. The corresponding phenomenon in the functionally specified skilled trades is most marked in India, but it is very important in all parts of Asia and also in Europe in the Middle Ages. In the latter case, the most crucial conflicts have been fought out over the issue of formal autonomy of the individual worker. The existence of the small peasant in a sense depends directly on the absence of capital accounting and on retaining the unity of household and enterprise. His is a specified and not a specialized function, and he tends both to devote more intensive labor to it and to restrict his standard of living in the interest of maintaining his formal independence. In addition, this system of agriculture makes possible the use of all manner of by-products and even "waste" in the household in a way which would not be possible in a larger farm unit. All the information we have available goes to show that capitalistic organization in agriculture is, where management is in the hands of the owner, far more sensitive to cyclical movements than small-scale peasant farming (see the author's figures in the *Verhandlungen des deutschen Juristentags*, vol. xxiv).[49a]

In industry, the corresponding small-scale type has retained its importance right up to the period of mechanization and of the most minute specialization and combination of functions. Even as late as the sixteenth century, as actually happened in England [1555], it was possible simply to forbid the operation of workshops like that of "Jack of Newbury" without catastrophic results for the economic situation of the workers. This was true because the combination in a single shop of looms, appropriated by one owner and operated by workers, could not, under the market conditions of the time, without any far-reaching increase in the specialization and co-ordination of labor functions, lead to an improvement in the prospect of profit for the entrepreneur large enough to compensate with certainty for the increase in risk and the cost of operating the shop. Above all, in industry an enterprise with large investments in fixed capital is not only, as in agriculture, sensitive to cyclical fluctuations, but also in the highest degree to every form of irrationality—that is, lack of calculability—in public administration and the administration of justice, as it existed everywhere outside the modern Western World. It has hence been possible, as in the competition with the Russian "factory" and everywhere else, for decentralized domestic industry to dominate the field. This was true up to the point, which was reached *before*

the introduction of mechanical power and machine tools, where, with the broadening of market opportunities, the need for exact cost accounting and standardization of product became marked. In combination with technically rational apparatus, using water power and horse-gins, this led to the development of economic enterprises with internal specialization. Mechanical motors and machines could then be fitted in. Until this point had been reached, it was possible for all the large-scale industrial establishments, which occasionally had appeared all over the world, to be eliminated again without any serious prejudice to the economic situation of all those involved in them and without any serious danger to the interest of consumers. This situation changed only with the appearance of the factory. But willingness to work on the part of factory labor has been primarily determined by a combination of the transfer of responsibility for maintenance to the workers personally and the corresponding powerful indirect compulsion to work, as symbolized in the English workhouse system, and it has permanently remained oriented to the compulsory guarantee of the property system. This is demonstrated by the marked decline in willingness to work at the present time which resulted from the collapse of this coercive power in the [1918] revolution.

26. *Forms of Communism*

Communist arrangements for the communal or associational organization of work which are indifferent to calculation are not based on a consideration of means for obtaining an optimum of provisions, but, rather, on direct feelings of mutual solidarity. They have thus tended historically, up to the present, to develop on the basis of common value attitudes of a primarily non-economic character. There are three main types: (1) The household communism of the family, resting on a traditional and affectual basis; (2) the military communism of comrades in an army; (3) the communism based on love and charity in a religious community.

Cases (2) and (3) rest primarily on a specific emotional or charismatic basis. Always, however, they either (a) stand in direct conflict with the rational or traditional, economically specialized organization of their environment; such communist groups either work themselves or, in direct contrast, are supported purely by contributions from patrons, or both. Or (b) they may constitute a budgetary organization of privileged persons, ruling over other household units which are excluded from their organization, and are supported by voluntary contributions or liturgies of the latter. Or (c) finally, they are consumer household

units, distinct from any profit-making enterprises but drawing income from them, and thus in an associative relationship with them.

The first of these modes of support (a) is typical of communities based on religious belief or some *Weltanschauung*—such as monastic communities which renounce the world altogether or carry on communal labor, sectarian groups and utopian socialists.

The second mode (b) is typical of military groups which rest on a wholly or partially communistic basis. Examples are the "men's house" in many primitive societies, the Spartan *syssitia*, the Ligurian pirate groups, the entourage of Calif Omar, the communism, in consumption and partly in requisitioning, of armies in the field in every age. A similar state of affairs is found in authoritarian religious groups—as in the Jesuit state in Paraguay and communities of mendicant monks in India and elsewhere.

The third mode (c) is typical of family households in a market economy.

Willingness to work and consumption without calculation within these communities are a result of the non-economic attitudes characteristic of them. In the military and religious cases, they are to an appreciable extent based on a feeling of separateness from the ordinary everyday world and of conflict with it. Modern communist movements are, so far as they aim for a communist organization of the masses, dependent on "value-rational" appeals to their disciples, and on arguments from expediency (*zweckrational*) in their [external] propaganda. In both cases, thus, they rest their position on specifically *rational* considerations and, in contrast to the military and religious communities, on considerations concerned with the everyday profane world.[20] Their prospects of success under ordinary conditions rest on entirely different subjective conditions than those of groups which are oriented to exceptional activities, to otherworldly values, or to other primarily non-economic considerations.

27. *Capital Goods and Capital Accounting*

The embryonic forms of capital goods are typically found in commodities traded in inter-local [as against local] or inter-tribal exchange, provided that "trade" (see sec. 29) appears as an activity clearly distinct from the mere procurement of goods on a household (budgetary) basis. For the swapping (*Eigenhandel*) of household economies—trading-off of surpluses—cannot be oriented to capital accounting. The inter-tribally sold products of household, clan or tribal crafts are *commodities*, while the means of procurement, as long as they remain one's own output, are

only tools or raw materials, but not capital goods. The same goes for the market products and means of procurement of the peasant and the feudal lord as long as economic activity is not oriented to capital accounting, if only in its most primitive forms such as were incipient already in [the manual on estate management of the elder] Cato.

It is obvious that the internal movement of goods within the domain of a feudal lord or of an *oikos*, including occasional exchange and the common forms of internal exchange of products, is the antithesis of trade based on capital accounting. The trade engaged in by an *oikos*, like that of the Pharaohs, even when it is not concerned solely with provision for need and thus does not act as a budgetary unit but as one oriented to profit, is not for present purposes necessarily capitalistic. This would only be the case if it were oriented to capital accounting, particularly to an ex-ante estimate in money of the chances of profit from a transaction. Such estimates were made by the professional travelling merchants, whether they were engaged in selling on *commenda* basis for others, or in disposing of goods co-operatively marketed by an organized group. It is here, in the form of "occasional" enterprise, that the source of capital accounting and of the use of goods as capital is to be found.

Human beings (slaves and serfs) and fixed installations of all types which are used by seigneurial owners as sources of rent are, in the nature of the case, only rent-producing household property and not capital goods, similar to the securities which today yield interest or dividends for a private investor oriented to obtain an income from his wealth and perhaps some speculative gains. Investment of this household type should be clearly distinguished from the temporary investment of business capital by an enterprise. Goods which a lord over land or persons receives from his dependents in payment of the obligations due him by virtue of his seigneurial powers, and then puts up for sale, are not capital goods for the present terminological purposes, but only commodities. In such cases capital accounting—and above all, estimates of cost—are lacking in principle, not merely in practice. On the other hand, where slaves are used in an enterprise as a means of profit, particularly where there is an organized slave market and widespread purchase and sale of slaves, they do constitute capital goods. Where corvée-based production units (*Fronbetriebe*) work with a labor force of (hereditary) dependents who are not freely alienable and transferable, we shall not talk of capitalistic economic establishments, but of profit-making economic establishments with bound labor, regardless of whether we are dealing with agricultural production or unfree household industry. The decisive aspect is whether the tie is mutual—whether the lord is also bound to the worker.

In industry, production for sale by free workers with their own raw

materials and tools ("price work") is a case of small-scale capitalistic enterprise. The putting-out industry is capitalistic, but decentralized; whereas every case of an organized workshop under capitalistic control is centralized capitalistic organization. All types of "wage work" of occasional workers, whether in the employer's or in the worker's home, are mere forms of dependent work which are sometimes exploited in the interest of the budgetary economy, sometimes in the interest of the employer's profit.

The decisive point is thus not so much the empirical fact, but rather the theoretical possibility of the use of capital accounting.

28. *The Concept of Trade and Its Principal Forms*

In addition to the various types of specialized and specified functions, which have already been discussed, every market economy (even, normally, one subject to substantive regulation) knows another function: namely mediation in the process of disposing of a producer's own control over goods or acquiring such control from others. This function can be carried out in anyone of the following forms: (1) By the members of the administrative staff of an organized economic group, in return for payments in kind or in money which are fixed or vary with the services performed; (2) by an organized group created especially to provide for the selling and purchasing needs of its members; (3) by the members of a specialized occupational group working for their own profit and remunerated by fees or commissions without themselves acquiring control of the goods they handle; they act, that is, as agents, but in terms of a wide variety of legal forms; (4) by a specialized occupational group engaged in trade as a capitalistic profit-making enterprise (trade on own account). Such persons purchase goods with the expectation of being able to resell them at a profit, or sell for future delivery with the expectation of being able to cover their obligations before that date at a profitable figure. This may be done by buying and selling entirely freely in the market or subject to substantive regulation; (5) by a continuous regulated process, under the aegis of an organized political group, of expropriation of goods against compensation and of voluntary or enforced disposal of these goods to customers, again against compensation: compulsory trade; (6) by the professional lending of money or procurement of credit for the purpose of effectuating business payments or for the acquisition of means of production on credit; such transactions may be with business enterprises or with other organized groups, particularly political bodies. The economic

function of the credit may be to finance current payments or the acquisition of capital goods.

Cases (4) and (5), and only these, will be called "trade." Case (4) is "free" trade, case (5) "compulsory monopolistic" trade.

Type (1) is illustrated for budgetary units by the *negotiores* and *actores* who have acted on behalf of princes, landlords, monasteries, etc., and for profit-making enterprises by various types of travelling salesmen; type (2) is illustrated by various kinds of co-operative buying and selling agencies, including consumers' co-operative societies; type (3) includes brokers, commission merchants, forwarding agents, insurance agents, and various other kinds of agents; type (4) is illustrated for the case of free market transactions by modern trade, and for the regulated case by various types of heteronomously imposed or autonomously agreed divisions of the market with an allocation of the transactions with certain customers or of the transactions in certain commodities, or by the substantive regulation of the terms of exchange by the order of a political body or some other type of co-operative group; type (5) is illustrated by the state monopoly of the grain trade.

29. *The Concept of Trade and Its Principal Forms—(Continued)*

Free trade on own account (type 4), which alone will be dealt with for the present, is always a matter of profit-making enterprise, never of budgetary administration. It is hence under all normal conditions, if not always, a matter of earning money profits by contracts of purchase and sale. It may, however, be carried on (a) by an organization subsidiary to a budgetary economy, or (b) it may be an inseparable part of a total function through which goods are brought to a state of local consumability.

Case (a) is illustrated by members of a budgetary unit designated specifically to dispose of surpluses of that unit's production on their own account. If, however, it is a matter simply of "occasional" sale by *different* members at *different* times, it is not even a subsidiary enterprise, but where the members in question devote themselves entirely and on their own financial responsibility to sale or purchase, it is an example of the type (4), though somewhat modified. If, on the other hand, they act for the account of the unit as a whole, it is a case of the type (1).

Case (b) is illustrated by peddlers and other small traders who travel *with* their goods, and who thus primarily perform the function of transporting goods to the place of sale. They have hence been mentioned above in connection with the function of transportation. Travelling *commenda* traders may be a transitional form between types (3) and

(4). Whether the transportation service is primary and the trading profit secondary, or *vice versa*, is generally quite indefinite. In any case, all persons included in these categories are "traders."

Trade on the individual's own account (type 4) is always carried on on the basis of appropriation of the means of procurement, even though his control may be made possible only by borrowing. It is always the trader who bears the capital risk on his own account; and, correspondingly, it is he who, by virtue of his appropriation of the means of procurement, enjoys the opportunity for profit.

Specialization and specification of functions in the field of free trade on own account may take place in a variety of different ways. From an economic point of view, it is for the present most important to distinguish them according to the types of economic unit between which the merchant mediates: (i) Trade between households (budgetary units) with a surplus and other households which consume the surplus; (ii) trade between profit-making enterprises, themselves producers or merchants, and households (budgetary units) which consume the product. The latter include, of course, all types of organizations, in particular, political bodies; (iii) trade between one profit-making enterprise and another.

The first two cases come close to what is usually called "retail trade," which involves sale to consumers without reference to the sources from which the goods were obtained. The third case corresponds to "wholesale trade."

Trade may be oriented to the market or to customers. In the former case it may be a consumers' market, normally with the goods actually present. It may, on the other hand, be a market for business enterprises, in which case the goods may actually be present, as at fairs and expositions (usually though not necessarily, seasonal), or the goods may not be present, as in trade on commodity exchanges (usually, though not necessarily, permanent). If trade is oriented directly to customers, providing for the needs of a relatively fixed group of purchasers, it may be to households (budgetary units), as in retail trade, or to profit-making enterprises. The latter may in turn be producing units or retail enterprises or, finally, other wholesale enterprises. There may be various levels of middlemen in this sense, varying from the one nearest the producers to the one who sells to the retailer.

According to the geographical source of the goods disposed of, trade may be "interlocal" or "local."

The merchant may be in a position in fact to secure purchases on his own terms from the economic units which sell to him—putting-out trade. He may, on the other hand, be in a position to dictate the terms of his sales to the economic units which buy from him—traders' monopoly.

The first type is closely related to the putting-out organization of industry and is generally found combined with it. The second is "substantively regulated" trade, a variety of type (4).

It goes without saying that every market-oriented business enterprise must dispose of its own goods, even if it is primarily a producing enterprise. This type of marketing is not, however, "mediation" in the sense of the above definition so long as no members of the administrative staff are specialized for this and only this purpose (such as travelling salesman). Only then is a specialized "trading" function being performed. There are, of course, all manner of transitional forms.

The calculations underlying trading activity will be called "speculative" to the extent to which they are oriented to possibilities, the realization of which is regarded as fortuitous and is in this sense uncalculable. In this sense the merchant assumes the burden of "uncertainty."[31] The transition from rational calculation to what is in this sense speculative calculation is entirely continuous, since no calculation which attempts to forecast future situations can be completely secured against unexpected "accidental" factors. The distinction thus has reference only to a difference in the *degree* of rationality.

The forms of technical and economic specialization and specification of function in trade do not differ substantially from those in other fields. The department store corresponds to the factory in that it permits the most extensive development of internal specialization of function.

29a. *The Concept of Trade and Its Principal Forms—(Concluded)*

The term "banks" will be used to designate those types of profit-making "trading" enterprise which make a specialized function of administering or procuring money.

Money may be administered for private households by taking private deposit accounts and caring for the property of private individuals. It may also be administered for political bodies, as when a bank carries the account of a government, and for profit-making enterprise, by carrying business deposits and their current accounts.

Money may be procured for the needs of budgetary units, as in extending private consumption credit to private individuals, or in extending credit to political bodies. It may be procured for profit-making enterprises for the purpose of making payments to third persons, as in the creation of bills of exchange or the provision of checks or drafts for remittances. It may also be used to make advances on future payments due from

customers, especially in the form of the discounting of bills of exchange. It may, finally, be used to give credit for the purchase of capital goods.

Formally, it is indifferent whether the bank (1) advances this money from its own funds or promises to make it available on demand, as in the provision for over-drafts of a current account, and whether the loan is or is not accompanied by a pledge or any other form of security provided by the borrower; or, (2) whether the bank, by some type of guarantee or in some other manner, influences others to grant the funds.

In practice, the business policy of banks is normally aimed to make a profit by relending funds which have been lent to them or placed at their disposal.

The funds which a bank lends may be obtained from stocks of bullion or of coin from the existing mints which it holds on credit, or by its own creation of certificates (*banco*-money) or of means of circulation (bank notes), or, finally, from the deposits of private individuals who have placed their money at its disposal.

Whether a bank borrows on its own to obtain the funds it lends out or creates means of circulation, it must, if it is acting rationally, attempt to provide for coverage to maintain its liquidity—that is, it must keep a sufficient stock of cash reserves or arrange the terms of credit granted in such a manner that it can always meet its normal payment obligations.

As a rule, the observance of liquidity ratios by money-creating (i.e., note-issuing) banks is provided for in imposed regulations by organizations (merchant guilds or political bodies). These regulations are at the same time usually designed to protect the chosen monetary system of an area as far as possible against changes in the substantive validity of the money, and thus to protect the (formal) rationality of the economic calculations of budgetary units, above all those of the political body, and of profit-making enterprises against disturbances from (substantive) irrationalities. In particular, the most stable rate of exchange possible for one's own money against the monies of other monetary areas, with which trade or credit relations exist or are desired, is usually striven for. This type of monetary policy, which attempts to control the factors of irrationality in the monetary field, will, following G. F. Knapp, be called "lytric" policy. In the strictly laissez-faire state, this is the most important function in the realm of economic policy which the state would undertake. In its rational form this type of policy is entirely restricted to the modern state.

The policy measures of the Chinese with respect to copper and paper money and the Roman coinage policy will be discussed at the proper point, but they did not constitute a modern lytric monetary policy. Only the *banco*-money policy of the Chinese guilds, which formed the model

for the Hamburg *banco* mark, came up to modern standards of rationality.[52]

The term "financing" (*Finanzierungsgeschäfte*) will be applied to all business transactions which are oriented to obtaining control, in one of the following ways, of favorable opportunities for profit-making by business enterprise, regardless of whether they are carried on by banks or by other agencies, including individuals, as an occasional source of profit or as a subsidiary enterprise, or as part of the speculative operations of a "financier": (a) through the transformation of rights to appropriated profit opportunities into securities or other negotiable instruments, and by the acquisition of these securities, either directly or through such subsidiary enterprises as are described below under (c); (b) by the systematic tender (or, occasionally, refusal) of business credit; (c) through compulsory joining, if necessary or desired, of hitherto competing enterprises, either (i) in the form of monopolistic regulation of enterprises at the same stage of production (cartellization), or (ii) in the form of monopolistic fusion under one management of hitherto competing enterprises for the purpose of weeding out the least profitable ones (merger), or (iii) in the not necessarily monopolistic form of the fusion of specialized enterprises at successive stages of a production process (vertical combination), or finally (iv) in the form of an attempted domination of many enterprises through operations with their shares (trusts, holding companies) or the creation of new enterprises for the purpose of increasing profits or merely to extend personal power (financing as such).

Of course, financing operations are often carried out by banks and, as a general rule, unavoidably involve their participation. But the main control often lies in the hands of stock brokers, like Harriman, or of individual large-scale entrepreneurs in production, like Carnegie. The formation of cartels is also often the work of large-scale entrepreneurs, like Kirdorf; while that of trusts is more likely to be the work of "financiers," like Gould, Rockefeller, Stinnes, and Rathenau. This will be further discussed below.

30. *The Conditions of Maximum Formal Rationality of Capital Accounting*

The following are the principal conditions necessary for obtaining a maximum of formal rationality of capital accounting in production enterprises: (1) complete appropriation of all material means of production by owners and the complete absence of all formal appropriation of opportunities for profit in the market; that is, market freedom; (2) complete

autonomy in the selection of management by the owners, thus complete absence of formal appropriation of rights to managerial functions; (3) complete absence of appropriation of jobs and of opportunities for earning by workers and, conversely, the absence of appropriation of workers by owners. This implies free labor, freedom of the labor market, and freedom in the selection of workers; (4) complete absence of substantive regulation of consumption, production, and prices, or of other forms of regulation which limit freedom of contract or specify conditions of exchange. This may be called substantive freedom of contract; (5) complete calculability of the technical conditions of the production process; that is, a mechanically rational technology; (6) complete calculability of the functioning of public administration and the legal order and a reliable purely formal guarantee of all contracts by the political authority. This is a formally rational administration and law; (7) the most complete separation possible of the enterprise and its conditions of success and failure from the household or private budgetary unit and its property interests. It is particularly important that the capital at the disposal of the enterprise should be clearly distinguished from the private wealth of the owners, and should not be subject to division or dispersion through inheritance. For large-scale enterprises, this condition tends to approach an optimum from a formal point of view: in the fields of transport, manufacture, and mining, if they are organized in corporate form with freely transferrable shares and limited liability, and in the field of agriculture, if there are relatively long-term leases for large-scale production units; (8) a monetary system with the highest possible degree of formal rationality.

Only a few points are in need of comment, though even these have already been touched on.

(1) With respect to the freedom of labor and of jobs from appropriation, it is true that certain types of unfree labor, particularly full-fledged slavery, have guaranteed what is formally a more complete power of disposal over the worker than is the case with employment for wages. But there are various reasons why this is less favorable to rationality and efficiency than the employment of free labor: (a) The amount of capital which it was necessary to invest in human resources through the purchase and maintenance of slaves has been much greater than that required by the employment of free labor; (b) the capital risk attendant on slave ownership has not only been greater, but specifically irrational in that slave labor has been exposed to all manner of non-economic influences, particularly to political influence in a very high degree; (c) the slave market and correspondingly the prices of slaves have been particularly subject to fluctuation, which has made a balancing of profit and loss on a rational basis exceedingly difficult; (d) for similar reasons,

particularly involving the political situation, there has been a difficult problem of recruitment of slave labor forces; (e) when slaves have been permitted to enjoy family relationships, this has made the use of slave labor more expensive in that the owner has had to bear the cost of maintaining the women and of rearing children. Very often, he has had no way in which he could make rational economic use of these elements as part of his labor force; (f) hence the most complete exploitation of slave labor has been possible only when they were separated from family relationships and subjected to a ruthless discipline. Where this has happened it has greatly accentuated the difficulties of the problem of recruitment; (g) it has in general been impossible to use slave labor in the operation of tools and apparatus, the efficiency of which required a high level of responsibility and of involvement of the operator's self-interest; (h) perhaps most important of all has been the impossibility of selection, of employment only after trying out in the job, and of dismissal in accordance with fluctuations of the business situation or when personal efficiency declined.

Hence the employment of slave labor has only been possible in general under the following conditions: (a) Where it has been possible to maintain slaves very cheaply; (b) where there has been an opportunity for regular recruitment through a well-supplied slave market; (c) in agricultural production on a large scale of the plantation type, or in very simple industrial processes. The most important examples of this type of relatively successful use of slaves are the Carthaginian and Roman plantations, those of colonial areas and of the Southern United States, and the Russian "factories." The drying up of the slave market, which resulted from the pacification of the Empire, led to the decay of the plantations of Antiquity.[58] In North America, the same situation led to a continual search for cheap new land, since it was impossible to meet the costs of slaves and pay a land rent at the same time. In Russia, the serf "factories" were barely able to meet the competition of the *kustar* type of household industry and were totally unable to compete with free factory labor. Even before the emancipation of the serfs, petitions for permission to dismiss workers were common, and the factories decayed with the introduction of shops using free labor.

When workers are employed for wages, the following advantages to industrial profitability and efficiency are conspicuous: (a) Capital risk and the necessary capital investment are smaller; (b) the costs of reproduction and of bringing up children fall entirely on the worker. His wife and children must seek employment on their own account; (c) largely for this reason, the risk of dismissal is an important incentive to the maximization of production; (d) it is possible to select the labor force according to ability and willingness to work.

(2) The following comment may be made on the separation of enterprise and household. The separation in England of the producing farm *enterprise*, leasing the land and operating with capital accounting, from the entailed *ownership* of the land is by no means fortuitous, but

is the outcome of an undisturbed development over centuries which was characterized by the absence of an effective protection of the status of peasants. This in turn was a consequence of the country's insular position. Every joining of the *ownership* of land with the *cultivation* of the land turns the land into a capital good for the economic unit, thus increasing the capital requirements and the capital risks of this unit. It impedes the separation of the household from the economic establishment; the settlements paid out at inheritance, for instance, burden the resources of the enterprise. It reduces the liquidity of the entrepreneur's capital and introduces a number of irrational factors into his capital accounting. Hence the separation of landownership from the organization of agricultural production is, from a formal point of view, a step which promotes the rationality of capital accounting. It goes without saying, however, that any substantive evaluation of this phenomenon is quite another matter, and its conclusions may be quite different depending on the values underlying the judgment.

31. *The Principal Modes of Capitalistic Orientation of Profit-Making*

The "capitalistic" orientation of profit-making activity (in the case of rationality, this means: the orientation to capital accounting) can take a number of qualitatively different forms, each of which represents a definite type:

1. It may be orientation to the profit possibilities in continuous buying and selling on the market ("trade") with free exchange—that is, absence of formal and at least relative absence of substantive compulsion to effect any given exchange; or it may be orientation to the profit possibilities in continuous production of goods in enterprises with capital accounting.

2. It may be orientation to the profit possibilities in trade and speculation in different currencies, in the taking over of payment functions of all sorts and in the creation of means of payment; the same with respect to the professional extension of credit, either for consumption or for profit-making purposes.

3. It may be orientation to opportunities for predatory profit from political organizations or persons connected with politics. This includes the financing of wars or revolutions and the financing of party leaders by loans and supplies.

4. It may be orientation to the profit opportunities in continuous business activity which arise by virtue of domination by force or of a position of power guaranteed by the political authority. There are two

main sub-types: colonial profits, either through the operation of plantations with compulsory deliveries or compulsory labor or through monopolistic and compulsory trade, and fiscal profits, through the farming of taxes and of offices, whether at home or in colonies.

5. It may be orientation to profit opportunities in unusual transactions with political bodies.

6. It may be orientation to profit opportunities of the following types: (a) in purely speculative transactions in standardized commodities or in the securities of enterprises; (b) in the execution of the continuous financial operations of political bodies; (c) in the promotional financing of new enterprises in the form of sale of securities to investors; (d) in the speculative financing of capitalistic enterprises and of various other types of economic organization with the purpose of a profitable regulation of market situations or of attaining power.

Types (1) and (6) are to a large extent peculiar to the modern Western World. The other types have been common all over the world for thousands of years wherever the possibilities of exchange and money economy (for type 2) and money financing (for types 3–5) have been present. In the Western World they have not had such a dominant importance as modes of profit-making as they had in Antiquity, except in restricted areas and for relatively brief periods, particularly in times of war. Where large areas have been pacified for a long period, as in the Chinese and later Roman Empire, these types have tended to decline, leaving only trade, money changing, and lending as forms of capitalistic acquisition. For the capitalistic financing of political activities was everywhere the product of the competition of states with one another for power, and of the corresponding competition for capital which moved freely between them. All this ended only with the establishment of the unified empires.

The point of view here stated has, if the author's memory is accurate, been previously put forward in the clearest form by J. Plenge in his *Von der Diskontpolitik zur Herrschaft über den Geldmarkt* (Berlin 1913). Before that a similar position seems to have been taken only in the author's article, "*Agrarverhältnisse im Altertum*," 1909 [reprinted in *GAzSW*, 1924; cf. 275ff.]

It is only in the modern Western World that rational capitalistic enterprises with fixed capital, free labor, the rational specialization and combination of functions, and the allocation of productive functions on the basis of capitalistic enterprises, bound together in a market economy, are to be found. In other words, we find the capitalistic type of organization of labor, which in formal terms is purely voluntary, as the typical and dominant mode of providing for the wants of the masses of the population,

with expropriation of the workers from the means of production and appropriation of the enterprises by security owners. It is also only here that we find public credit in the form of issues of government securities, the "going public" of business enterprises, the floating of security issues and financing carried on as the specialized function of rational business enterprises, trade in commodities and securities on organized exchanges, money and capital markets, monopolistic organizations as a form of rational business organization of the entrepreneurial *production* of goods, and not only of the trade in them.

This difference calls for an explanation and the explanation cannot be given on economic grounds alone. Types (3) to (5) inclusive will be treated here together as "politically oriented capitalism." The whole of the later discussion will be devoted particularly to the problem of explaining the difference. In general terms, it is possible only to make the following statements:

1. It is clear from the very beginning that the politically oriented events and processes which open up these profit opportunities exploited by political capitalism are irrational from an economic point of view—that is, from the point of view of orientation to market advantages and thus to the consumption needs of budgetary units.

2. It is further clear that purely speculative profit opportunities and pure consumption credit are irrational from the point of view both of want satisfaction and of the production of goods, because they are determined by the fortuitous distribution of ownership and of market advantages. The same may also be true of opportunities for promotion and financing, under certain circumstances; but this is not necessarily always the case.

Apart from the rational capitalistic enterprise, the modern economic order is unique in its monetary system and in the commercialization of ownership shares in enterprises through the various forms of securities. Both these peculiarities must be discussed—first the monetary system.

32. *The Monetary System of the Modern State and the Different Kinds of Money: Currency Money*

1. (a) The modern state has universally assumed the monopoly of regulating the monetary system by statute; and (b) almost without exception, the monopoly of creating money, at least for coined money.

Originally, purely fiscal considerations were decisive in the creation of this monopoly—seigniorage (minting fees) and other profits from

coinage. This was the motive for the prohibition of the use of foreign money. But the monopolization of issue of money has not been universal even up into the modern age. Thus, up until the currency reform [of 1871–1873] foreign coins were current in Bremen.

(c) With the increasing importance of its taxation and its own economic enterprises, the state has become both the largest receiver and the largest maker of payments in the society, either through its own pay offices or through those maintained on its behalf. Quite apart from the monopoly of monetary regulation and issue, because of the tremendous importance of the financial transactions of the state the behavior of the state treasurers in their monetary transactions is of crucial significance for the monetary system—above all, what kind of money they *actually* have at hand and hence can pay out, and what kind of money they force on the public as legal tender, and further, what kind of money they *actually* accept and what kind they partially or fully repudiate.

Thus, paper money is partially repudiated if customs duties have to be paid in gold, and was fully repudiated (at least ultimately) in the case of the *assignats* of the French Revolution, the money of the Confederate States of America, and that issued by the Chinese Government during the Tai Ping Rebellion.

In terms of its legal properties, money can be defined as a "legal means of payment" which everyone, including also and especially the public pay offices, is obligated to accept and to pay, either up to a given amount or without limit. In terms of the behavior of the state (*regiminal*) it may be defined as that money which public pay offices accept in payment and for which they in turn enforce acceptance in their payments; legal compulsory money is that money, in particular, which they impose in their payments. The "imposition" may occur by virtue of existing legal authority for reasons of monetary policy, as in the case of the [German silver] Taler and the [French silver] five-franc piece after the discontinuance—as we know, never really put into effect—of the coining of silver [1871 and 1876]; or it may occur because the state is incapable of paying in any other means of payment. In the latter case, an existing legal authority to enforce acceptance may now be employed for the first time, or an *ad hoc* legal authority may be created, as is almost always true in cases of resort to paper money. In this last case, what usually happens is that a means of exchange, which was previously by law or *de facto* redeemable in definitive money, whether its acceptance could be legally imposed or not, will now be *de facto* imposed and by the same token become *de facto* unredeemable.

By passing a suitable law, a state can turn any object into a "legal

means of payment" and any chartal object into "money" in the sense of a means of payment. It can establish for them any desired set of "value scales" or, in the case of "market money," "currency relations" [see above, ch. II, sec. 6]. There are, however, certain formal disturbances of the monetary system in these cases which the state can either not suppress at all or only with great difficulties:

(a) In the case of administrative money, the forgery of notes, which is almost always very profitable; and (b) with all forms of metallic money, the non-monetary use of the metal as a raw material, where its products have a high value. This is particularly true when the metal in question is in an undervalued currency relation to others. It is also, in the case of market money, exceedingly difficult to prevent the export of the coins to other countries where that currency metal has a higher value. Finally, it is difficult to compel the offer of a legal monetary metal for coinage where it is undervalued with respect to the currency money (coins or paper).

With paper money the rate of exchange of one currency unit of the metal with its nominal equivalent of paper always becomes too unfavorable for the metal when redeemability of the notes is suspended, and this is what happens when it is no longer possible to make payments in metal money.

The exchange ratios between several kinds of market money may be determined (a) by fixing the relation for each particular case; (b) by establishing rates periodically; and (c) by legal establishment of permanent rates, as in bimetallism.

> In cases (a) and (b) it is usual that only one metal is the effective currency (in the Middle Ages it was silver), while the others are used as trading coins with varying rates. The complete separation of the specific modes of use of different types of market money is rare in modern monetary systems, but has at times been common, as in China and in the Middle Ages.

2. The definition of money as a legal means of payment and as the creature of the "lytric" administration of political bodies is, from a sociological point of view, not exhaustive. This definition, to put it in G. F. Knapp's words, starts from "the fact of the existence of debts,"[54] especially of tax debts to the state and of interest debts of the state. What is relevant for the legal discharge of such debts is the continuity of the *nominal* unit of money, even though the monetary material may have changed, or, if the nominal unit should change, the "historical definition" of the new nominal unit. Beyond that, the individual today values the nominal unit of money as a certain proportional part of his nominal money income, and not as a chartal piece of metal or note.

The state can through its legislation—or its administrative staff through the actual behavior of its pay offices—indeed dictate the *formal* validity of the "currency" of the monetary area which it rules.

Provided, that is, that it employs modern methods of administration. It was not, however, possible at all times, for instance, in China. There in earlier times it has generally not been possible because payments by and to the government were too small in relation to the total field of transactions. Even recently it appears that the Chinese Government has not been able to make silver into a "limited money" currency with a gold reserve because it was not sufficiently powerful to suppress the counterfeiting which would undoubtedly have ensued.

However, it is not merely a matter of dealing with existing debts, but also with exchange in the present and the contraction of new debts to be paid in the future. But in this connection the orientation of the parties is primarily to the status of money as a means of exchange [see above, ch. II, sec. 6], and thus to the probability that it will be at some future time acceptable in exchange for specified or unspecified goods in price relationships which are capable of approximate estimate.

1. Under certain circumstance, it is true, the probability that urgent debts can be paid off to the state or private individuals from the proceeds may also be importantly involved. This case, may, however, be left out of account here because it only arises in emergency situations.

2. In spite of the fact that it is otherwise absolutely correct and brilliantly executed, hence of permanently fundamental importance, it is at this point that the incompleteness of G. F. Knapp's *Staatliche Theorie des Geldes* becomes evident.

Furthermore, the state on its part needs the money which it receives through taxation or from other sources also as a means of exchange, though not only for that purpose, but often in fact to a very large extent for the payment of interest on its debt. But its creditors, in the latter case, will then wish to employ it as a means of exchange; indeed this is the main reason why they desire money. And it is almost always true that the state itself needs money to a large degree, sometimes even entirely, as a means of exchange to cover future purchases of goods and supplies in the market. Hence, however necessary it is to distinguish it analytically, it is not, after all, the fact that money is a means of payment which is decisive.

The exchange possibility of money against other specific goods, which rests on its valuation in relation to marketable goods, will be called its "substantive" validity, as opposed to its formal, legal validity as a means of payment and the frequently existing legal compulsion for its formal use as a means of exchange.

In principle, as an observable fact, a monetary unit has a substantive valuation only in relation to definite types of goods and only for each separate individual as his own valuation on the basis of the marginal utility of money for him, which will vary with his income. This marginal utility is changed for the individual with any increase in the quantity of money at his disposal. Thus the marginal utility of money to the issuing authority falls, not only, but above all, when it creates administrative money and uses it for obtaining goods by exchange or forces it on the public as a means of payment. There is a secondary change in the same direction for those persons who deal with the state and who, because of the higher prices resulting from the lowered marginal utility of money to public bodies, become the possessors of larger money stocks. The "purchasing power" now at their disposal—that is, the lowering of the marginal utility of money for these possessors—can in turn result in an increase in prices paid to those from whom *they* purchase, etc. If, on the other hand, the state were to withdraw from circulation part of the notes it receives—that is, if it should not pay them out again, but destroy them—the result would be that the marginal utility of money of its lessened money stocks would rise, and it would have to curtail its expenditures correspondingly, that is, it would reduce its demand prices appropriately. The results would be the exact opposite of those just outlined. It is hence possible for administrative money, though by no means only this, to have an important effect on the price structure in any given monetary area. (The speed at which this will occur and the different ways in which it affects different goods cannot be discussed here).

3. A cheapening and increase in the supply, or vice versa, a rise in cost and curtailment of the supply in the production of monetary metals could have a similar effect in *all* countries using it for monetary purposes. Monetary and non-monetary uses of metals are closely interdependent, but the only case in which the non-monetary use of the metal has been decisive for its valuation as money has been that of copper in China. Gold will enjoy an equivalent valuation in the nominal unit of gold money less costs of coining as long as it is used as a means of payment between monetary areas and is also the market money in the monetary areas of the leading commercial powers. In the past this was true also of silver and would be today if silver were still in the same position as gold. A metal which is not used as a means of payment between monetary areas, but constitutes market money in some of them, will naturally have a definite value in terms of the nominal monetary unit of those areas. But these in turn will, according to the costs of adding to the supply and according to the quantities in circulation, and, finally, according

to the so-called "balance of payments," have a fluctuating exchange relationship to other currencies. Finally, a precious metal which is universally used for restricted coinage into administrative money, but not as market money, is primarily valued on the basis of its non-monetary use. The question is always whether the metal in question can be profitably produced and at what rate. When it is completely demonetized, this valuation depends entirely on its money cost of production reckoned in international means of payment in relation to the non-monetary demand for it. If, on the other hand, it is used universally as market money and as an international means of payment, its valuation will depend on costs in relation primarily to the monetary demand for it. When, finally, it has a limited use as market or administrative money, its valuation will be determined in the long run by whichever of the two demands for it, as expressed in terms of international means of payment, is able to afford better to pay the costs of production. If its use as market money is limited to a particular monetary area, it is unlikely in the long run that its monetary use will be decisive for the valuation, for the exchange rate of such special-standard areas to other monetary areas will tend to fall, and it is only when international trade is completely cut off—as in China and Japan in the past, and in the areas still actually cut off from each other after the war today—that this will not affect domestic prices. The same is true for the case of a metal used as regulated [i.e., limited coinage] administrative money; the strictly limited possibility of the use of the metal as money could be decisive for its valuation only if it would be minted in great quantities. The long-run outcome would in this case, however, be similar to that of a metal used as market money only in a restricted area.

Though it was temporarily realized in practice in China, the monopolization of the total production and use of a monetary metal is essentially a theoretical, limiting case. If several competing monetary areas are involved and wage labor is used, it does not alter the situation as much as possibly might be expected. For if all payments by government agencies were made in terms of this metal, every attempt to limit its coinage or to tax it very heavily, which might well yield large profit, would have the same result as it did in the case of the very high Chinese seigniorage. First, in relation to the metal the money would become very highly valued, and if wage labor were used, mining operations would to a large extent become unprofitable. As the amount in circulation declined, there would result a "contra-inflation"; and it is possible, as actually happened in China where this led at times to complete freedom of coinage, that this would go so far as to induce the use of money substitutes and a large extension of the area of natural economy. This also happened in China. If a market economy were to be main-

tained, it would be hardly possible for monetary policy in the long run to act otherwise than as if free coinage were legally in force. The only difference is that minting would no longer be left to the initiative of interested parties. With complete socialism, on the other hand, the problem of money would cease to be significant and the precious metals would hardly be produced at all.

4. The fact that the precious metals have normally become the monetary standard and the material from which money is made is historically an outcome of their function as ornaments and hence, specifically, as gifts. But apart from purely technical factors, this use was also determined by the fact that they were goods which were typically dealt with by weight. Their maintenance in this function is not at first sight obvious since today, for all except the smallest payments, everyone normally uses notes, especially bank-notes, and expects to receive them in payment. There are, however, important motives underlying retention of metal standards.

5. In all modern states, not only is the issue of money in the form of notes legally regulated, but it is monopolized by the state. It is either carried out directly by the state itself, or by one or a few issuing agencies enjoying special privileges but subject to the control of the state—the banks of issue.

6. The term "public currency money" (*regiminales Kurantgeld*)[55] will be applied only to money which is actually paid out by public agencies and acceptance of which is enforced. On the other hand, any other money which, though not paid out under compulsory acceptance, is used in transactions between private individuals by virtue of formal legal provisions, will be called "accessory standard money." Money which must legally be accepted in private transactions only up to a given maximum amount, will be called "change" (*Scheidegeld*). (This terminology is based on that of Knapp. This is even more definitely true in what follows.)

"Definitive" currency money means public currency money; whereas any type of money is to be called "provisional" currency money so far as it is in fact effectively exchangeable for or redeemable in terms of definitive currency.

7. In the long run, public currency money must naturally coincide with the effective currency. It cannot be a possibly separate, merely "official" legal tender currency. Effective currency, however, is necessarily one of three things: (a) free market money; (b) unregulated; or (c) regulated administrative money. The public treasury does not make its payments simply by deciding to apply the rules of a monetary system which somehow seems to it ideal, but its acts are determined by its own financial interests and those of important economic groups.

With regard to its chartal form, an effective standard money may be metallic money or note money.[56] Only metallic money can be a free market money, but this is not necessarily the case for all metallic money.

It is free market money when the lytric administration will coin any quantity of the standard metal or will exchange it for chartal coins—"hylodromy."[57] According, then, to the precious metal which is chosen as the standard, there will be an effective gold, silver, or copper standard. Whether the lytric administration is in fact in a position to maintain an actual hylodromic system does not depend simply on its own desires, but on whether individuals are interested in presenting metal for coinage.

It is thus possible for hylodromy to exist "officially" without existing "effectively." Whatever the official position may be, it is not effective (a) when, given hylodromy with several metals, one or more of these is at the official rate *under*valued with respect to the market price of the raw material. In that case, naturally, only the *over*valued metal will be offered to the mint for coinage and to creditors in payments. If the public pay offices do not participate in this trend, the *over*valued coins will pile up in their hands until they, too, have nothing else to offer in their payments. If the price relation is rigidly enough maintained, the *under*valued coins will then be melted down, or they will be exchanged by weight, as commodities, against the coins of the *over*valued metal.

(b) Hylodromy is also not effective if persons making payments, including especially public agencies under stress of necessity, continually and on a large scale make use of their formal right or usurped power to compel acceptance of another means of payment, whether metal or notes, which is not presently provisional [i.e. redeemable] money, but either has been accessory money or, if previously provisional, has ceased to be redeemable because of the insolvency of the issuing agency.

In case (a) hylodromy always ceases, and the same thing happens in case (b) when accessory forms of money or forms which are no longer effectively provisional are forced on the public persistently on a large scale.

The outcome in case (a) is to confine the maintenance of the fixed rate to the overvalued metal, which then becomes the only free market money; the result is thus a new metallic standard. In case (b) the accessory metal or notes which are no longer effectively provisional become the standard money. In the first case we get a "restricted money" standard; in the second, a paper standard.

It is also possible for hylodromy to be effective without being official in the sense of being legally established.

An example is the competition of the various coining authorities in the Middle Ages, determined by their fiscal interest in seigniorage, to

mint as much as possible of the monetary metals. There was no formal establishment of hylodromy at that time, but the actual situation was much as if there had been.

In view of what has just been said, a "monometallic legal standard," which may be gold, silver, or copper, will be said to exist when one metal is by law hylodromic. A "multimetallic legal standard," on the other hand, exists when more than one metal is used (it may be two or three) and they are freely coined in a fixed ratio to each other. A "parallel legal standard" exists when several metals are freely coinable *without* a fixed ratio. A standard metal and a metallic standard will only be spoken of for that metal which is effectively hylodromic, and thus, in practice, constitutes actual market money.

Legally, all countries of the Latin Union were under bimetallism until the suspension of the free coinage of silver, which followed the German currency reform [1871]. But effectively, as a rule, only the metal which was for the time being overvalued was actually a standard metal. The legal stabilization of the exchange ratio, however, worked so well that the change was often scarcely noted and there seemed to be effective bimetallism. But insofar as the ratio shifted, the coins of the undervalued money became accessory money. (This account of the matter coincides closely with that of Knapp). At least where there is competition between several autocephalous and autonomous minting agencies, bimetallism is an effective monetary state only as a transitory phenomenon and is usually only a legal, as opposed to an effective, state of affairs.

The fact that the undervalued metal is not brought to the mint is naturally the result not of administrative action, but of the changed market situation in relation to the persistence of the legal coinage ratio of the metals. It would, of course, be possible for the mint to continue to coin that metal at a loss as administrative money, but since the non-monetary uses of the money are more profitable, it could not be kept in circulation.

33. *Restricted Money*

Any type of metallic money which is not hylodromic will be called "restricted money" (*Sperrgeld*) if it is currency money. Restricted money may circulate as accessory money; that is, having a fixed relationship to some other currency money in the same monetary area. This latter may be another form of restricted money, paper money, or a market money.

Or restricted money may be oriented to an international standard. This is the case when it is the sole currency money in its own area, and

provision is made for having international means of payment available for making payments abroad, either in coin or in bullion. This is a "convertible restricted money" standard with a reserve fund of foreign exchange.

(a) Restricted money will be called "particular" when it is the only currency money, but is not oriented to an international standard.

> Restricted money may then be valued internationally *ad hoc* each time international means of payment or foreign exchange is bought; or, when this is possible, it may be given a fixed relation to the international standard. Talers and silver five-franc pieces were restricted money with a fixed relation to the currency money of the same country; both were accessory money. The Dutch silver gulden has been oriented to the international gold standard after having been "particular" for a short time after the restriction of coinage, and now the rupee is in the same position. This is also true of the Chinese dollar which, since the coinage regulation of 24 May 1910, is "particular" as long as hylodromy, which is not mentioned in the statute, does also *de facto* not exist. The orientation to the international gold standard, as recommended by the American Commission, was rejected.

In the case of a "restricted" money, free coinage at fixed rates (hylodromy) would be very profitable to the private owners of the precious metals. Nevertheless, and precisely for this reason, restriction is maintained because it is feared that the introduction of hylodromy of the metal of the formerly restricted money would lead to abandonment as unprofitable of the hylodromy of the other metal which was fixed in too low a ratio to it. The monetary stock of this metal, which would now become "obstructed" (see next paragraph), would be put to more profitable non-monetary uses. The reason why a rational lytric administration wishes to avoid this is that the other metal, which would be forced out, is an international means of payment.

(b) Restricted currency money will be called "obstructed" market money when, contrary to the case just cited, free coinage exists legally, but is unprofitable to private business and hence does not take place. This lack of profitability may rest on an unfavorable relation between the market price of the metal and its monetary ratio to the market money, if a metal, or to paper money. Such money must at some time in the past have been market money; but, with multimetallism, changes in the relative market prices of the metals or, with multi- or monometallism, financial catastrophes, must have made the payment of metallic money by the government impossible and must have forced it to adopt paper money and to make it irredeemable. In consequence the private business preconditions of effective hylodromy have ceased to exist. This money will

then no longer be used in transactions—at least, insofar as action is rational.

(c) Apart from restricted currency money, which alone has been called "restricted money" here, there may be restricted "change" money —that is, money which must be accepted as means of payment only up to a given amount. Usually, though not necessarily, it is then intentionally coined at a rate which overvalues it in relation to standard coin to protect it from being melted down. Usually, then, it has the status of provisional money in that it is redeemable at certain places. (This case is a phenomenon of everyday experience and has no special importance for present purposes.)

All "change" money and many types of restricted metallic money occupy a place in monetary systems similar to that of note (today: paper) money. They differ from it only in that the monetary metal has a non-monetary use which is of some importance. Restricted metallic money is very nearly a means of circulation when it is provisional money; that is, when there is adequate provision for redemption in market money.

34. *Note Money*

Note money naturally is always administrative money. For the purposes of a sociological theory of money, it is always the specific chartal form of the document including the specific formal meaning printed on it which constitutes "money," and not the claim to something else which it may, though it need not, represent. Indeed, in the case of unredeemable paper money, such a claim is altogether absent.

From a formal legal point of view, note money may consist in (at least officially) redeemable certificates of indebtedness, acknowledged by a private individual, as in the case of the English goldsmiths in the seventeenth century, by a privileged bank, as in the case of bank-notes, or by a political body, as in the case of government notes. If it is effectively redeemable and thus functions only as a circulating medium or provisional money, it may be fully covered—thus constituting a certificate—or it may be covered only sufficiently to meet normal demands for redemption, which makes it a circulating medium. Coverage may be in terms of specified weights of bullion (as in the case of a *banco*-currency) or of metal coin.

It is almost always the case that note money has first been issued as a redeemable form of provisional money. In modern times, it has been

typically a medium of circulation, almost always in the form of bank-notes. They have therefore been denominated in terms of units of an existing metallic standard.

1. The first part of the last paragraph, naturally, is not true of cases where one form of note money has been replaced by another; for example, where government notes have been replaced by bank-notes, or vice versa. But this is not a case of a primary issue of money.

2. It is of course true that means of exchange and of payment may exist which do not take a chartal form, i.e., are not coins or notes or other material objects. There is no doubt of this. It is not, however, expedient to speak of these as "money," but to use the term "unit of account" or some other term which, according to the particular case, is appropriate. It is characteristic of money that it is associated with particular quantities of chartal artifacts. This is a property which is very far from being merely external or of secondary importance.

If what has previously been provisional money has its redeemability suspended, it is important to distinguish whether the interested parties regard this as a temporary measure or as definitive for as long as they can predict. In the first case it would be usual, since metallic money or bullion is sought after for all international payments, for the note money to fall to a discount in relation to its nominal metal equivalent. This is not, however, by any means inevitable; and the discount is often moderate. The discount may, however, become large if the need for foreign exchange is very acute. In the second case, after a time a definitive "paper money standard" will develop. Then it is no longer appropriate to speak of a "discount" on the monetary unit, but rather, at least in the usage of the past, of "debasement."

It is not beyond the range of possibilities that the market price of the metal of the former market money, which is now obstructed, and in terms of which the issue is denominated, may for some reason fall radically relative to international means of payment, while the fall in the value of the paper currency is less marked. This must have the result (as it actually did in Austria and Russia) that what was earlier the nominal unit in terms of weight of the metal (of silver in those two cases) could now be purchased with a smaller nominal amount in the notes, which had now become independent of it. That is readily understandable. Thus, even though in the initial stages of a pure paper standard the unit of paper money is probably without exception valued in international exchange at a lower figure than the same nominal amount of metal, because this step always results from inability to pay, the subsequent development depends, as in the cases of Austria and Russia, on the development of the balance of payments which determines the foreign demand for domestic means of payment, on the amount of paper money issued, and on the degree of success with which the issuing authority is

able to obtain an adequate supply of international means of payment. These three factors can (and in fact at times did) shape up in such a way that the exchange rate against the international means of payment —in this case: gold—of the paper money is increasingly stabilized or even rises, while at the same time the earlier standard metal falls in price relative to the international standard. In the case of silver, this happened (vis-à-vis gold) because of the increased and cheapened production of the metal and because of its progressive demonetization. A true independent paper standard exists in the case where there is no longer any prospect of effective resumption of redemption in terms of metal at the former rate.

35. *The Formal and Substantive Validity of Money*

It is true that by law and administrative action a state can today insure the *formal* validity of a type of money as the standard in its own area of power, provided it remains itself in a position to make payments in this money.

It will not remain in a position to do this if it has allowed what was previously an accessory or provisional type of money to become free market money (in the case of a metallic money) or autonomous paper money (in the case of note money). This is because these types of money will then accumulate in the hands of the government until it commands no other kind and is hence forced to impose them in its own payments. (Knapp has rightly maintained that this is the normal process in the case of "obstructional" changes in the standard.)

But naturally this formal power implies nothing as to the *substantive* validity of money; that is, the rate at which it will be accepted in exchange for commodities. Nor does it yield any knowledge of whether and to what extent the monetary authorities can influence its substantive validity. Experience shows that it is possible for the political authority to attain, by such measures as the rationing of consumption, the control of production, and the enforcement of maximum or minimum prices, a high degree of control of this substantive validity, at least with respect to goods or services which are present or produced within its own territory. It is equally demonstrable from experience, however, that there are exceedingly important limits to the effectiveness of this kind of control, which will be discussed elsewhere. But in any case, such measures obviously do not belong in the category of monetary administration. The rational type of modern monetary policy has, on the contrary, had quite a different aim. The tendency has been to attempt to influence the substantive valuation of domestic currency in terms of foreign currency,

that is, the market price of the home currency expressed in units of foreign currencies, usually to maintain stability or in some cases to attain the highest possible ratio. Among the interests determining such policy are those of prestige and political power. But on the economic side, the decisive ones are financial interest, with particular reference to future foreign loans, and other very powerful business interests, notably of importers and of industries which have to use raw materials from abroad. Finally, the interests as consumers of those elements in the population which purchase imported goods are involved. Today there can be no doubt that "lytric" policy is in fact primarily concerned with regulation of the foreign exchanges.

Both this and what follows are closely in agreement with Knapp. Both in its form and content, his book is one of the greatest masterpieces of Gennan literary style and scientific acumen. It is unfortunate that most of the specialist critics have concentrated on the problems which he deliberately ignored—a small number indeed (although in some cases not altogether unimportant).

While England probably still came into the gold standard somewhat reluctantly, because silver, which was desired as the official standard, was undervalued by the official ratio, all the other states in the modern world with a modern form of organization have chosen their monetary standard with a view to the most stable possible exchange relation with the English gold standard. They chose either a pure gold standard, a gold standard with restricted accessory silver money, or a restricted silver or regulated note standard with a lytric policy concerned primarily with the maintenance of gold reserves for international payments. The adoption of pure paper standards has always been a result of political catastrophe, wherever this has been the only way to meet the problem of inability to pay in what was previously the standard money. This is happening on a large scale today.[58]

It seems to be true that for the purpose of stabilizing foreign exchange in relation to gold, the free coinage of fixed rates of gold in one's own monetary system is not the only possible means. The parity of exchange between different types of hylodromic chartal gold coinage can in fact become seriously disturbed, although it is true that the possibility of obtaining international means of payment in case of need by means of exporting and recoining gold is always greatly improved by internal hylodromy and can be temporarily negated only through natural obstacles to trade or embargoes on the export of gold as long as this hylodromy exists. But on the other hand it is also true, as experience shows, that under normal peace-time conditions it is quite possible for

an area with a well-ordered legal system, favorable conditions of production and a lytric policy which is deliberately oriented to procuring adequate foreign exchange for international payments, to maintain a relatively stable exchange rate. Yet, if other things are equal, this involves markedly higher burdens to state finances and to persons in need of gold. Exactly the same would be true, of course, if silver were the principal means of payment in international transactions and were recognized as such in the principal trading nations of the world.

36. *Methods and Aims of Monetary Policy*

Among the more elementary of the typical methods (specific measures will not in general be dealt with here) of lytric policy in relation to foreign exchange are the following:

(a) In countries with gold hylodromy: (1) The backing of the circulating medium, so far as it is not covered by gold, with commercial paper; that is, claims to payments for goods which have been sold, which are guaranteed by safe persons or, in other words, proved entrepreneurs. The transactions of the note issuing banks on their own account are as far as possible limited to dealing with such bills, to making loans on the security of stocks of goods, to the receipt of deposits, the clearing of check payments, and, finally, acting as financial agent for the state; (2) the "discount policy" of the banks of issue. This consists in raising the rate of interest charged on bills discounted when there is a probability that payments abroad will create a demand for gold sufficient to threaten the internal stock of gold, especially that in the hands of the issuing bank. The purpose is to encourage owners of foreign balances to take advantage of the higher rate of interest and to discourage domestic borrowing.

(b) In areas with a restricted metal standard other than gold or with a paper standard, the following are the principal measures: (1) Discount policy similar to that described under (a:2) in order to check undue expansion of credit; (2) a gold-premium policy. This is a measure which is also common in gold-standard areas with an accessory restricted silver currency; (3) a deliberate policy of gold purchases and deliberate control of the foreign exchange rate by purchase and sale of foreign bills.

This policy is in the first instance oriented purely to lytric considerations, but under certain circumstances it may come to involve substantive regulation of economic activity. The note-issuing banks occupy a position of great power in the system of commercial banks, since the latter are often dependent on the credit extended by the bank of issue.

The bank of issue may influence the other banks to regulate the money market, that is, the conditions on which short-term credit is given, in a uniform way, and from there proceed to a deliberate regulation of business credit, thereby influencing the direction of the production of goods. This is, within the framework of a capitalistic economic order, the closest approach to a planned economy. It is formally merely a matter of voluntary adjustments, but actually involves substantive regulation of economic activity within the territory controlled by the political authority in question.

These measures were all typical before the war. They were used in the interest of a monetary policy which was primarily oriented to the stabilization of a currency or, in case changes were desired, as in countries with restricted or paper money, at most to attempts to bring about a gradual rise in the foreign exchange value of the currency. It was, thus, in the last analysis, oriented to the hylodromic monetary systems of the most important trading nations.

But strong interests exist which desire just the reverse policy. They favor a lytric policy of the following type: (1) Measures which would lead to a fall in the foreign exchange price of their own money in order to improve the position of exporting interests; (2) by increasing the issue of money through free coinage of silver in addition to gold (which would have meant *instead of* it), and even in some cases deliberate issue of paper money, to decrease the value of money in relation to domestic goods and thereby, what is the same thing, to raise the money prices of domestic goods. The object has been to improve prospects for profit in the production of such goods, an increase in the price of which as reckoned in terms of domestic currency was thought to be the first consequence of the increase of the amount of domestic money in circulation and of the attendant fall in its foreign exchange value. The intended process is termed "inflation."

The following points may be noted: (1) though its quantitative importance is still controversial, it is very probable that with any type of hylodromy a very great cheapening in the production of the precious metal or other source of increase in its supply, as through very cheap forced seizures, will lead to a noticeable tendency toward a rise in the prices at least of many products in areas where that metal is the monetary standard, and in differing degrees of all products. (2) It is at the same time an undoubted fact that, in areas with an independent paper standard, situations of severe financial pressure, especially war, lead the monetary authorities to orient their policy overwhelmingly to the financial requirements of the war. It is equally clear that countries with hylodromy or with restricted metallic money have, in similar circum-

stances, not only suspended redemption of their notes in circulation, but have gone further to establish a definitive and pure paper standard. But in the latter case, the metal money, now become accessory money, could, because its premium in relation to notes is ignored, only be used for non-monetary purposes. It thus disappeared from circulation. Finally, it is a fact that in cases of such shifts to a pure paper standard, occurring along with unlimited issue of paper money, inflation has in fact ensued with all its consequences on a colossal scale.

When all these processes are compared, it will be seen that so long as freely coined market money exists, the possibility of inflation will be narrowly limited. This will be true in the first place for mechanical reasons: though it is somewhat elastic, the quantity of the precious metal in question available for monetary use is ultimately firmly limited. Secondly, there are economic reasons in that here the creation of money takes place on the initiative of private interests, so that the demand for coinage is oriented to the needs of the market system for means of payment. Inflation, then, is only possible if restricted metal money (such as today silver in gold-standard countries) is thrown open to free coinage. However, if the restricted metal can be produced very cheaply and in large quantities, the effect may be very great.

Inflation through an increase in the quantity of "means of circulation" is conceivable only as the result of a very gradual increase in the circulation through a lengthening of credit terms. The limits are elastic, but in the last resort this process is strictly limited by the necessity for maintaining the solvency of the note-issuing bank. There is acute danger of inflation only if there is danger that the bank will become insolvent. Normally this is likely to occur only where there is a paper standard resulting from war needs. (Cases like the gold inflation of Sweden during the war, resulting from the export of war materials, are the result of such special circumstances that they need not be considered here.)

Where an independent paper standard has once been established, there may not be any greater danger of inflation itself (since in time of war almost all countries soon go over to a paper standard), but in general there is a noticeably greater possibility of the development of the consequences of inflation. The pressure of financial difficulties and of the increased wage and salary demands and other costs which are caused by the higher prices will noticeably strengthen the tendency of financial administrations to continue the inflation even if there is no absolute necessity to do so and in spite of the possibility to suppress it if strong sacrifices are incurred. The differences in this respect between paper currency and other currencies is, even if only quantitative, certainly noticeable, as the financial conduct [during and after the War] of the

Allies as a group, of Germany, and of both Austria and Russia finally, can show.

Lytric policy may thus, especially in the case of accessory restricted metal or of paper money, be an inflationary policy. In a country which, like the United States, has had relatively so little interest in the foreign exchange value of her money, this has been true for a time under quite normal conditions without being based on any motives derived from financial needs of the state. In a number of countries which fell into inflationary measures during the War, the pressure of necessity has been such as to lead to the continuance of an inflationary policy afterwards.

This is not the place to develop a theory of inflation. Inflation always means, in the first place, a particular way of increasing the purchasing power of certain interests. We will only note that any lytric policy oriented to the *substantive* rationality of a planned economy, which it would seem to be far easier to develop with administrative and especially paper money, is at the same time far more likely to come to serve interests which, from the point of view of exchange rate stabilization, are irrational. For *formal* rationality (of the market-economy type) of lytric policy, and hence of the monetary system, can, in conformity with the definition of "rationality" consistently held to here, only mean: the exclusion of all such interests which are either not market-oriented, like the financial interests of the state, or are not interested in the maintenance of stable exchange relations with other currencies as an optimum basis for rational calculation, but which, on the contrary, are primarily oriented to the creation of purchasing power for certain interest groups by means of inflation and to its maintenance even if there is no longer any need for the issue of new money from the point of view of public finances. Whether especially this latter process is to be praised or censured is, naturally, not a question capable of solution on empirical grounds. Of its empirical existence there can be no doubt.

It is furthermore true that proponents of a point of view which is oriented to *substantive* social ideals can find a very important opening for criticism in the very fact that the creation of money and currency is, in a pure market economy, made an object of the play of interests oriented only to profitability, and is not considered in terms of the "right" volume or the "right" type of money. They might with reason argue that it is only administrative money which can be "managed," but not market money. Thus the use of administrative money, especially paper money, which can be cheaply produced in any desired form and quantity is, from the point of view of a *substantive* rationality, whatever its goals, the only correct way to handle the monetary question. This argument is conclusive in formal logical terms. Its value, however, is

naturally limited in view of the fact that in the future as in the past it will be the "interests" of individuals rather than the "ideas" of an economic administration which will rule the world.[85] Thus, the possibility of conflict between *formal* rationality in the present sense and the *substantive* rationality which could theoretically be constructed for a lytric authority entirely free of any obligation to maintain hylodromy of a metal, has been demonstrated also for this point. That was the sole purpose of this discussion.

It is evident that this whole treatment of money consists only in a kind of discussion with Knapp's magnificent book, *Die Staatliche Theorie des Geldes*, a discussion which is, however, confined to points relevant to the present problems and carried out on a highly schematic basis, entirely neglecting the finer points. Quite at variance with its author's intentions, though perhaps not entirely without fault on his part, the work immediately was utilized in support of value judgments. It was naturally greeted with especial warmth by the Austrian lytric administration, with its partiality to paper money. Events have by no means disproved Knapp's theory in any point, though they have shown, what was known beforehand, that it is incomplete in its treatment of the *substantive* validity of money. It will now be necessary to justify this statement in more detail.

36a. Excursus: *A Critical Note on the "State Theory of Money"*

Knapp victoriously demonstrates that in every case the recent monetary policy both of states themselves and of agencies under the direction of the state have, in their efforts to adopt a gold standard or some other standard approximating this as closely as possible, been primarily concerned with the exchange value of their currency in terms of others, particularly the English. The object has been to maintain a certain exchange parity with the English gold standard, the money of the world's largest trading area which was universally used as a means of payment in international trade. To accomplish this, Germany first demonetized silver; then France, Switzerland, and the other countries of the Latin Union, Holland, and finally India ceased to treat silver as market money and made it into restricted money. Apart from this they undertook indirectly gold-hylodromic measures to provide for foreign payments in gold. Austria and Russia did the same, in that the lytric administration of these countries using unredeemable, independent paper money took indirectly gold-hylodromic measures so as to be in a position to make at

least foreign payments in gold at any time. They were thus concerned entirely with obtaining the greatest possible stability of their foreign exchange rates. Knapp concludes from this that stabilization of the foreign exchange rate is the only factor which makes the particular monetary material and hylodromy at all significant. He concludes that this end of foreign exchange rate stability is served just as well by the indirectly hylodromic measures of the paper currency administrations (as in Austria and Russia) as by directly hylodromic measures. His claim is not, to be sure, strictly and literally true under *ceteris paribus* conditions for areas of full hylodromy in the same metal. For, as long as two areas which maintain a hylodromic coinage in the same metal refrain from embargoes on the exportation of the monetary metal, whether they are both gold-standard or silver-standard countries, the fact of the existence of the same hylodromy on both sides undoubtedly facilitates the maintenance of exchange parity considerably. Yet, under normal conditions Knapp's conclusion is to a large extent correct. But this does not prove that in the choice of a monetary material—above all today in the choice between a metal, whether gold or silver, and note money—this would be the only set of considerations which could be important. (The special circumstances which are involved in bimetallism and restricted money have already been discussed and can reasonably be left aside here.)

Such a claim would imply that a paper standard and a metallic standard behave in all other respects in the same way. But even from a formal point of view the difference is significant. Paper money is necessarily a form of administrative money, which may be true of metallic money, but is not necessarily so. It is impossible for paper money to be "freely coined." The difference between depreciated paper money, such as the *assignats*, and the type of depreciation of silver which might at some future time result from its universal demonetization, making it exclusively an industrial raw material, is not negligible; it is true, however, that Knapp occasionally grants this. Paper has been and is today (1920) by no means a freely available good, just as the precious metals are not. But the difference, both in the objective possibility of increased production and in the costs of production in relation to probable demand, is enormous, since the production of metals is to a relative degree so definitely dependent on the existence of mineral deposits. This difference justifies the proposition that a lytric administration was, before the war, in a position to produce paper money, if it so desired, in unlimited quantities. This is a significant difference even from copper, as used in China, certainly from silver, and very decidedly from gold. The costs would be, relatively speaking, negligible. Furthermore, the nominal value of the notes could be determined arbitrarily and need bear no

particular relation to the amount of paper used. In the case of metallic money, this last has been true only of its use as "change" money; thus not in any comparable degree or sense. It was certainly not true of currency metal. In the latter case, the available quantity was indeed somewhat elastic, but nevertheless immensely more rigidly limited than the produceability of paper. This fact has imposed limits on the arbitrariness of monetary policy. It is of course true that, so far as the lytric administration has been oriented exclusively to the maintenance of the greatest possible stability of foreign exchange rates, it would be subject to very definite normative limitations on its creation of note money, even though not to technical limitations. This is the answer Knapp might well give, and in giving it he would be right, although only from a formal point of view. And how about fully "independent" paper money? The situation is the same, Knapp would say, pointing to Austria and Russia: "only" the purely technical limitations imposed by the scarcity of monetary metals are absent. The question is, whether this absence is an altogether unimportant difference—a question which Knapp ignores. "Against death," he might say, meaning that of a currency, "no potion has yet been found." If the present (1920) absolute and abnormal obstruction of paper production be ignored, there unquestionably have been and still are certain factors tending to unlimited issue of paper money. In the first place, there are the interests of those in political authority who, as Knapp also assumes, bear ultimate responsibility for monetary policy, and there are also certain private interests. Both are not of necessity primarily concerned with the maintenance of stable foreign exchange rates. It is even true, at least temporarily, that their interests might lie in the directly opposite direction. These interests can, either from within the political and monetary administration or by exercising a strong pressure on it, have an important influence on policy which would lead to "inflation" or what Knapp, who strictly avoids the term, could only describe as a case of the issue of paper money which is not "admissible" because it is not oriented to the international rate of exchange.

There are, in the first place, financial temptations to resort to inflation. An average depreciation of the German mark by inflation to 1/20th of its former value in relation to the most important domestic commodities and property objects would—once profits and wages had become adapted to this level of prices—mean, it may here be assumed, that all internal commodities and labor services would nominally be valued 20 times as high as before. This would further mean, for those in this fortunate situation, a reduction of the war debt to 1/20th of its original level. The state, which would receive a proportionate increase in its income from taxation as nominal money incomes rose, would at least enjoy

important relief from this source. This is indeed an attractive prospect. It is clear that someone would have to bear the costs, but it would be neither the state nor one of these two categories of private individuals, entrepreneurs and wage earners. The prospect is even more attractive of being able to pay old foreign debts in a monetary unit which can be manufactured at will and at negligible cost. Apart from the possibility of political intervention, there is of course the objection that the use of this policy toward foreign loans would endanger future credit. But the state is often more concerned with the present than with the more or less remote future. Furthermore, there are entrepreneurs who would be only too glad to see the prices of their products increased twenty-fold through inflation if, as is altogether possible, the nominal wages of workers, because of lack of bargaining power or through lack of understanding of the situation or for any other reason, were to increase "only" five- or possibly ten-fold.

It is usual for acute inflation from public finance motives of this kind to be sharply disapproved by experts in economic policy. It is certainly not compatible with Knapp's form of exchange-rate oriented monetary policy. On the other hand, a deliberate but very gradual increase of the volume of means of circulation, of the type which is sometimes undertaken by central banks by facilitating the extension of credit, is often looked upon favorably as a means of stimulating speculative attitudes. By holding out prospect of greater profits, it is held to stimulate the spirit of enterprise and with that an increase in capitalistic production by encouraging the investment of free money in profit-making enterprise, rather than its investment in fixed-interest securities. We have to ask, however, what is the effect of this more conservative policy on the stability of the exchange rate? Its direct effect—that is, the consequences of the stimulation of the spirit of enterprise—may be to create a more favorable balance of payment, or at least to check the fall in the foreign exchange position of the domestic currency. How often this works out and how strong the influence is, is, of course, another question. Also, no attempt will here be made to discuss whether the effects of a moderate increase in the volume of currency caused by state requirements for money would be similar. The costs of such an expansion of the stock of currency money, which would be relatively harmless to the foreign exchange position, would be gradually paid by the same groups which would be subject to "confiscation" in a case of acute inflation. This includes all those whose nominal income remains the same or who have securities with a constant nominal value, above all, the receivers of fixed-interest bond income, and those who earn salaries which are "fixed" in that they can be raised only through a severe struggle. It is

thus not possible to interpret Knapp as meaning that it is only the stability of foreign exchange which is significant as a criterion for the management of paper money; indeed, he does not claim this. Nor is it legitimate to believe, as he does, that there is a very high probability that this will empirically be the only criterion. It cannot, however, be denied that it would indeed be the decisive criterion of a lytric policy which is completely rational in Knapp's sense, that is, one which seeks as far as possible to prevent disturbances of the price relations resulting from monetary policies (a definition which Knapp does not himself spell out). But it cannot be admitted, and Knapp does not claim this either, that the practical significance of the kind of monetary policy formulated is limited to the question of the stability of foreign exchange rates.

Inflation has here been spoken of as a source of price revolutions or at least slow price level increases, and it has been pointed out that it may be caused by the desire to bring about such price level changes. Naturally, an inflation so extensive as to create a price revolution will inevitably upset the stability of foreign exchange; though this is by no means necessarily true of gradual increases in the circulating medium. Knapp would admit that. He obviously assumes, and rightly, that there is no place in his theory for a currency policy concerned with commodity prices, whether it be revolutionary, evolutionary, or conservative. Why does he do this? Presumably for the following formal reasons:

The exchange relationship between the standards of two or more countries is expressed daily in a small number of formally unambiguous and uniform market prices of currencies, which can be used as a guide to a rational lytric policy. It is further possible for a lytric authority, especially one concerned with the means of circulation, to make certain estimates (but only *estimates*, based on anterior demand conditions periodically observed in the market) of the probable fluctuations of a given stock of means of payment which will be required, for payment purposes alone, by a given population linked in market relationships over a certain future period, provided conditions in general remain approximately unchanged. But it is not possible to estimate in the same sense, quantitatively, the effect on prices—revolutionary or gradual increase, or perhaps a decrease—of a currency expansion or contraction over a certain future period. To do this, it would, in the case of inflation, to which attention will be confined, be necessary to know the following additional facts: (1) The existing distribution of income; (2) connected with this, the present policy conclusions derived therefrom of the different individuals engaged in economic activity; (3) the channels the inflationary process would follow, that is, who would be the primary and subsequent recipients of newly-issued money. This would involve knowing the se-

quence in which nominal incomes are raised by the inflation and the extent to which this would take place; (4) the way in which the newly-created demand for goods would be exercised, for consumption, for building up property investments, or for new capital. This would be important quantitatively, but even more so qualitatively; (5) the direction of the consequent changes in prices and of the further income changes resulting in turn, and all the innumerable further attendant phenomena of purchasing power redistribution, and also the volume of the (possible) stimulated increase in goods production. All these are data which would depend entirely on the decisions made by individuals when faced with the new economic situation. And these decisions would in turn react on the expectations as to prices of other individuals; only the consequent struggle of interests can determine the actual future prices. In such a situation there can clearly be no question of forecasting in the form of such predictions as that the issue of an additional billion of currency units would result in increases in the pig-iron price of "X" or in the grain price of "Y." The prospect is made even more difficult by the fact that it is possible temporarily to establish effective price regulation of domestic commodities, even though these can only be maximum and not minimum prices and their effectiveness is definitely limited. But even if this impossible task of calculating specific prices were accomplished, it would be of relatively little use. This would only determine the amount of money required as a means of payment, but in addition to this, and on a much larger scale, money would be required in the form of credit as a means of obtaining capital goods. Here, possible consequences of a proposed inflationary measure are involved which are inaccessible to any kind of accurate forecasting. It is thus understandable that, all things considered, Knapp should have entirely neglected the possibility of inflationary price policies being used in the modern market economy as a deliberate rational policy comparable to that of maintenance of foreign exchange stability.

But historically the existence of such policies is a fact. To be sure, in a crude form and under much more primitive conditions of money economy, inflation and deflation have been repeatedly attempted with the Chinese copper currency, though they have led to serious failures. In America, inflation has been proposed. Knapp, however, since his book operates on the basis only of what he calls demonstrable assumptions, contents himself with giving the advice that the state ought to be careful in the issue of independent paper money. Since he is entirely oriented to the criterion of exchange rate stability, this advice appears to be relatively unequivocal; inflationary debasement and depreciation in foreign exchange are usually very closely associated. But they are not identical,

and it is far from true that every inflation is primarily caused by the foreign exchange situation. Knapp does not explicitly admit, but neither does he deny, that an inflationary money regime has been urged for reasons of price policy among others by the American silver producers during the free silver campaign and by the farmers who demanded "greenbacks," but not only in these cases. It is probably comforting to him that it has never been successful over a long period.

But the situation is by no means so simple as this. Whether or not they have been *intended* simply to raise the price level, inflations of this sort have in fact often taken place, and even in the Far East, to say nothing of Europe, such catastrophes as met the *assignats* are by no means unknown. This is a fact which a *substantive* theory of money must deal with. Knapp, of all people, certainly would not maintain that there is no difference whatever between the depreciation of silver and the depreciation of the *assignats*. Even formally this is not the case. What has been depreciated is not silver coin, but, on the contrary, the raw silver for industrial purposes. Coined chartal silver, on the contrary, being restricted, has often had the opposite fate. On the other hand, it was not the paper available for industrial purposes which was "depreciated," but only the chartal *assignats*. It is true, as Knapp would rightly point out, that they would fall to zero or to their values to collectors or as museum pieces only when they had finally been repudiated by the state. Thus even this results from a "state" action. This may be granted, but their material value may have fallen to a minute proportion of what it formerly was, before their formal repudiation, in spite of the fact that they were still nominally valid for making payments of public obligations.

But quite apart from such catastrophes, history provides a considerable number of examples of inflation, and, on the other hand, in China, of deflationary movements as a result of non-monetary use of monetary metals. It is necessary to do more than merely to note that under some circumstances certain kinds of money which were not accessory before, have become so, have tended to accumulate in the hands of the state, and have rendered obstructional changes in the standard necessary. A substantive theory of money should at least formulate the question as to how prices and income, and hence the whole economic system, are influenced in such cases, even though it is, for the reasons which have been given, perhaps questionable how far it will be able to achieve a theoretical solution. Similarly, a problem is suggested by the fact that, as a result of relative decline in the prices of either silver or gold in terms of the other, France, which has been formally a country of bimetallism, in fact has operated at times on a gold standard alone, and at others on

a silver standard, while the other metal became accessory. In such a case it is not sufficient merely to call attention to the fact that the resulting price changes originate from a *monetary* source. The same is true in other cases where the monetary material has been changed. We also want to know what are the sources of an increase in the supply of a precious metal, whether it has stemmed from booty (as in the case of Cortez and Pizarro), from enrichment through trade (as in China early in the Christian era and since the sixteenth century), or from an increase of production. So far as the latter is the source, has production merely increased, or has it also become cheaper, and why? What is the part which may have been played by changes in the non-monetary uses of the metal? It may be that for a particular economic area, as, for instance, the Mediterranean area in Antiquity, a definitive export has taken place to an entirely distinct area like China or India, as happened in the early centuries of the Christian era. Or the reasons may lie wholly or partly in a change in the monetary demand arising from changes in customs touching the use of money, such as use in small transactions. How all these and various other possibilities tend to affect the situation is a subject which ought to be discussed in a monetary theory.

Finally, it is necessary to discuss the regulation of the "demand" for money in a market economy, and to inquire into the meaning of this concept. One thing is clear, that it is the actual demand for means of payment on the part of the parties to market relationships which determines the creation of free market money under free coinage. Furthermore, it is the effective demand for means of payment and, above all, for credit, on the part of market participants, in combination with care for the solvency of the banks of issue and the norms which have been established with this in view, which determines the policies for means of circulation of modern banks of issue. All this is oriented to the requirements of interested parties, as is in conformity with the general character of the modern economic order.

It is only this which, under the formal legal conditions of our economic system, can correctly be called "demand for money." This concept is thus quite indifferent with respect to substantive criteria, as is the related one of effective demand for goods. In a market economy there is an inherent limit to the creation of money only in the case of metallic money. But it is precisely the existence of this limit, as has already been pointed out, which constitutes the significance of the precious metals for monetary systems. The restriction of standard money to a material which is not capable of unlimited production at will, particularly to one of the precious metals, in combination with the "coverage" of means of circulation by this standard, sets a limit to any sort of

creation of money. Even though it does not exclude a certain elasticity and does not make an evolutionary type of credit inflation altogether impossible, it still has a significant degree of rigidity. Where money is made out of a material which is, for practical purposes, capable of unlimited production, like paper, there is no such mechanical limit. In this case, there is no doubt that it is the free decision of the political authorities which is the regulator of the quantity of money, unimpeded by any such mechanical restraints. That, however, means, as has been indicated, determination by their conception of the financial interests of the political authority or even, under certain circumstances, the purely personal interests of the members of the administrative staff, as was true of the use of the printing presses by the Red armies. The significance of metallic standards today lies precisely in the elimination of these interests from influence on the monetary situation, or more precisely, since they may always try to influence the state, urging it to abandon metal in favor of a pure paper standard, in a certain restraint on such interests. In spite of the mechanical character of its operation, a metallic standard nevertheless makes possible a higher degree of formal rationality in a market economy because it permits action to be oriented wholly to market advantages. It is, of course, true, as demonstrated by the experience of Austria and Russia, that the monetary policy of lytric authorities under a pure paper standard is not necessarily oriented either to the purely personal interests of the authority or the administrative staff, or to the financial interests of the state (which would mean the least expensive creation of the greatest possible volume of means of payment, without concern for what happens to the currency as a means of exchange). But the danger that such an orientation should become dominant is, nonetheless, continually present under a paper standard, while in a hylodromic system (free market money) it does not exist in a comparable sense. From the point of view of the formal order of a market economy, the existence of this danger is an "irrational" factor present in any form of monetary system other than a hylodromic standard. This is true in spite of the fact that it may be readily admitted that, on account of its mechanical character, such a monetary system itself possesses only a relative degree of formal rationality. So much Knapp could and should admit.

However incredibly primitive the older forms of the quantity theory of money were, there is no denying that any inflation with the issue of paper money determined by financial needs of the state is in danger of causing "debasement" of the currency. Nobody, not even Knapp, would deny this. But his reasons for dismissing it as unimportant are thoroughly unconvincing. The "amphitropic" position of each individual, meaning

that every man is both a debtor and creditor, which Knapp in all seriousness puts forward as proof of the absolute indifference of any currency "debasement,"[40] is, as we now all know from personal experience, a mere phantom. What becomes of this position, not only for the *rentier*, but also for every one on a fixed salary, whose income remains constant in nominal units or, at best, is doubled if state finances and the mood of the bureaucracies permit, while his expenditures may, in nominal units, have increased twenty-fold, as it happens to us nowadays? What becomes of it for any long-term creditor? Such radical alterations in the (substantive) validity of money today produce a chronic tendency toward social revolution, even if many entrepreneurs are in a position to profit from the international exchange situation, and if some (very few) workers are powerful enough to secure increases in their nominal wages. It is, of course, open to anyone to welcome this revolutionary effect and the accompanying tremendous unsettlement of the market economy. Such an opinion cannot be scientifically refuted. Rightly or wrongly, some can hope that this tendency will lead to the transformation of a market economy into socialism. Or some may expect proof for the thesis that only a regulated economy with small-scale production units is capable of substantive rationality, regardless of the sacrifices its establishment would entail. It is impossible for science to decide such questions, but at the same time it is its duty to state the facts about these effects as clearly and objectively as possible. Knapp's assumption that people are both debtors and creditors in the same degree, which in the generalized form he gives the proposition is quite untenable, serves only to obscure the situation. There are particular errors in his work, but the above seems to be the most important element of *incompleteness* in his theory. It is this which has led also some scholars who otherwise would have no reason to be hostile to his work, to attack his theory on grounds of "principle."

37. *The Non-Monetary Significance of Political Bodies for the Economic Order*

The significance for the economic system apart from the monetary order of the fact that autonomous political organizations exist lies above all in the following aspects:

(1) In the fact that, other things being nearly equal, they tend to prefer their own subjects as sources of supply for the utilities they need. The impact of this fact is the greater, the more the economy of these

political bodies has a monopolistic character or that of a system of budgetary satisfaction of needs; hence it is presently on the increase.

(2) In the possibility deliberately to encourage, restrain, or regulate trade transactions across its boundaries on the basis of some substantive criteria—that is, to conduct a foreign trade policy.

(3) In the possibility of various types of formal and substantive regulation of economic activity by political bodies, differing in stringency and in type.

(4) In the important consequences of the very great differences in the structure of authority and of political power and in the closely related structure of administration and of social classes, especially of those which enjoy the highest prestige, and of the attitudes toward earning and profit-making which derive from these.

(5) In the competition among the directing authorities of these political bodies to increase their own power and to provide the members under their authority with means of consumption and acquisition and with the corresponding opportunities for earnings and profits.

(6) In the differences in ways in which these bodies provide for their own needs. On this see the following section.

38. *The Financing of Political Bodies*

The most direct connection between the economic system and primarily non-economic organizations lies in the way in which they secure the means of carrying on their corporate activity as such; that is, the activity of the administrative staff itself and that which is directed by it (see chap. I, sec. 12). This mode of provision may be called "financing" in the broadest sense, which includes the provision of goods in kind.

Financing—that is, the provision of corporate activity with economically scarce means—may, considering only the simplest types, be organized in the following ways:

(1) Intermittently, based either on purely voluntary or on compulsory contributions or services. Voluntary "intermittent" financing may take one of three forms:

(a) That of large gifts or endowments.[61] This is typical in relation to charitable, scientific, and other ends which are primarily neither economic nor political.

(b) That of begging. This is typical of certain kinds of ascetic communities.

In India, however, we also find secular castes of beggars, and elsewhere, particularly in China, organized groups of beggars are found.

Begging may in these cases be extensively monopolized and systematized with territorial assignments. Also, because response is regarded as a duty or as meritorious, begging may lose its intermittent character and in fact tend to become a tax-like source of income.

(c) That of gifts, which are formally voluntary, to persons recognized as politically or socially superior. This includes gifts to chiefs, princes, patrons, feudal lords over land or persons. Because of the fact that they have become conventional, these may in fact be closely approximated to compulsory payments. But usually, they are not worked out on a basis of rational expediency, but are generally made on certain traditional occasions, such as particular anniversaries or on the occasion of events of family or political significance.

Intermittent financing may, on the other hand, be based on compulsory contributions.

The type case for compulsory "intermittent" financing is furnished by such organizations as the *Camorra* in southern Italy and the *Mafia* in Sicily, and similar organized groups elsewhere. In India there have existed ritually separated castes of "thieves" and "robbers," and in China sects and secret societies with a similar method of economic provision. The payments are "intermittent" only on the surface, because they are formally illegal. In practice they often assume the character of periodic "subscriptions," paid in exchange for the rendering of certain services—notably, of a guarantee of security. About twenty years ago, a Neapolitan manufacturer replied to my doubts concerning the effectiveness of the *Camorra* with respect to business enterprises: "Signore, la Camorra mi prende X lire nel mese, ma garantisce la sicurezza,—lo Stato me ne prende 10 · X, e garantisce: niente." [Sir, the *Camorra* takes X lire a month from me, but guarantees me security; the state takes ten times that amount, and guarantees me nothing.] The secret societies typical of Africa—perhaps rudiments of the former "men's house"—operate in a similar way (as secret courts), thus insuring security. Political groups may, like the Ligurian "pirate state," rest primarily on the profits of booty, but this has never been the exclusive source of support over a long period.

(2) Financing may, on the other hand, be organized on a permanent basis.

A.—This may take place without any independent economic production on the part of the organization. It may then consist in contributions of goods, which may be base on a money economy. If so, money contributions are collected and provisions are obtained by the money purchase of the necessary utilities. In this case, all compensation of members of the administrative staff takes the form of money salaries. Contributions of goods may, on the other hand, be organized on the basis of a natural economy. Then, members are assessed with specific

contributions in kind. Within this category, there are the following subtypes: the administrative staff may be provided for by benefices in kind and the needs of the group met in the same way. On the other hand, the contributions which were collected in kind may be sold wholly or in part for money and provision made in monetary terms.

Whether in money or in kind, the principal elementary types of contribution are the following:

(a) Taxes; that is, contributions which may be a proportion of all possessions (in the money economy: of wealth), or of all receipts (in the money economy: of incomes), or, finally, only of the means of production or from certain kinds of profit-making enterprises (so-called "yield taxes").

(b) Fees; that is, payments for using or taking advantage of facilities provided by the organization, of its property or of its services.

(c) "Imposts" on such things as specific types of use or consumption of commodities, specific kinds of transactions, above all, the transportation of goods (customs) and the turnover of goods (excise duties and sales tax).

Contributions may be collected by the organization itself or leased out ("farmed") or lent out or pledged. The leasing of collection for a fixed sum of money ("tax farming") may have a rational effect on the fiscal system since it may be the only possible way to budget accounts. Lending and pledging are usually irrational from the fiscal point of view, normally resulting from financial necessity or usurpation on the part of the administrative staff, a result of the absence of a dependable administrative organization.

A permanent appropriation of the receipts from contributions by creditors of the state, by private guarantors of the army or of tax payments, by unpaid mercenary captains (*condottieri*) and soldiers, and, finally, by holders of rights to official positions, will be called the granting of benefices (*Verpfründung*). This may in turn take the form of individual appropriation or collective appropriation with freedom of replacement from the group which has collectively carried out the appropriation.

Financing without any economic production on the part of the organization itself may also take place by the imposition of obligations to personal services; that is, direct personal services with specification of the work to be done.

B.—Permanent financing may further, contrary to the above cases, be based on the existence of a productive establishment under the direct control of the organization. Such an establishment may be a budgetary unit, as an *oikos* or a feudal domain, or it may be a profit-making enter-

prise, which, in turn, may compete freely with other profit-making enterprises or be a monopoly.

Once more, exploitation may be directly under the administration of the organization or it may be farmed out, leased, or pledged.

C.—Finally, it is possible for financing to be organized "liturgically" by means of burdens which are associated with privileges. These may involve "positive privileges," as when a group is freed from the burden of making particular contributions, or (possibly identical with the former case) "negative privileges," as when certain burdens are placed on particular groups. The latter are usually either status groups (*Stände*) or property or income classes. Finally, the liturgic type may be organized "correlatively" by associating specific monopolies with the burden of performing certain services or supplying certain goods. This may take the form of organization of "estates," that is, of compulsorily forming the members of the organization into hereditarily closed liturgical classes on the basis of property and occupation, each enjoying status privileges. Or it may be carried out capitalistically, by creating closed guilds or cartels, with monopolistic rights and a corresponding obligation to make money contributions.

This very rough classification applies to all kinds of organizations. Examples, however, will be given only in terms of political bodies.

The system of provision through money contributions without economic production is typical of the modern state. It is, however, quite out of the question to attempt here even a summary analysis of modern systems of taxation. What will first have to be discussed at length is the "sociological location" of taxation—that is, the type of structure of domination that has typically led to the development of certain kinds of contributions (as, e.g., fees, excises, or taxes).

Contributions in kind, even in the case of fees, customs, excises, and sales taxes, were common throughout the Middle Ages. Their commutation into money payments is a relatively modern phenomenon.

Deliveries of goods in kind are typical in the form of tribute or of assessments of products laid upon dependent economic units. The transportation of in-kind contributions is possible only for small political units or under exceptionally favorable transportation conditions, as were provided by the Nile and the Chinese Grand Canal. Otherwise it is necessary for the contributions to be converted into money if the final recipient is to benefit from them. This was common in Antiquity. It is also possible for them to be exchanged, according to the distance they have to be transported, into objects with higher price-to-weight ratios. This is said to have been done in ancient China.

Examples of obligations to personal service are obligations to military service, to serve in courts and on juries, to maintain roads and bridges, to work on a dyke or in a mine, and all sorts of compulsory service for

corporate purposes which are found in various types of organizations. The type case is furnished by the "*corvée* state," of which the best example is the New Kingdom of ancient Egypt. Similar conditions were found at some periods in China, to a lesser extent in India and to a still less extent in the late Roman Empire and in many organizations of the early Middle Ages. Support by the granting of benefices is illustrated by the following cases: (1) In China, collectively to the body of successful examinees for official positions; (2) in India, to the private guarantors of military services and tax payments; (3) to unpaid *condottieri* and mercenary soldiers, as in the late Caliphate and under the regime of the Mamelukes; (4) to creditors of the state, as in the sale of offices common everywhere.

Provision from the organization's own productive establishment administered on a budgetary basis is illustrated by the exploitation of domains under direct control for the household of the king, and in the obligation of subjects to compulsory services if used, as in Egypt, to produce goods needed by the court or for political purposes in directly controlled production establishments. Modern examples are factories maintained by the state for the manufacture of munitions or of military clothing.

The use of productive establishments for profit in free competition with private enterprise is rare, but has occurred occasionally, as, for instance, in the case of the [Prussian] *Seehandlung*.[83] On the other hand, the monopolistic type is very common in all periods of history, but reached its highest development in the Western World from the sixteenth to the eighteenth centuries.

Positive privileges on a liturgical basis are illustrated by the exemption of the *literati* in China from feudal obligations. There are similar exemptions of privileged groups from the more menial tasks all over the world. In many countries educated people have been exempt from military service.

Negative privilege is to be found in the extra liturgical burdens placed upon wealth in the democracies of Antiquity. It is also illustrated by the burden placed on the classes who did not enjoy the exemptions in the cases just mentioned.

To take the "correlative" case under (C.) above: the subjection of privileged classes to specified liturgical obligations is the most important form of systematic provision for public needs on a basis other than that of regular taxation. In China, India, and Egypt, the countries with the earliest development of "hydraulic" bureaucracy, liturgical organization was based on obligations to deliveries and services in kind. It was in part taken over from these sources by the Hellenistic states and by the late Roman Empire, though there, to be sure, to an important extent it took the form of liturgical obligations to pay money taxes rather than contributions in kind. This type of provision always involves the organization of the population in terms of occupationally differentiated classes. It is by no means out of the question that it might reappear again in the modern world in this form if public provision by taxation should fall

down and the satisfaction of private wants by capitalistic enterprise becomes subject to extensive regulation by the state. Up until now, the financial difficulties of the modern state could be adequately met by the compulsory creation of producer cartels with monopoly rights in exchange against money contributions; an example could be the compulsory control of the gunpowder factories in Spain with monopoly protection against new foundations and a continuous high contribution to the state treasury. The idea is suggestive: one might proceed in the same way in the "socialization" of the capitalistic enterprises of individual branches, by imposing compulsory cartels or combinations with obligations to pay large sums in taxes. Thus they could be made useful for fiscal purposes, while production would continue to be oriented rationally to the price situation.

39. *Repercussions of Public Financing on Private Economic Activity*

The way in which political and hierocratic bodies provide for their corporate needs has very important repercussions on the structure of private economic activity. A state based exclusively on money contributions, conducting the collection of the taxes (but no other economic activity) through its own staff, and calling on personal service contributions only for political and judicial purposes, provides an optimal environment for a rational market-oriented capitalism. A state which collects money taxes by tax farming is a favorable environment for the development of politically oriented capitalism, but it does not encourage the orientation of profit-making activity to the market. The granting of rights to contributions and their distribution as benefices normally tends to check the development of capitalism by creating vested interests in the maintenance of existing sources of fees and contributions. It thus tends to stereotyping and traditionalizing of the economic system.

A political body based purely on deliveries in kind does not promote the development of capitalism. On the contrary, it hinders it to the extent to which it involves rigid binding of the structure of production in a form which, from a point of view of profit-making enterprise, is irrational.

A system of provision by compulsory services in kind hinders the development of market capitalism above all through the confiscation of the labor force and the consequent impediments to the development of a free labor market. It is unfavorable to politically oriented capitalism because it removes the typical prospective advantages which enable it to develop.

Financing by means of monopolistic profit-making enterprises has in

common with the use of contributions in kind which are sold for money and with liturgical obligations on property, the fact that they are all unfavorable to the development of a type of capitalism which is autonomously oriented to the market. On the contrary, they tend to repress it by fiscal measures which, from the point of view of the market, are irrational, such as the establishment of privileges and of opportunities for money making through other channels. They are, on the other hand, under certain conditions favorable to politically oriented capitalism.

What is important for profit-making enterprises with fixed capital and careful capital accounting is, in formal terms, above all, the calculability of the tax load. Substantively, it is important that there shall not be unduly heavy burdens placed on the capitalistic employment of resources, which means, above all, on market turnover. On the other hand, speculative trade capitalism is compatible with any form of organization of public finances which does not, through tying it to liturgical obligations, directly inhibit the trader's exploitation of goods as commodities.

Though important, the form of organization of the obligations imposed by public finance is not sufficient to determine completely the orientation of economic activity. In spite of the apparent absence of all the more important obstacles of this type, no important development of rational capitalism has occurred in large areas and for long periods. On the other hand, there are cases where, in spite of what appear to be very serious obstacles placed in its way by the system of public finances, such a development has taken place. Various factors seem to have played a part. Substantively, state economic policy may be very largely oriented to non-economic ends. The development of the intellectual disciplines, notably science and technology, is important. In addition, obstructions due to certain value-attitudes derived from ethical and religious sources have tended to limit the development of an autonomous capitalistic system of the modern type to certain areas. It must, furthermore, not be forgotten that forms of establishment and of the firm must, like technical products, be "invented." In an historical analysis, we can only point out certain circumstances which exert negative influences on the relevant thought processes—that is, influences which impede or even obstruct them—or such which exert a positive, favoring influence. It is not, however, possible to prove a strictly inevitable causal relationship in such cases, any more than it is possible in any other case of strictly individual events.[68]

Apropos of the last statement, it may be noted that the concrete individual events also in the field of the natural sciences can be rigorously

reduced to their particular causal components only under very special circumstances. There is thus no difference in principle between the field of action and other fields.[64]

At this point it is possible to give only a few provisional indications of the fundamentally important interrelationships between the form of organization and administration of political bodies and the economic system.

1. Historically, the most important case of obstruction of the development of market capitalism by turning public contributions into privately held benefices is China. The conferring of contributions as fiefs, which often cannot be differentiated from this, had the same effect in the Near East since the time of the Caliphs. Both will be discussed in the proper place. Tax farming is found in India, in the Near East, and in the Western World in Antiquity and the Middle Ages. Particularly, however, in Antiquity, as in the development of the Roman class of tax-farming financiers, the *equites*, it became decisive in determining the mode of orientation of capitalistic acquisition. In India and the Near East, on the other hand, it was more important in determining the development and distribution of wealth, notably of land ownership.

2. The most important case in history of the obstruction of capitalistic development by a liturgical organization of public finance is that of later Antiquity. It was perhaps also important in India after the Buddhist era and at certain periods in China. This also will be discussed later.

3. The most important historical case of the monopolistic diversion of capitalism is, after the Hellenistic, especially the Ptolemaic precursors, the period of royal monopolies and monopolistic concessions in early modern times, which again will be discussed in the proper place. A prelude to this development might be seen in certain measures introduced by Emperor Frederick II in Sicily, perhaps following a Byzantine model, and its final struggle in the conflict of the Stuarts with the Long Parliament.[65]

This whole discussion in such an abstract form has been introduced only in order to make an approximately correct formulation of problems possible. But before returning to the stages of development of economic activity and the conditions underlying that development, it is necessary to undertake a strictly sociological analysis of the non-economic components.

10. *The Influence of Economic Factors on the Formation of Organizations*

Economic considerations have one very general kind of sociological importance for the formation of organizations if, as is almost always true, the directing authority and the administrative staff are remunerated.

If this is the case, an overwhelmingly strong set of economic interests become bound up with the continuation of the organization, even though its primary ideological basis may in the meantime have ceased to exist.

> It is an everyday occurrence that organizations of all kinds which, even in the eyes of the participants, have become "meaningless," continue to exist because an executive secretary or some other official makes his "living" in this manner and otherwise would have no means of support.

Every advantage which is appropriated, or even under certain circumstances one which has not been formally appropriated, *may* have the effect of stereotyping existing forms of social action. Among the opportunities for economic profit or earnings in the field of the peaceful provision for everyday wants, it is in general *only* the opportunities open to profit-making enterprise which constitute autonomous forces that are in a rational sense *revolutionary;* but even of them this is not always true.

> For example, the interests of bankers in maintaining their commissions long obstructed the recognition of endorsements on bills of exchange. Similar cases of the obstruction of formally rational institutions by vested interests, which may well be interests in capitalistic profits, will frequently be met with below. They are, however, appreciably rarer than obstructions resulting from such factors as appropriation of benefices, status advantages, and various economically irrational forces.

41. *The Mainspring of Economic Activity*

All economic activity in a market economy is undertaken and carried through by individuals acting to provide for their own ideal or material interests. This is naturally just as true when economic activity is oriented to the patterns of order of organizations, whether they themselves are partly engaged in economic activity, are primarily economic in character, or merely regulate economic activity. Strangely enough, this fact is often not taken account of.

In an economic system organized on a socialist basis, there would be no fundamental difference in this respect. The decision-making, of course, would lie in the hands of the central authority, and the functions of the individual engaged in the production of goods would be limited to the performance of "technical" services; that is, to "labor" in the sense of the term employed here. This would be true so long as the individuals were being administered "dictatorially," that is, by autocratic determination from above in which they had no voice. But once any right of "co-determination" were granted to the population, this would immediately

make possible, also in a formal sense, the fighting out of interest conflicts centering on the manner of decision-making and, above all, on the question of how much should be saved (i.e., put aside from current production). But this is not the decisive point. What is decisive is that in socialism, too, the individual will under these conditions ask first whether to him, personally, the rations allotted and the work assigned, as compared with other possibilities, appear to conform with his own interests. This is the criterion by which he would orient his behavior, and violent power struggles would be the normal result: struggles over the alteration or maintenance of rations once allotted—as, for instance, over ration supplements for heavy labor; appropriations or expropriations of particular jobs, sought after because of extra remuneration or pleasant working conditions; work cessations, such as in strikes or lock-outs; restrictions of production to enforce changes in the conditions of work in particular branches; boycotts and the forcible dismissal of unpopular supervisors—in short, appropriation processes of all kinds and interest struggles would also then be the normal phenomena of life. The fact that they would for the most part be fought out through organized groups, and that advantages would be enjoyed on the one hand by the workers engaged in the most essential services, on the other hand by those who were physically strongest, would simply reflect the existing situation. But however that might be, it would be the interests of the individual, possibly organized in terms of the similar interests of many individuals as opposed to those of others, which would underlie all action. The *structure* of interests and the relevant situation would be different, and there would be other *means* of pursuing interests, but this fundamental factor would remain just as relevant as before. It is of course true that economic action which is oriented on purely ideological grounds to the interests of others does exist. But it is even more certain that the mass of men do not act in this way, and it is an induction from experience that they cannot do so and never will.

In a completely socialized planned economy there would be scope only for the following: (a) the distribution of real goods on the basis of planned rationed needs; (b) the production of these goods according to a plan of production. "Income" as a category of the money economy would necessarily disappear, but rationed "receipts" would be possible.

In a market economy the striving for *income* is necessarily the ultimate driving force of all economic activity. For every disposition, insofar as it makes a claim on goods or utilities which are not available to the actor in a form fully ready for whatever use he intends, presupposes the acquisition of and disposition over future income, and practically every existing power of control over goods and services presupposes previous

income. All business profits of enterprises will at some stage and in some form be turned into the income of economically acting individuals. In a "regulated economy" the principal aim of the regulations is generally to affect in some manner the distribution of income. (In a "natural economy" we find no "income" in the usage of the present terminology; instead there are "receipts" in the form of goods and services which cannot be valued in terms of a unitary means of exchange.)

Income and receipts may, from a sociological point of view, take the following principal forms and be derived from the following principal sources:

A.—Incomes and receipts from personal services derived from specialized or specified functions:

(1) Wages: (a) Freely determined wage incomes or receipts contracted at fixed rates per time period; (b) the same, determined on some established scale (salaries or in-kind remuneration of public officials and civil servants); (c) the labor return of hired workers on contracted piece rates; (d) entirely open labor returns.

(2) Gains: (a) Free exchange profits deriving from the procurement of goods and services on an entrepreneurial basis; (b) the same, but regulated. In cases (a) and (b), "incomes" are calculated as net returns after the deduction of costs. (c) Predatory gains; (d) Gains derived from positions of political authority, fee incomes of an office, bribes, tax farming, etc., obtained by the appropriation of power. In cases (c) and (d), costs will be deducted to calculate "income" only if the activity is conducted as a continuous organized mode of acquisition; otherwise the gross revenue is usually considered "income."

B.—Income and receipts from property, derived from the exploitation of control over important means of production:

(1) Those in which "income" is normally calculated as "net rent" after the deduction of costs. (a) Rent obtained from the ownership of human beings, as in the case of slaves, serfs or freedmen. These may be receipts in money or in kind; they may be fixed in amount or consist in shares of the source's earnings after the deduction of costs of maintenance. (b) Appropriated revenues derived from positions of political authority (after the deduction of the costs of administration). (c) Rental revenues derived from the ownership of land (*métayage* payments or fixed rents per unit of time, either in kind or in money, seigneurial rent revenues—after deduction of land taxes and costs of maintenance). (d) House rents after deduction of expenses. (e) Rent receipts from appropriated monopolies (feudal *banalités*, patent royalties after the deduction of fees).

(2) Property income and receipts normally not requiring deduction

of costs from gross revenues: (a) Investment income (interest paid to households or profit-making enterprises in return for the right to utilize their resources or capital—see above, ch. II, sec. 11). (b) "Interest" from cattle loans (*Viehrenten*).[46] (c) "Interest" from other loans of concrete objects, and contracted "annuities in kind" (*Deputatrenten*). (d) Interest on money loans. (e) Money interest on mortgages. (f) Money returns from securities, which may consist in fixed interest or in dividends varying with profitability. (g) Other shares in profits, such as shares in the proceeds of "occasional" profit-making ventures and in profits from rational speculative operations, and shares in the rational long-run profit-making activities of all sorts of enterprises.

All "gains" and the dividend incomes from shares are either not contracted (as to rate or amount) in advance, or only indirectly contracted incomes (namely, through the agreement on prices or piece rates). Fixed interest and wages, leases of land, and house rents are contracted incomes. Income from the exercise of power, from ownership of human beings, from seigneurial authority over land, and predatory incomes all involve appropriation by force. Income from property may be divorced from any occupation in case the recipient lets others utilize the property. Wages, salaries, labor profits, and entrepreneurial profits are, on the other hand, occupational incomes. Other types of property incomes and gains may be either one or the other. An exhaustive classification is not intended here.

Of all types of incomes, it is particularly those from business profits and the contracted piece rate or free labor incomes which have a dynamic, revolutionary significance for economic life. Next to these stand incomes derived from free exchange and, in quite different ways, under certain circumstances, the "predatory" incomes.

Those having a static, conservative influence on economic activity are above all incomes drawn in accordance with a predetermined scale, namely salaries, wages reckoned per unit of working time, gains from the exploitation of office powers, and normally all kinds of fixed interest and rents.[47]

The *economic* source of "incomes" (in an exchange economy) lies in a great majority of cases in the exchange situation on the market for goods and labor services. Thus, in the last analysis, it is determined by consumers' demand, in connection with the more or less strong natural or statutory monopolistic position of the parties to market relationships.

The economic source of "receipts" (in a natural economy) generally lies in the monopolistic appropriation of opportunities to exploit property or services for a return.

The underpinning of all these incomes is nothing but the *possibility*

of violence in the defence of appropriated advantages (see above, ch. II, sec. 1, pt. 4). Predatory incomes and related modes of acquisition are the return on *actual* violence. An exhaustive classification had to be foregone in this very rough first sketch.

In spite of many disagreements on particular points, I consider the sections on "income" in R. Liefmann's works to be among the most valuable of his contributions.[68] The problems of economic theory involved cannot be explored any further here; the interrelations between the economic dynamics and the social order will have to be discussed time and again.

NOTES

Unless otherwise indicated, notes are by Parsons.

1. In the economic sense.

2. Robert Liefmann, *Grundsätze der Volkswirtschaftslehre*, vol. I, 3rd ed. (Stuttgart 1923), p. 74ff. and *passim*. (Wi)

3. See Franz Oppenheimer, *System der Soziologie*, Part III, *Theorie der reinen und politischen Ökonomie*, 5th ed. (Jena 1923), pp. 146–152. (Wi)

4. The German word *Technik* which Weber uses here covers both the meanings of the English word "technique" and of "technology." Since the distinction is not explicitly made in Weber's terminology, it will have to be introduced according to the context in the translation.

5. The term *Verfügungsgewalt*, of which Weber makes a great deal of use, is of legal origin, implying legally sanctioned powers of control and disposal. This, of course, has no place in a purely economic conceptual scheme but is essential to a sociological treatment of economic systems. It is another way of saying that concretely economic action depends on a system of property relations.

6. This is one of the many differences between China and the Western World which Weber related to the difference of orientation to economic activities, growing out of the religious differences of the two civilizations. See his *The Religion of China: Confucianism and Taoism*, transl. H. H. Gerth (Glencoe, Ill. 1951).

7. *Beschaffung*. Weber uses this term, which could be translated variously as "making available," "bringing forth," "providing," etc., throughout this chapter in combinations where today the term "production" has become usual, and we normally translate it in this way. However, the term does cover, beyond production in the narrow sense, also all manner of activities which make available goods, services, money, or anything else useful—that is, transport (as noted here), trade, banking, etc. Wherever it was necessary to indicate this wider meaning clearly, we have translated the term as "procurement." (Wi)

8. It is a striking fact that, particularly in primitive society, a very large proportion of economically significant exchange is formally treated as an exchange of gifts. A return gift of suitable value is definitely obligatory but the specific characteristic of purely economically rational exchange, namely bargaining, is not only absent but is specifically prohibited.

9. The type case Weber has in mind is the relation of the state to the modern system of property and contract. Whether or not private citizens will engage in any given activity is no determined by the law. The latter is restricted

to the enforcement of certain formal rules governing whoever does engage in such activities.

10. This is a term which is not in general use in German economics, but which Weber took over, as he notes below, from G. F. Knapp. There seems to be no suitable English term and its use has hence been retained.

11. *Theorie des Geldes und der Umlaufsmittel* (Munich 1912). English edition: *The Theory of Money and Credit*, trsl. H. E. Batson (London 1934; 2d rev. ed., New Haven 1953). (Wi)

12. English edition: *The State Theory of Money*, abridged ed., trsl. by H. M. Lucas and J. Bonar, publ. for the Royal Economic Society (London 1924). (Wi)

13. Weber, as will become clear further on in this chapter, in common with many of his contemporaries (including the leaders of the Bolshevik revolution in Russia) strongly identified "socialism" and "communism" with the absence of money and monetary categories (money prices, money wages, etc.). In the event, these categories were, of course, used in the Communist countries even in the substantial absence of free markets, although their use was attended by many difficulties, as yet unresolved, in the determination of rational prices. This is true for the internal economy of these countries, but particularly true for the exchange relations *between* the Communist countries (coexisting "communist organizations") which are mentioned here. For the state of the debate in Weber's day, see F. A. Hayek (ed.), *Collectivist Economic Planning* (London 1935); an appreciation of Weber's contribution, p. 32ff. (Wi)

14. The concept *Haushalt*, as distinguished from *Erwerb*, is central to Weber's analysis in this context. He means by it essentially what Aristotle meant by the "management of a household" (Jowett's translation). It is a question of rational allocation of resources in providing for a given set of ne s. The concept of budget and budgetary management seems to be the closest English equivalent in common use.

15. Corresponding to the distinction of *Haushalt* and *Erwerb*, Weber distinguishes *Vermögen* and *Kapital*. They are, of course, classes of property distinguished in terms of their function in the management of an economic unit. There is no English equivalent of *Vermögen* in this sense, and it has seemed necessary to employ the more general term "wealth." Where there is danger of confusion, it will be amplified as "budgetary wealth."

16. In common usage the term *Erwerben* would perhaps best be translated as "acquisition." This has not, however, been used, as Weber is here using the term in a technical sense as the antithesis of *Haushalten*. "Profit-Making" brings out this specific meaning much more clearly.

17. Since Weber wrote, there has been an extensive discussion of the problem of whether rational allocation of resources was possible in a completely socialistic economy in which there were no independent, competitively determined prices. The principal weight of technical opinion seems at present to take the opposite position from that which Weber defends here. A discussion of the problem will be found in Oskar Lange and F. M. Taylor, *On the Economic Theory of Socialism*, edited by B. E. Lippincott (Minneapolis 1938). This book includes a bibliography on the subject.

18. For the relevant articles by K. Rodbertus, see *Jahrbücher für Nationalökonomie und Statistik*, vols. IV, V, and VIII (1865–1869); K. Bücher, *Industrial Evolution*, trsl. S. M. Wickett (New York 1901). (Wi)

19. On *banco*-currencies, see *Economic History*, 189f; on the Egyptian "grain deposit banks," *ibid.*, 59. (Wi)

20. Otto Neurath, *Bayerische Sozialisierungserfahrungen*, Vienna 1920; *id.*,

Vollsozialisierung. Von der nächsten u. übernächsten Zukunft (*Deutsche Gemeinwirtschaft*, vol. 15; Jena 1920), and bibliography given there. Neurath, incidentally, had not only written about and agitated for economic socialization, but also briefly worked as director of the Bavarian *Zentralwirtschaftsamt*, the agency in charge of socialization plans, during the *Räterepublik* or "soviet" phase of the Bavarian revolutionary regime in the spring of 1919; when he was brought to trial after the suppression of the revolution, Weber testified in his defense. See A. Mitchell, *Revolution in Bavaria 1918–1919* (Princeton 1965), pp. 293–305; Marianne Weber, *Max Weber* (Tübingen 1926), pp. 673 & 677; Ernst Niekisch, *Gewagtes Leben* (Köln 1958), pp. 53–57. (Wi)

21. J. C. L. Simonde de Sismondi, Essay X ("De la condition des cultivateurs dans la Campagne de Rome") in his *Études sur l'Économie Politique*, vol. II (Paris 1838); W. Sombart, *Die römische Campagna. Eine sozialökonomische* Studie (Leipzig 1888). (Wi)

22. Oppenheimer, who was for part of his life associated with the Henry George movement, saw the ultimate basis of capitalism in the appropriation of land; he was himself the founder of a "free land" movement. (Wi)

23. English translation in F. A. Hayek (ed.), *Collectivist Economic Planning* (London 1935). (Wi)

24. Weber seems to have said in this passage in a somewhat involved way what has come to be generally accepted among the more critical economic theorists and the welfare economists. A simpler way of stating the same point is provided by the doctrine of maximum satisfaction. This states the conditions under which, to use Weber's phrase, formal and substantive rationality would coincide. It is generally conceded that among these conditions is the absence of certain types of inequality of wealth. One of the best statements of the problem is that of Frank H. Knight in his essay "The Ethics of Competition," which is reprinted in the book of that title. The problem of the relations of formal and substantive rationality has for Weber, however, wider ramifications.

25. Proposals for the introduction of a planned economy made in the early summer of 1919 by the first *Reichswirtschaftsminister* of the Weimar Republic, the Social Democrat Rudolf Wissell and his Undersecretary Wichard von Moellendorff. After the rejection of his plans, Wissell resigned in July of that year and was replaced by an opponent of planning. Cf. Arthur Rosenberg, *A History of the German Republic*, trsl. I. F. D. Morrow and M. Sieveking (London 1936), 108ff. The text of the proposals is included in Wissell's justification of his conduct of office: *Praktische Wirtschaftspolitik. Unterlagen zur Beurteilung einer fünftmonatlichen Wirtschaft führung* (Berlin 1919), and in part also in *Deutsche Gemeinwirtschaft*, vols. 9 and 10 (Jena 1919). (Wi)

26. English ed.: *Industrial Evolution*, transl. (from the 3rd German edition, 1900) by S. Morley Wickoff (New York 1901). (Wi)

27. In a good deal of his discussion, Weber uses the term *Betrieb* in a context where this distinction is not important. To avoid a confusion of terms, it has in general been found most convenient to translate *Betrieb* as "enterprise" (cf. the definition of "enterprise" as continuous rational activity, above, ch. I:15). But wherever the distinction made here is important in the context, the term "establishment" is used. *Unternehmen* has for the same reason been translated as "firm." (Wi)

28. See above note. In most cases it has so far seemed best to translate *Erwerbsbetrieb* with "enterprise."

29. See below, ch. II, sec. 20, point V. (Wi)

30. Weber here sides with Karl Bücher against a theory of developmental

stages propounded mainly by Gustav Schmoller, who defines stages in terms of ruling groups. Cf. Schmoller, "Städtische, territoriale und staatliche Wirtschaftspolitik," *Jahrb. f. Gesetzgebung, Verwaltung u. Volkswirtschaft*, VIII (1884), 4ff. and II (1904), 668ff.; Bücher, "The Rise of the National Economy," in his *Industrial Evolution*, *op. cit.*, 83–149. For the polemic between Schmoller and Bücher, see *Jb. f. G., V. & V.*, XVII and XVIII (1893–1894). See also below, Part Two, ch. XVI:i:4. (Wi)

31. The corresponding German terms are: *Hauswirtschaft, Dorfwirtschaft, grundherrliche* and *patrimonialfürstliche Haushaltswirtschaft, Stadtwirtschaft, Territorialwirtschaft*, and *Volkswirtschaft*.

32. What Weber apparently has in mind is the type of "trust" which controls all stages of the process of production from raw material to the finished product. Thus many of our steel enterprises have not only blast furnaces and rolling mills, but coal mines, coke ovens, railways and ships, and iron ore mines. The most notable example in Germany in Weber's time was the Stinnes combine.

33. The *demiurgoi* were the public craftsmen ("those who work for the people") of ancient Greece. Whether they were really on an annual retainer, rather than being paid for the individual job, is still controversial (cf. M. I. Finley, *The World of Oddyseus* [New York 1959], 51f.); Weber himself usually cites the public artisans of Indian villages as an example (e.g., *Economic History*, 34f., 103f.) (Wi)

34. K. Rodbertus, "Zur Geschichte der römischen Tributsteuern seit Augustus," *Jahrbücher f. Nationalök. u. Statistik*, IV (1865); cf. also *Economic History*, 108. (Wi)

35. Carolingian Imperial regulation prescribing detailed management procedures for the royal estates (*villae*). (Wi)

36. Discussed in sec 20, below. (Wi)

37. Discussed in sec. 21, below. (Wi)

38. On Demosthenes' shops and the Carolingian women's house (*genitium*), see *Economic History*, 104ff.; on Roman estate shops, H. Gummerus, *Der römische Gutsbetrieb als wirtschaftl. Organismus nach den We ken des Cato, Varro und Columella* (Leipzig 1906); on the Russian serf factory, see M. I. Tugan-Baranovskii, *Geschichte der russischen Fabrik*, transl. B. Minzes (Berlin 1900). (Wi)

39. *Beunden* were plots of land exempt from the cultivation regulations (crop rotation, grazing rights, etc.) of the village (*Mark-*) association; in contrast to ordinary arable, they could be fenced. *Herrenbeunden*, or unrestricted seigneurial farms operated by a special official (*Beundehofmann*), are found in early documents. J. & W. Grimm, *Deutsches Wörterbuch*, I (Leipzig 1854). (Wi)

40. The term *Paria* is used by Weber in a technical sense to designate a group occupying the same territorial area as others, but separated from them by ritual barriers which severely limit social intercourse between the groups. It has been common for such groups to have specialized occupations, particularly occupations which are despised in the larger society.

41. What is ordinarily called a "producers' co-operative association" would be included in this type, but Weber conceives the type more broadly. In certain respects, for instance, the medieval village community could be considered an example.

42. On the "freed mountains" and "mining freedom," see *Economic History*, 142f. (Wi)

43. His real name was John Winchcombe. See W. J. Ashley, *An Introduc-*

tion to English Economic History and Theory, II (London 1893), 229f. and 255f., who reprints part of the poem; also *Economic History*, 132. (Wi)

44. That is without rights of inheritance or alienation. See above chap. I, sec. 10.

45. This chapter is, however, a mere fragment which Weber intended to develop on a scale comparable with the others. Hence most of the material to which this note refers was probably never written down.

46. For a discussion of *Stör*, "wage work," and "price work," see Karl Bücher, *Industrial Evolution*, *op. cit.*, chap. 4. (Wi)

47. On *coloni*, see *Economic History*, 56, 73. (Wi)

48. It seems curious that in this classification Weber failed to mention the type of agricultural organization which has become predominant in the staple agricultural production of much of the United States and Canada. Of the European types this comes closest to large-scale peasant proprietorship, but is much more definitely oriented to the market for a single staple, such as wheat. Indeed, in many respects this type of farm is closely comparable to some kinds of small-scale industrial enterprise.

49. On this peculiar phenomenon, see *Economic History*, 35. (Wi)

49a. Memorandum on the question of a legal provision to protect the homesteads of smallholders against legal execution ("Empfiehlt sich die Einführung eines Heimstättenrechtes, insbesondere zum Schutz des kleinen Grundbesitzes gegen Zwangsvollstreckung?") in *Deutscher Juristentag* XXIV (1897), *Verhandlungen*, II, 15–32. (W)

50. Weber uses the term *Alltag* in a technical sense, which is contrasted with *Charisma*. The antithesis will play a leading role in chap. III. In his use of the terms, however, an ambiguity appears of which he was probably not aware. In some contexts, *Alltag* means routine, as contrasted with things which are exceptional or extraordinary and hence temporary. Thus, the charismatic movement led by a prophet is, in the nature of the case, temporary, and if it is to survive at all must find a routine basis of organization. In other contexts, *Alltag* means the profane, as contrasted with the sacred. The theoretical significance of this ambiguity has been analysed in [Parsons,] *Structure of Social Action*, chap. xvii.

51. There are several different factors involved in the inability to predict future events with complete certainty. Perhaps the best known analysis of these factors is that of F. H. Knight in his *Risk, Uncertainty and Profit*.

52. On the Chinese and Hamburg *banco*-money (deposit certificates), see *Economic History*, 189f. (Wi)

53. In a well-known essay, "The Social Causes of the Decay of Ancient Civilization," (*J. of General Education*, V, 1950, 75–88), Weber attributed to this factor an important role in the economic decline and through this the cultural changes of the Roman Empire.

54. G. F. Knapp, *The State Theory of Money*, *op. cit.*, 11. (Wi)

55. For the exact definition of "currency money," see Knapp, *The State Theory of Money*, 100ff. (Wi)

56. Note money is discussed in sec. 34, below; metal money in this and the following section. (Wi)

57. Most of the special terminology employed here was coined by Knapp, but never came to be really widely used. "Lytric," from the Greek *lytron* = means of payment, designates specifically the agencies or institutions connected with payments or regulating payment instruments. "Hylodromy," literally the rate of exchange (*Kurs* = *dromos*) of currency metals (*matter* = *hyle*), Knapp defines

as a state characterized by "the deliberate fixing of the price of a hylic metal" (Knapp, *The State Theory of Money*, 79). (Wi)

58. It should be borne in mind that this was written in 1919 or 1920. The situation has clearly been radically changed by the developments since that time.

59. This is an application of Weber's general theory of the relations of interests and ideas, which is much further developed in his writings on the Sociology of Religion. The most important point is that he refused to accept the common dilemma that a given act is motivated either by interests or by ideas. The influence of ideas is rather to be found in their function of defining the situations in which interests are pursued. Beside in Weber's own works, this point is developed in [Parsons'] article "The Role of Ideas in Social Action," *American Sociological Review*, October 1938.

60. Knapp, *The State Theory of Money*, 48. (Wi)

61. *Mäzenatisch.* This term is commonly used in German but not in the precise sense which Weber gives it here. There seems to be no equivalent single term in English, so the idea has been conveyed by a phrase.

62. For the complex history of this institution, the later *Preussische Staatsbank*, see W. O. Henderson, *The State and the Industrial Revolution in Prussia, 1740–1870* (Liverpool 1958), 1[illegible]–147. Founded in 1772 by Frederick II as a primarily government-owned overseas trade agency, the *Seehandlung* eventually turned into a fully government-owned commercial bank used to float state loans and, to some extent, to finance desired industrial development. (Wi)

63. The methodological problems touched here have been further discussed in various of the essays collected in the volume *GAzW*. The most essential point is that Weber held that no scientific analysis in the natural or the social field ever exhausts the concrete individuality of the empirical world. Scientific conceptual schemes and the causal explanations attained through their use are always in important respects abstract.

64. Cf. Weber's essay on "Roscher und Knies und die logischen Probleme der historischen Nationalökonomie," *GAzW*, 2nd ed., 1951, 56, 64ff. (Wi)

65. See *Economic History*, 213 and 256f. (Wi)

66. On cattle loans, see *Economic History*, 56 and 201. (Wi)

67. The distinction here made between those types of economic interest having a dynamic and a static influence on economic activity respectively, is strikingly similar to that made by Pareto between "speculators" and "rentiers:" see *The Mind and Society*, especially secs. 22, 34ff.

68. See Robert Liefmann, *Ertrag und Einkommen auf Grundlage einer rein subjektiven Wertlehre* (Jena 1907); Liefmann, *Grundsätze der Volkswirtschaftslehre* (Stuttgart 1919), vol. II, parts VIII–IX, esp. 636–710. (Wi)

CHAPTER III

THE TYPES OF LEGITIMATE DOMINATION

i

The Basis of Legitimacy

1. *Domination and Legitimacy*

Domination was defined above (ch. I:16) as the probability that certain specific commands (or all commands) will be obeyed by a given group of persons. It thus does not include every mode of exercising "power" or "influence" over other persons. Domination ("authority")[1] in this sense may be based on the most diverse motives of compliance: all the way from simple habituation to the most purely rational calculation of advantage. Hence every genuine form of domination implies a minimum of voluntary compliance, that is, an *interest* (based on ulterior motives or genuine acceptance) in obedience.

Not every case of domination makes use of economic means; still less does it always have economic objectives. However, normally the rule over a considerable number of persons requires a staff (cf. ch. I:12), that is, a *special* group which can normally be trusted to execute the general policy as well as the specific commands. The members of the administrative staff may be bound to obedience to their superior (or superiors) by custom, by affectual ties, by a purely material complex of

interests, or by ideal (*wertrationale*) motives. The quality of these motives largely determines the type of domination. *Purely* material interests and calculations of advantages as the basis of solidarity between the chief and his administrative staff result, in this as in other connexions, in a relatively unstable situation. Normally other elements, affectual and ideal, supplement such interests. In certain exceptional cases the former alone may be decisive. In everyday life these relationships, like others, are governed by custom and material calculation of advantage. But custom, personal advantage, purely affectual or ideal motives of solidarity, do not form a sufficiently reliable basis for a given domination. In addition there is normally a further element, the belief in *legitimacy*.

Experience shows that in no instance does domination voluntarily limit itself to the appeal to material or affectual or ideal motives as a basis for its continuance. In addition every such system attempts to establish and to cultivate the belief in its legitimacy. But according to the kind of legitimacy which is claimed, the type of obedience, the kind of administrative staff developed to guarantee it, and the mode of exercising authority, will all differ fundamentally. Equally fundamental is the variation in effect. Hence, it is useful to classify the types of domination according to the kind of claim to legitimacy typically made by each. In doing this, it is best to start from modern and therefore more familiar examples.

1. The choice of this rather than some other basis of classification can only be justified by its results. The fact that certain other typical criteria of variation are thereby neglected for the time being and can only be introduced at a later stage is not a decisive difficulty. The legitimacy of a system of control has far more than a merely "ideal" significance, if only because it has very definite relations to the legitimacy of property.

2. Not every claim which is protected by custom or law should be spoken of as involving a relation of authority. Otherwise the worker, in his claim for fulfilment of the wage contract, would be exercising authority over his employer because his claim can, on occasion, be enforced by order of a court. Actually his formal status is that of party to a contractual relationship with his employer, in which he has certain "rights" to receive payments. At the same time the concept of an authority relationship (*Herrschaftsverhältnis*) naturally does not exclude the possibility that it has originated in a formally free contract. This is true of the *authority* of the employer over the worker as manifested in the former's rules and instructions regarding the work process; and also of the *authority* of a feudal lord over a vassal who has freely entered into the relation of fealty. That subjection to military discipline is formally "involuntary" while that to the discipline of the factory is voluntary does not alter the fact that the latter is also a case of subjection to *authority*. The position of a bureaucratic official is also entered into by contract and can be

freely resigned, and even the status of "subject" can often be freely entered into and (in certain circumstances) freely repudiated. Only in the limiting case of the slave is formal subjection to authority absolutely involuntary.

On the other hand, we shall not speak of formal domination if a monopolistic position permits a person to exert economic power, that is, to dictate the terms of exchange to contractual partners. Taken by itself, this does not constitute authority any more than any other kind of influence which is derived from some kind of superiority, as by virtue of erotic attractiveness, skill in sport or in discussion. Even if a big bank is in a position to force other banks into a cartel arrangement, this will not alone be sufficient to justify calling it an authority. But if there is an immediate relation of command and obedience such that the management of the first bank can give orders to the others with the claim that they shall, and the probability that they will, be obeyed regardless of particular content, and if their carrying out is supervised, it is another matter. Naturally, here as everywhere the transitions are gradual; there are all sorts of intermediate steps between mere indebtedness and debt slavery. Even the position of a "salon" can come very close to the borderline of authoritarian domination and yet not necessarily constitute "authority." Sharp differentiation in concrete fact is often impossible, but this makes clarity in the analytical distinctions all the more important.

3. Naturally, the legitimacy of a system of domination may be treated sociologically only as the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct ensue. It is by no means true that every case of submissiveness to persons in positions of power is primarily (or even at all) oriented to this belief. Loyalty may be hypocritically simulated by individuals or by whole groups on purely opportunistic grounds, or carried out in practice for reasons of material self-interest. Or people may submit from individual weakness and helplessness because there is no acceptable alternative. But these considerations are not decisive for the classification of types of domination. What is important is the fact that in a given case the particular claim to legitimacy is to a significant degree and according to its type treated as "valid"; that this fact confirms the position of the persons claiming authority and that it helps to determine the choice of means of its exercise.

Furthermore, a system of domination may—as often occurs in practice—be so completely protected, on the one hand by the obvious community of interests between the chief and his administrative staff (bodyguards, Pretorians, "red" or "white" guards) as opposed to the subjects, on the other hand by the helplessness of the latter, that it can afford to drop even the pretense of a claim to legitimacy. But even then the mode of legitimation of the relation between chief and his staff may vary widely according to the type of basis of the relation of the authority between them, and, as will be shown, this variation is highly significant for the structure of domination.

4. "Obedience" will be taken to mean that the action of the person obeying follows in essentials such a course that the content of the command may be taken to have become the basis of action for its own sake. Furthermore, the fact that it is so taken is referable only to the formal obligation, without regard to the actor's own attitude to the value or lack of value of the content of the command as such.

5. Subjectively, the causal sequence may vary, especially as between "intuition" and "sympathetic agreement." This distinction is not, however, significant for the present classification of types of authority.

6. The scope of determination of social relationships and cultural phenomena by virtue of domination is considerably broader than appears at first sight. For instance, the authority exercised in the schools has much to do with the determination of the forms of speech and of written language which are regarded as orthodox. Dialects used as the "chancellery language" of autocephalous political units, hence of their rulers, have often become orthodox forms of speech and writing and have even led to the formation of separate "nations" (for instance, the separation of Holland from Germany). The rule by parents and the school, however, extends far beyond the determination of such cultural patterns, which are perhaps only apparently formal, to the formation of the young, and hence of human beings generally.

7. The fact that the chief and his administrative staff often appear formally as servants or agents of those they rule, naturally does nothing whatever to disprove the quality of dominance. There will be occasion later to speak of the substantive features of so-called "democracy." But a certain minimum of assured power to issue commands, thus of domination, must be provided for in nearly every conceivable case.

2. *The Three Pure Types of Authority*

There are three pure types of legitimate domination. The validity of the claims to legitimacy may be based on:

1. Rational grounds—resting on a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands (legal authority).

2. Traditional grounds—resting on an established belief in the sanctity of immemorial traditions and the legitimacy of those exercising authority under them (traditional authority); or finally,

3. Charismatic grounds—resting on devotion to the exceptional sanctity, heroism or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him (charismatic authority).

In the case of legal authority, obedience is owed to the legally established impersonal order. It extends to the persons exercising the authority

of office under it by virtue of the formal legality of their commands and only within the scope of authority of the office. In the case of traditional authority, obedience is owed to the *person* of the chief who occupies the traditionally sanctioned position of authority and who is (within its sphere) bound by tradition. But here the obligation of obedience is a matter of personal loyalty within the area of accustomed obligations. In the case of charismatic authority, it is the charismatically qualified leader as such who is obeyed by virtue of personal trust in his revelation, his heroism or his exemplary qualities so far as they fall within the scope of the individual's belief in his charisma.

1. The usefulness of the above classification can only be judged by its results in promoting systematic analysis. The concept of "charisma" ("the gift of grace") is taken from the vocabulary of early Christianity. For the Christian hierocracy Rudolf Sohm, in his *Kirche recht*, was the first to clarify the substance of the concept, even though he did not use the same terminology. Others (for instance, Holl in *Enthusiasmus und Bussgewalt*) have clarified certain important consequences of it. It is thus nothing new.

2. The fact that none of these three ideal types, the elucidation of which will occupy the following pages, is usually to be found in historical cases in "pure" form, is naturally not a valid objection to attempting their conceptual formulation in the sharpest possible form. In this respect the present case is no different from many others. Later on (sec. 11 ff.) the transformation of pure charisma by the process of routinization will be discussed and thereby the relevance of the concept to the understanding of empirical systems of authority considerably increased. But even so it may be said of every historical phenomenon of authority that it is not likely to be "as an open book." Analysis in terms of sociological types has, after all, as compared with purely empirical historical investigation, certain advantages which should not be minimized. That is, it can in the particular case of a concrete form of authority determine what conforms to or approximates such types as "charisma," "hereditary charisma," "the charisma of office," "patriarchy," "bureaucracy," the authority of status groups, and in doing so it can work with relatively unambiguous concepts. But the idea that the whole of concrete historical reality can be exhausted in the conceptual scheme about to be developed is as far from the author's thoughts as anything could be.

ii

Legal Authority With a Bureaucratic Administrative Staff

Note: The specifically modern type of administration has intentionally been taken as a point of departure in order to make it possible later to contrast the others with it.

3. *Legal Authority: The Pure Type*

Legal author ty rests on the acceptance of the validity of the following mutually inter-dependent ideas.

1. That any given legal norm may be established by agreement or by imposition, on grounds of expediency or value-rat onality or both, with a claim to obedience at least on the part of the members of the organization. This is, however, usually extended to include all persons within the sphere of power in question—which in the case of territorial bodies is the territorial area—who stand in certain social relationships or carry out forms of social action which in the order governing the organization have been declared to be relevant.

2. That every body of law consists essentially in a consistent system of abstract rules which have normally been intentionally established. Furthermore, administration of law is held to cons st in the application of these rules to particular cases; the administrative process in the rational pursuit of the interests which are specified in the order governing the organization within the limits la d down by legal precepts and following principles which are capable of generalized formulation and are approved in the order governing the group, or at least not disapproved in it.

3. That thus the typical person in authority, the "superior," is himself subject to an impersonal order by orienting his actions to it in his own dispositions and commands. (This is true not only for persons exercising legal authority who are in the usual sense "officials," but, for instance, for the elected president of a state.)

4. That the person who obeys authority does so, as it is usually stated, only in his capacity as a "member" of the organization and what he obeys is only "the law." (He may in this connection be the member

of an association, of a community, of a church, or a citizen of a state.)

5. In conformity with point 3, it is held that the members of the organization, insofar as they obey a person in authority, do not owe this obedience to him as an individual, but to the impersonal order. Hence, it follows that there is an obligation to obedience only within the sphere of the rationally delimited jurisdiction which, in terms of the order, has been given to him.

The following may thus be said to be the fundamental categories of rational legal authority:

(1) A continuous rule-bound conduct of official business.

(2) A specified sphere of competence (jurisdiction). This involves: (a) A sphere of obligations to perform functions which has been marked off as part of a systematic division of labor. (b) The provision of the incumbent with the necessary powers. (c) That the necessary means of compulsion are clearly defined and their use is subject to definite conditions. A unit exercising authority which is organized in this way will be called an "administrative organ" or "agency" (*Behörde*).

> There are administrative organs in this sense in large-scale private enterprises, in parties and annies, as well as in the state and the church. An elected president, a cabinet of ministers, or a body of elected "People's Representatives" also in this sense constitute administrative organs. This is not, however, the place to discuss these concepts. Not every administrative organ is provided with compulsory powers. But this distinction is not important for present purposes.

(3) The organization of offices follows the principle of hierarchy; that is, each lower office is under the control and supervision of a higher one. There is a right of appeal and of statement of grievances from the lower to the higher. Hierarchies differ in respect to whether and in what cases complaints can lead to a "correct" ruling from a higher authority itself, or whether the responsibility for such changes is left to the lower office, the conduct of which was the subject of the complaint.

(4) The rules which regulate the conduct of an office may be technical rules or norms.[2] In both cases, if their application is to be fully rational, specialized training is necessary. It is thus normally true that only a person who has demonstrated an adequate technical training is qualified to be a member of the administrative staff of such an organized group, and hence only such persons are eligible for appointment to official positions. The administrative staff of a rational organization thus typically consists of "officials," whether the organization be devoted to political, hierocratic, economic—in particular, capitalistic—or other ends.

(5) In the rational type it is a matter of principle that the members of the administrative staff should be completely separated from owner-

ship of the means of production or administration. Officials, employees, and workers attached to the administrative staff do not themselves own the non-human means of production and administration. These are rather provided for their use, in kind or in money, and the official is obligated to render an accounting of their use. There exists, furthermore, in principle complete separation of the organization's property (respectively, capital), and the personal property (household) of the official. There is a corresponding separation of the place in which official functions are carried out—the "office" in the sense of premises—from the living quarters.

(6) In the rational type case, there is also a complete absence of appropriation of his official position by the incumbent. Where "rights" to an office exist, as in the case of judges, and recently of an increasing proportion of officials and even of workers, they do not normally serve the purpose of appropriation by the official, but of securing the purely objective and independent character of the conduct of the office so that it is oriented only to the relevant norms.

(7) Administrative acts, decisions, and rules are formulated and recorded in writing, even in cases where oral discussion is the rule or is even mandatory. This applies at least to preliminary discussions and proposals, to final decisions, and to all sorts of orders and rules. The combination of written documents and a continuous operation by officials constitutes the "office" (*Bureau*)[3] which is the central focus of all types of modern organized action.

(8) Legal authority can be exercised in a wide variety of different forms which will be distinguished and discussed later. The following ideal-typical analysis will be deliberately confined for the time being to the administrative staff that is most unambiguously a structure of domination: "officialdom" or "bureaucracy."

In the above outline no mention has been made of the kind of head appropriate to a system of legal authority. This is a consequence of certain considerations which can only be made entirely understandable at a later stage in the analysis. There are very important types of rational domination which, with respect to the ultimate source of authority, belong to other categories. This is true of the hereditary charismatic type, as illustrated by hereditary monarchy, and of the pure charismatic type of a president chosen by a plebiscite. Other cases involve rational elements at important points, but are made up of a combination of bureaucratic and charismatic components, as is true of the cabinet form of government. Still others are subject to the authority of the chiefs of other organizations, whether their character be charismatic or bureaucratic; thus the formal head of a government department under a parliamentary

regime may be a minister who occupies his position because of his authority in a party. The type of rational, legal administrative staff is capable of application i all kinds of situations and contexts. It is the most important mechanism for the administration of everyday affairs. For in that sphere, the exercise of authority consists precisely in administration.

4. *Legal Authority: The Pure Type (Continued)*

The purest type of exercise of legal authority is that which employs a bureaucratic administrative staff. Only the supreme chief of the organization occupies his position of dominance (*Herrenstellung*) by virtue of appropriation, of election, or of having been designated for the succession. But even *his* authority consists in a sphere of legal "competence." The whole administrative staff under the supreme authority then consists, in the purest type, of individual officials (constituting a "monocracy" as opposed to the "collegial" type, which will be discussed below) who are appointed and function according to the following criteria:

(1) They are personally free and subject to authority only with respect to their impersonal official obligations.

(2) They are organized in a clearly defined hierarchy of offices.

(3) Each office has a clearly defined sphere of competence in the legal sense.

(4) The office is filled by a free contractual relationship. Thus, in principle, there is free selection.

(5) Candidates are selected on the basis of technical qualifications. In the most rational case, this is tested by examination or guaranteed by diplomas certifying technical training, or both. They are *appointed*, not elected.

(6) They are remunerated by fixed salaries in money, for the most part with a right to pensions. Only under certain circumstances does the employing authority, especially in private organizations, have a right to terminate the appointment, but the official is always free to resign. The salary scale is graded according to rank in the hierarchy; but in addition to this criterion, the responsibility of the position and the requirements of the incumbent's social status may be taken into account (cf. ch. IV).

(7) The office is treated as the sole, or at least the primary, occupation of the incumbent.

(8) It constitutes a career. There is a system of "promotion" according to seniority or to achievement, or both. Promotion is dependent on the judgment of superiors.

(9) The official works entirely separated from ownership of the means of administration and without appropriation of his position.

(10) He is subject to strict and systematic discipline and control in the conduct of the office.

This type of organization is in principle applicable with equal facility to a wide variety of different fields. It may be applied in profit-making business or in charitable organizations, or in any number of other types of private enterprises serving ideal or material ends. It is equally applicable to political and to hierocratic organizations. With the varying degrees of approximation to a pure type, its historical existence can be demonstrated in all these fields.

1. For example, bureaucracy is found in private clinics, as well as in endowed hospitals or the hospitals maintained by religious orders. Bureaucrati organization is well illustrated by the administrative role of the priesthood (*Kaplanokratie*) in the modern [Catholic] chur h, which has expropriated almost all of the old church benefices, which were in former days to a large extent subject to private appropriation. It is also illustrated by the notion of a [Papal] universal episcopate, which is thought of as formally constituting a universal legal competence in religious matters. Similarly, the doctrine of Papal infallibility is thought of as in fa t involving a universal competence, but only one which functions "ex cathedra" in the sphere of the office, thus implying the typical distinction between the sphere of office and that of the private affairs of the incumbent. The same phenomena are found in the large-scale capitalisti enterprise; and the larger it is, the greater their role. nd this is not less true of political parties, which will be discussed separately. Finally, the modern army is essentially a bureaucratic organization administered by that peculiar type of military functionary, the "officer."

2. Bureaucratic authority is carried out in its purest form where it is most clearly dominated by the principle of appointment. There is no such thing as a hierarchical organization of elected officials. In the first place, it is impossible to attain a stringen y of discipline even approaching that in the appointed type, since the subordinate official can stand on his own election and since his prospects are not dependent on the superior's judgment. (On elected officials, see below, sec. 14.)

3. Appointment by free contract, which makes free selection possible, is essential to modern bureaucracy. Where there is a hierarchical organization with impersonal spheres of competence, but occupied by unfree officials—like slaves or *ministeriales*, who, however, function in a formally bureaucratic manner—the term "patrimonial bureau racy" will be used.

4. The role of technical qualifications in bureaucratic organizations is continually in reasing. Even an official in a party or a trade-union organization is in need of specialized knowledge, though it is usually developed by experience rather than by formal training. In the modern

state, the only "offices" for which no technical qualifications are required are those of ministers and presidents. This only goes to prove that they are "officials" only in a formal sense, and not substantively, just like the managing director or president of a large business corporation. There is no question but that the "position" of the capitalistic entrepreneur is as definitely appropriated as is that of a monarch. Thus at the top of a bureaucratic organization, there is necessarily an element which is at least not purely bureaucratic. The category of bureaucracy is one applying only to the exercise of control by means of a particular kind of administrative staff.

5. The bureaucratic official normally receives a fixed salary. (By contrast, sources of income which are privately appropriated will be called "benefices" (*Pfründen*)—on this concept, see below, sec. 8.) Bureaucratic salaries are also normally paid in money. Though this is not essential to the concept of bureaucracy, it is the arrangement which best fits the pure type. (Payments in kind are apt to have the character of benefices, and the receipt of a benefice normally implies the appropriation of opportunities for earnings and of positions.) There are, however, gradual transitions in this field with many intermediate types. Appropriation by virtue of leasing or sale of offices or the pledge of income from office are phenomena foreign to the pure type of bureaucracy (cf. *infra*, sec. 7a: III: 3).

6. "Offices" which do not constitute the incumbent's principal occupation, in particular "honorary" offices, belong in other categories, which will be discussed later (sec. 19f.). The typical "bureaucratic" official occupies the office as his principal occupation.

7. With respect to the separation of the official from ownership of the means of administration, the situation is exactly the same in the field of public administration and in private bureaucratic organizations, such as the large-scale capitalistic enterprise.

8. Collegial bodies will be discussed separately below (section 15). At the present time they are rapidly decreasing in importance in favor of types of organization which are in fact, and for the most part formally as well, subject to the authority of a single head. For instance, the collegial "governments" in Prussia have long since given way to the monocratic "district president" (*Regierungspräsident*). The decisive factor in this development has been the need for rapid, clear decisions, free of the necessity of compromise between different opinions and also free of shifting majorities.

9. The modern army officer is a type of appointed official who is clearly marked off by certain status distinctions. This will be discussed elsewhere (ch. IV). In this respect such officers differ radically from elected military leaders, from charismatic *condottieri* (sec. 10), from the type of officers who recruit and lead mercenary armies as a capitalistic enterprise, and, finally, from the incumbents of commissions which have been purchased (sec. 7a). There may be gradual transitions between these types. The patrimonial "retainer," who is separated from the means

of carrying out his function, and the proprietor of a mercenary army for capitalistic purposes have, along with the private capitalistic entrepreneur, been pioneers in the organization of the modern type of bureaucracy. This will be discussed in detail below.

5. *Monocratic Bureaucracy*

Experience tends universally to show that the purely bureaucratic type of administrative organization—that is, the monocratic variety of bureaucracy—is, from a purely technical point of view, capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of exercising authority over human beings. It is superior to any other form in precision, in stability, in the stringency of its discipline, and in its reliability. It thus makes possible a particularly high degree of calculability of results for the heads of the organization and for those acting in relation to it. It is finally superior both in intensive efficiency and in the scope of its operations, and is formally capable of application to all kinds of administrative tasks.

The development of modern forms of organization in all fields is nothing less than identical with the development and continual spread of bureaucratic administration. This is true of church and state, of armies, political parties, economic enterprises, interest groups, endowments, clubs, and many others. Its development is, to take the most striking case, at the root of the modern Western state. However many forms there may be which do not appear to fit this pattern, such as collegial representative bodies, parliamentary committees, soviets, honorary officers, lay judges, and what not, and however many people may complain about the "red tape," it would be sheer illusion to think for a moment that continuous administrative work can be carried out in any field except by means of officials working in offices. The whole pattern of everyday life is cut to fit this framework. If bureaucratic administration is, other things being equal, always the most rational type from a technical point of view, the needs of mass administration make it today completely indispensable. The choice is only that between bureaucracy and dilettantism in the field of administration.

The primary source of the superiority of bureaucratic administration lies in the role of technical knowledge which, through the development of modern technology and business methods in the production of goods, has become completely indispensable. In this respect, it makes no difference whether the economic system is organized on a capitalistic or a socialistic basis. Indeed, if in the latter case a comparable level of technical

efficiency were to be achieved, it would mean a tremendous increase in the importance of professional bureaucrats.

When those subject to bureaucratic control seek to escape the influence of the existing bureaucratic apparatus, this is normally possible only by creating an organization of their own which is equally subject to bureaucratization. Similarly the existing bureaucratic apparatus is driven to continue functioning by the most powerful interests which are material and objective, but also ideal in character. Without it, a society like our own—with its separation of officials, employees, and workers from ownership of the means of administration, and its dependence on discipline and on technical training—could no longer function. The only exception would be those groups, such as the peasantry, who are still in possession of their own means of subsistence. Even in the case of revolution by force or of occupation by an enemy, the bureaucratic machinery will normally continue to function just as it has for the previous legal government.

The question is always who controls the existing bureaucratic machinery. And such control is possible only in a very limited degree to persons who are not technical specialists. Generally speaking, the highest-ranking career official is more likely to get his way in the long run than his nominal superior, the cabinet minister, who is not a specialist.

Though by no means alone, the capitalistic system has undeniably played a major role in the development of bureaucracy. Indeed, without it capitalistic production could not continue and any rational type of socialism would have simply to take it over and increase its importance. Its development, largely under capitalistic auspices, has created an urgent need for stable, strict, intensive, and calculable administration. It is this need which is so fateful to any kind of large-scale administration. Only by reversion in every field—political, religious, economic, etc.—to small-scale organization would it be possible to any considerable extent to escape its influence. On the one hand, capitalism in its modern stages of development requires the bureaucracy, though both have arisen from different historical sources. Conversely, capitalism is the most rational economic basis for bureaucratic administration and enables it to develop in the most rational form, especially because, from a fiscal point of view, it supplies the necessary money resources.

Along with these fiscal conditions of efficient bureaucratic administration, there are certain extremely important conditions in the fields of communication and transportation. The precision of its functioning requires the services of the railway, the telegraph, and the telephone, and becomes increasingly dependent on them. A socialistic form of organization would not alter this fact. It would be a question (cf. ch. II, sec. 12)

whether in a socialistic system it would be possible to provide conditions for carrying out as stringent a bureaucratic organization as has been possible in a capitalistic order. For socialism would, in fact, require a still higher degree of formal bureaucratization than capitalism. If this should prove not to be possible, it would demonstrate the existence of another of those fundamental elements of irrationality—a conflict between formal and substantive rationality of the sort which sociology so often encounters.

Bureaucratic administration means fundamentally domination through knowledge. This is the feature of it which makes it specifically rational. This consists on the one hand in technical knowledge which, by itself, is sufficient to ensure it a position of extraordinary power. But in addition to this, bureaucratic organizations, or the holders of power who make use of them, have the tendency to increase their power still further by the knowledge growing out of experience in the service. For they acquire through the conduct of office a special knowledge of facts and have available a store of documentary material peculiar to themselves. While not peculiar to bureaucratic organizations, the concept of "official secrets" is certainly typical of them. It stands in relation to technical knowledge in somewhat the same position as commercial secrets do to technological training. It is a product of the striving for power.

Superior to bureaucracy in the knowledge of techniques and facts is only the capitalist entrepreneur, within his own sphere of interest. He is the only type who has been able to maintain at least relative immunity from subjection to the control of rational bureaucratic knowledge. In large-scale organizations, all others are inevitably subject to bureaucratic control, just as they have fallen under the dominance of precision machinery in the mass production of goods.

In general, bureaucratic domination has the following social consequences:

(1) The tendency to "levelling" in the interest of the broadest possible basis of recruitment in terms of technical competence.

(2) The tendency to plutocracy growing out of the interest in the greatest possible length of technical training. Today this often lasts up to the age of thirty.

(3) The dominance of a spirit of formalistic impersonality: "*Sine ira et studio*," without hatred or passion, and hence without affection or enthusiasm. The dominant norms are concepts of straightforward duty without regard to personal considerations. Everyone is subject to formal equality of treatment; that is, everyone in the same empirical situation. This is the spirit in which the ideal official conducts his office.

The development of bureaucracy greatly favors the levelling of status, and this can be shown historically to be the normal tendency. Conversely, every process of social levelling creates a favorable situation for the development of bureaucracy by eliminating the office-holder who rules by virtue of status privileges and the appropriation of the means and powers of administration; in the interests of "equality," it also eliminates those who can hold office on an honorary basis or as an avocation by virtue of their wealth. Everywhere bureaucratization foreshadows mass democracy, which will be discussed in another connection.

The "spirit" of rational bureaucracy has normally the following general characteristics:

(1) Formalism, which is promoted by all the interests which are concerned with the security of their own personal situation, whatever this may consist in. Otherwise the door would be open to arbitrariness and hence formalism is the line of least resistance.

(2) There is another tendency, which is apparently, and in part genuinely, in contradiction to the above. It is the tendency of officials to treat their official function from what is substantively a utilitarian point of view in the interest of the welfare of those under their authority. But this utilitarian tendency is generally expressed in the enactment of corresponding regulatory measures which themselves have a formal character and tend to be treated in a formalistic spirit. (This will be further discussed in the Sociology of Law). This tendency to substantive rationality is supported by all those subject to authority who are not included in the group mentioned above as interested in the protection of advantages already secured. The problems which open up at this point belong in the theory of "democracy."

iii

Traditional Authority

6. *The Pure Type*

Authority will be called traditional if legitimacy is claimed for it and believed in by virtue of the sanctity of age-old rules and powers. The masters are designated according to traditional rules and are obeyed because of their traditional status (*Eigenwürde*). This type of organized

rule is, in the simplest case, primarily based on personal loyalty which results from common upbringing. The person exercising authority is not a "superior," but a personal master, his administrative staff does not consist mainly of officials but of personal retainers, and the ruled are not "members" of an association but are either his traditional "comrades" (sec. 7a) or his "subjects." Personal loyalty, not the official's impersonal duty, determines the relations of the administrative staff to the master.

Obedience is owed not to enacted rules but to the person who occupies a position of authority by tradition or who has been chosen for it by the traditional master. The commands of such a person are legitimized in one of two ways:

a) partly in terms of traditions which themselves directly determine the content of the command and are believed to be valid within certain limits that cannot be overstepped without endangering the master's traditional status;

b) partly in terms of the master's discretion in that sphere which tradition leaves open to him; this traditional prerogative rests primarily on the fact that the obligations of personal obedience tend to be essentially unlimited.

Thus there is a double sphere:

a) that of action which is bound to specific traditions;
b) that of action which is free of specific rules.

In the latter sphere, the master is free to do good turns on the basis of his personal pleasure and likes, particularly in return for gifts—the historical sources of dues (*Gebühren*). So far as his action follows principles at all, these are governed by considerations of ethical common sense, of equity or of utilitarian expediency. They are not formal principles, as in the case of legal authority. The exercise of power is oriented toward the consideration of how far master and staff can go in view of the subjects' traditional compliance without arousing their resistance. When resistance occurs, it is directed against the master or his servant personally, the accusation being that he failed to observe the traditional limits of his power. Opposition is not directed against the system as such—it is a case of "traditionalist revolution."

In the pure type of traditional authority it is impossible for law or administrative rule to be deliberately created by legislation. Rules which in fact are innovations can be legitimized only by the claim that they have been "valid of yore," but have only now been recognized by means of "Wisdom" [the *Weistum* of ancient Germanic law]. Legal decisions as "finding of the law" (*Rechtsfindung*) can refer only to documents of tradition, namely to precedents and earlier decisions.

7. *The Pure Type (Continued)*

The master rules with or without an administrative staff. On the latter case, see sec. 7a:I.

The typical administrative staff is recruited from one or more of the following sources:

(I) From persons who are already related to the chief by traditional ties of loyalty. This will be called patrimonial recruitment. Such persons may be

a) kinsmen,
b) slaves,
c) dependents who are officers of the household, especially *ministeriales*,
d) clients,
e) *coloni*,
f) freedmen;

(II) Recruitment may be extra-patrimonial, including

a) persons in a relation of purely personal loyalty such as all sorts of "favorites,"
b) persons standing in a relation of fealty to their lord (vassals), and, finally,
c) free men who voluntarily enter into a relation of personal loyalty as officials.

On I.a) Under traditionalist domination it is very common for the most important posts to be filled with members of the ruling family or clan.

b) In patrimonial administrations it is common for slaves and freedmen to rise even to the highest positions. It has not been rare for Grand Viziers to have been at one time slaves.

c) The typical household officials have been the following: the seneschal, the marshal, the chamberlain, the carver (*Truchsess*), the majordomo, who was the head of the service personnel and possibly of the vassals. These are to be found everywhere in Europe. In the Orient, in addition, the head eunuch, who was in charge of the harem, was particularly important, and in African kingdoms, the executioner. Furthermore, the ruler's personal physician, the astrologer and similar persons have been common.

d) In China and in Egypt, the principal source of recruitment for patrimonial officials lay in the clientele of the king.

e) Armies of *coloni* have been known throughout the Orient and were typical of the Roman nobility. (Even in modern times, in the Mohammedan world, armies of slaves have existed.)

On II.a) The regime of favorites is characteristic of every patrimonial rule and has often been the occasion for traditionalist revolutions.

b) The vassals will be treated separately.

c) Bureaucracy has first developed in patrimonial states with a body of officials recruited from extra-patrimonial sources; but, as will be shown soon, these officials were at first personal followers of their master.

In the pure type of traditional rule, the following features of a bureaucratic administrative staff are absent:

a) a clearly defined sphere of competence subject to impersonal rules,

b) a rationally established hierarchy,

c) a regular system of appointment on the basis of free contract, and orderly promotion,

d) technical training as a regular requirement,

e) (frequently) fixed salaries, in the type case paid in money.

On a): In place of a well-defined functional jurisdiction, there is a conflicting series of tasks and powers which at first are assigned at the master's discretion. However, they tend to become permanent and are often traditionally stereotyped. These competing functions originate particularly in the competition for sources of income which are at the disposal of the master himself and of his representatives. It is often in the first instance through these interests that definite functional spheres are first marked off and genuine administrative organs come into being.

At first, persons with permanent functions are household officials. Their (extra-patrimonial) functions outside the administration of the household are often in fields of activity which bear a relatively superficial analogy to their household function, or which originated in a discretionary act of the master and later became traditionally stereotyped. In addition to household officials, there have existed primarily only persons with *ad hoc* commissions.

The absence of distinct spheres of competence is evident from a perusal of the list of the titles of officials in any of the ancient Oriental states. With rare exceptions, it is impossible to associate with these titles a set of rationally delimited functions which have remained stable over a considerable period.

The process of delimiting permanent functions as a result of competition among and compromise between interests seeking favors, income, and other forms of advantage is clearly evident in the Middle Ages. This phenomenon has had very important consequences. The financial interests of the powerful royal courts and of the powerful legal profession in England were largely responsible for vitiating or curbing the influence of Roman and Canon law. In all periods the irrational division of official functions has been stereotyped by the existence of an established set of rights to fees and perquisites.

On b): The question of who shall decide a matter or deal with appeals—whether an agent shall be in charge of this, and which one, or

whether the master reserves decision for himself—is treated either traditionally, at times by considering the provenience of certain legal norms and precedents taken over from the outside (*Oberhof-System*);[38] or entirely on the basis of the master's discretion in such manner that all agents have to yield to his personal intervention.

> Next to the traditionalist system of the [precedent-setting outside] "superior" court (*Oberhof*) we find the principle of Germanic law, deriving from the ruler's political prerogative, that in his presence the jurisdiction of any court is suspended. The *ius evocandi* and its modern derivative, chamber justice (*Kabinettsjustiz*), stem from the same source and the ruler's discretion. Particularly in the Middle Ages the *Oberhof* was very often the agency whose writ declared and interpreted the law, and accordingly the source from which the law of a given locality was imported.

On c): The household officials and favorites are often recruited in a purely patrimonial fashion: they are slaves or dependents (*ministeriales*) of the master. If recruitment has been extra-patrimonial, they have tended to be benefice-holders whom he can freely remove. A fundamental change in this situation is first brought about by the rise of free vassals and the filling of offices by a contract of fealty. However, since fiefs are by no means determined by functional considerations, this does not alter the situation with respect to a) and b) [the lack of definite spheres of competence and clearly determined hierarchical relationships]. Except under certain circumstances when the administrative staff is organized on a prebendal basis, "promotion" is completely up to the master's discretion (see sec. 8).

On d): Rational technical training as a basic qualification for office is scarcely to be found among household officials and favorites. However, a fundamental change in administrative practice occurs wherever there is even a beginning of technical training for appointees, regardless of its content.

> For some offices a certain amount of empirical training has been necessary from very early times. This is particularly true of the art of reading and writing which was originally truly a rare "art." This has often, most strikingly in China, had a decisive influence on the whole development of culture through the mode of life of the literati. It eliminated the recruiting of officials from intra-patrimonial sources and thus limited the ruler's power by confronting him with a status group (cf. sec. 7a: III).

On e): Household officials and favorites are usually supported and equipped in the master's household. Generally, their dissociation from the lord's own table means the creation of benefices, at first usually benefices in kind. It is easy for these to become traditionally stereotyped in amount and kind. In addition, or instead of them, the officials who

live outside the lord's household and the lord himself count on various fees, which are often collected without any regular rate or scale, being agreed upon from case to case with those seeking favors. (On the concept of benefices see sec. 8.)

7a. *Gerontocracy, Patriarchalism and Patrimonialism*

I. *Gerontocracy* and *primary patriarchalism* are the most elementary types of traditional domination where the master has no personal administrative staff.

The term gerontocracy is applied to a situation where so far as rule over the group is organized at all it is in the hands of elders—which originally was understood literally as the eldest in actual years, who are the most familiar with the sacred traditions. This is common in groups which are not primarily of an economic or kinship character. "Patriarchalism" is the situation where, within a group (household) which is usually organized on both an economic and a kinship basis, a particular individual governs who is designated by a definite rule of inheritance. Gerontocracy and patriarchalism are frequently found side by side. The decisive characteristic of both is the belief of the members that domination, even though it is an inherent traditional right of the master, must definitely be exercized as a joint right in the interest of all members and is thus not freely appropriated by the incumbent. In order that this shall be maintained, it is crucial that in both cases there is a complete absence of a personal (patrimonial) staff. Hence the master is still largely dependent upon the willingness of the members to comply with his orders since he has no machinery to enforce them. Therefore, the members (*Genossen*) are not yet really subjects (*Untertanen*).

Their membership exists by tradition and not by enactment. Obedience is owed to the master, not to any enacted regulation. However, it is owed to the master only by virtue of his traditional status. He is thus on his part strictly bound by tradition.

> The different types of gerontocracy will be discussed later. Elementary patriarchalism is related to it in that the patriarch's authority carries strict obligations to obedience only within his own household. Apart from this, as in the case of the Arabian Sheik, it has only an exemplary effect, in the manner of charismatic authority, or must resort to advice and similar means of exerting influence.

II. *Patrimonialism* and, in the extreme case, *sultanism* tend to arise whenever traditional domination develops an administration and a military force which are purely personal instruments of the master. Only then are the group members treated as subjects. Previously the master's

authority appeared as a pre-existent group right, now it turns into his personal right, which he appropriates in the same way as he would any ordinary object of possession. In principle, he can exploit his right like any economic asset—sell it, pledge it as security, or divide it by inheritance. The primary external support of patrimonial power is provided by slaves (who are often branded), *coloni* and conscripted subjects, but also by mercenary bodyguards and armies (patrimonial troops); the latter practice is designed to maximize the solidarity of interest between master and staff. By controlling these instruments the ruler can broaden the range of his arbitrary power and put himself in a position to grant grace and favors at the expense of the traditional limitations of patriarchal and gerontocratic structures. Where domination is primarily traditional, even though it is exercised by virtue of the ruler's personal autonomy, it will be called *patrimonial authority;* where it indeed operates primarily on the basis of discretion, it will be called *sultanism.* The transition is definitely continuous. Both forms of domination are distinguished from elementary patriarchalism by the presense of a personal staff.

Sometimes it appears that sultanism is completely unrestrained by tradition, but this is never in fact the case. The non-traditional element is not, however, rationalized in impersonal terms, but consists only in an extreme development of the ruler's discretion. It is this which distinguishes it from every form of rational authority.

III. *Estate-type domination (ständische Herrschaft)*[4] is that form of patrimonial authority under which the administrative staff appropriates particular powers and the corresponding economic assets. As in all similar cases (cf. ch. II, sec. 19), appropriation may take the following forms:

a) Appropriation may be carried out by an organized group or by a category of persons distinguished by particular characteristics, or

b) it may be carried out by individuals, for life, on a hereditary basis, or as free property.

Domination of the estate-type thus involves:

a) always a limitation of the lord's discretion in selecting his administrative staff because positions or seigneurial powers have been appropriated by

- α) an organized group,
- β) a status group (see ch. IV), or

b) often—and this will be considered as typical—appropriation by the individual staff members of

- α) the positions, including in general the economic advantages associated with them,
- β) the material means of administration,
- γ) the governing powers.

Those holding appropriated positions may have originated historically 1) from members of an administrative staff which was not previously an independent status group, or 2) before the appropriation, they may not have belonged to the staff.

Where governing powers are appropriated, the costs of administration are met indiscriminately from the incumbent's own and his appropriated means. Holders of military powers and seigneurial members of the "feudal" army (*ständisches Heer*) equip themselves and possibly their own patrimonial or feudal contingents. It is also possible that the provision of administrative means and of the administrative staff itself is appropriated as the object of a profit-making enterprise, on the basis of fixed contributions from the ruler's magazines or treasury. This was true in particular of the mercenary armies in the sixteenth and seventeenth century in Europe—examples of "capitalist armies."

Where appropriation is complete, all the powers of government are divided between the ruler and the administrative staff members, each on the basis of his personal rights (*Eigenrecht*); or autonomous powers are created and regulated by special decrees of the ruler or special compromises with the holders of appropriated rights.

On 1): An example are the holders of court offices which have become appropriated as fiefs. An example for 2) are seigneurs who appropriated powers by virtue of their privileged position or by usurpation, using the former as a legalization of the latter.

Appropriation by an *individual* may rest on

1. leasing,
2. pledging as security,
3. sale,
4. privileges, which may be personal, hereditary or freely appropriated, unconditional or subject to the performance of certain functions; such a privilege may be

a) granted in return for services or for the sake of "buying" compliance, or

b) it may constitute merely the formal recognition of actual usurpation of powers;

5. appropriation by an organized group or a status group, usually a consequence of a compromise between the ruler and his administrative staff or between him and an unorganized status group; this may

α) leave the ruler completely or relatively free in his selection of individuals, or

β) it may lay down rigid rules for the selection of incumbents;

6. fiefs, a case which we must deal with separately.

1. In the cases of gerontocracy and pure patriarchalism, so far as there are clear ideas on the subject at all, the means of administration are generally appropriated by the group as a whole or by the participating households. The administrative functions are performed on behalf of the group as a whole. Appropriation by the master personally is a phenomenon of patrimonialism. It may vary enormously in degree to the extreme cases of a claim to full proprietorship of the land (*Bodenregal*) and to the status of master over subjects treated as negotiable slaves. Estate-type appropriation generally means the appropriation of at least part of the means of administration by the members of the administrative staff. In the case of pure patrimonialism, there is complete separation of the functionary from the means of carrying out his function. But exactly the opposite is true of the estate-type of patrimonialism. The person exercising governing powers has personal control of the means of administration—if not all, at least of an important part of them. In full possession of these means were the feudal knight, who provided his own equipment, the count, who by virtue of holding his fief took the court fees and other perquisites for himself and met his feudal obligations from his own means (including the appropriated ones), and the Indian *jagirdar*, who provided and equipped a military unit from the proceeds of his tax benefice. On the other hand, a colonel who recruited a mercenary regiment on his own account, but received certain payments from the royal exchequer and covered his deficit either by curtailing the service or from booty or requisitions, was only partly in possession of the means of administration and was subject to certain regulations. By contrast, the Pharaoh, who organized armies of slaves or *coloni*, put his clients in command of them, and clothed, fed and equipped them from his own storehouses, was acting as a patrimonial lord in full personal control of the means of administration. It is not always the formal mode of organization which is decisive. The Mamelukes were formally purchased slaves. In fact, however, they monopolized the powers of government as completely as any group of *ministeriales* has ever monopolized the service fiefs.

There are examples of service land appropriated by a closed group without any individual appropriation. Where this occurs, land may be freely granted to individuals by the lord as long as they are members of the group (case III:a:α) or the grant may be subject to regulations specifying qualifications (case III:a:β). Thus, military or possibly ritual qualifications have been required of the candidates, but once they are given, close blood relations have had priority. The situation is similar in the case of manorial or guild artisans or of peasants whose services have been attached for military or administrative purposes.

2. Appropriation by lease, especially tax farming, by pledging as security, or by sale, have been found in the Occident, but also in the Orient and in India. In Antiquity, it was not uncommon for priesthoods to be sold at auction. In the case of leasing, the aim has been partly a practical financial one to meet stringencies caused especially by the costs of war. It has partly also been a matter of the technique of

financing, to insure a stable money income available for budgetary uses. Pledging as security and sale have generally arisen from the first aim. In the Papal States the purpose was also the creation of rents for nephews (*Nepotenrenten*). Appropriation by pledging played a significant role in France as late as the eighteenth century in filling judicial posts in the *parlements*. The appropriation of officers' commissions by regulated purchase continued in the British army well into the nineteenth century. Privileges, as a sanction of usurpation, as a reward, or as an incentive for political services, were common in the Middle Ages in Europe as well as elsewhere.

8. *Patrimonial Maintenance: Benefices and Fiefs*

The patrimonial retainer may receive his support in any of the following ways:

a) by living from the lord's table,

b) by allowances (usually in kind) from the lord's magazines or treasury,

c) by rights of land use in return for services ("service-land"),

d) by the appropriation of property income, fees or taxes,

e) by fiefs.

We shall speak of *benefices* insofar as the forms of maintenance b) through d) are always newly granted in a traditional fashion which determines amount or locality, and insofar as they can be appropriated by the individual, although not hereditarily. When an administrative staff is, in principle, supported in this form, we shall speak of *prebendalism*. In such a situation there may be a system of promotion on a basis of seniority or of particular objectively determined achievements, and it may also happen that a certain social status and hence a sense of status honor (*Standesehre*) are required as a criterion of eligibility. (On the concept of the status group: *Stand*, see ch. IV.)

Appropriated seigneurial powers will be called a *fief* if they are granted primarily to particular qualified individuals by a contract and if the reciprocal rights and duties involved are primarily oriented to conventional standards of status honor, particularly in a military sense. If an administrative staff is primarily supported by fiefs, we will speak of [Western] *feudalism* (*Lehensfeudalismus*).

The transition between fiefs and military benefices is so gradual that at times they are almost indistinguishable. (This will be further discussed below in ch. IV.)

In cases d) and e), sometimes also in c), the individual who as appropriated governing powers pays the cost of his administration, possibly

of military equipment, in the manner indicated above, from the proceeds of his benefice or fief. His own authority may then become patrimonial (hence, hereditary, alienable, and capable of division by inheritance.)

1. The earliest form of support for royal retainers, household officials, priests and other types of patrimonial (for example, manorial) retainers has been their presence at the lord's table or their support by discretionary allowances from his stores. The "men's house," which is the oldest form of professional military organizations—to be dealt with later—, very often adheres to the consumptive household communism of a ruling stratum. Separation from the table of the lord (or of the temple or cathedral) and the substitution of allowances or service-land has by no means always been regarded with approval. It has, however, usually resulted from the establishment of independent families. Allowances in kind granted to such temple priests and officials constituted the original form of support of officials throughout the Near East and also existed in China, India, and often in the Occident. The use of land in return for military service is found throughout the Orient since early Antiquity, and also in medieval Germany, as a means of providing for *ministeriales*, manorial officials and other functionaries. The income sources of the Turkish *spahis*, the Japanese *samurai*, and various similar types of Oriental retainers and knights are, in the present terminology, "benefices" and not "fiefs," as will be pointed out later. In some cases they have been derived from the rents of certain lands; in others, from the tax income of certain districts. In the latter case, they have generally been combined with appropriation of governmental powers in the same district. The concept of the fief can be further developed only in relation to that of the state. Its object may be a manor—a form of patrimonial domination—or it may be any of various kinds of claims to property income and fees.

2. The appropriation of property income and rights to fees and the proceeds of taxes in the form of benefices and fiefs of all sorts is widespread. In India, particularly, it became an independent and highly developed practice. The usual arrangement was the granting of rights to these sources of income in return for the provision of military contingents and the payment of administrative costs.

9. *Estate-Type Domination and Its Division of Powers*

In the pure type, patrimonial domination, especially of the estate-type, regards all governing powers and the corresponding economic rights as privately appropriated economic advantages. This does not mean that these powers are qualitatively undifferentiated. Some important ones are appropriated in a form subject to special regulations. In particular, the appropriation of judicial and military powers tends to be treated as a legal basis for a privileged status position of those appropriating them, as

compared to the appropriation of purely economic advantages having to do with the income from domains, from taxes, or perquisites. Within the latter category, again, there tends to be a differentiation of those which are primarily patrimonial from those which are primarily extra-patrimonial or fiscal in the mode of appropriation. For our terminology the decisive fact is that, regardless of content, governing powers and the related emoluments are treated as private rights.

In his *Der deutsche Staat des Mittelalters,* von Below is quite right in emphasizing that the appropriation of judicial authority was singled out and became a source of privileged status, and that it is impossible to prove that the medieval political organization had either a purely patrimonial or a purely feudal character. Nevertheless, so far as judicial authority and other rights of a purely political origin are treated as private rights, it is for present purposes terminologically correct to speak of patrimonial domination. The concept itself, as is well known, has been most consistently developed by Haller in his *Restauration der Staatswissenschaften.* Historically there has never been a purely patrimonial state.[5]

IV. We shall speak of the *estate-type division of powers* (*ständische Gewaltenteilung*) when organized groups of persons privileged by appropriated seigneurial powers conclude *compromises* with their ruler. As the occasion warrants, the subject of such compromises may be political or administrative regulations, concrete administrative decisions or supervisory measures. At times the members of such groups may participate directly on their own authority and with their own staffs.

1. Under certain circumstances, groups, such as peasants, which do not enjoy a privileged social position, may be included. This does not, however, alter the concept. For the decisive point is the fact that the members of the privileged group have independent rights. If socially privileged groups were absent, the case would obviously belong under another type.

2. The type case has been fully developed only in the Occident. We must deal separately and in detail with its characteristics and with the reasons for its development.

3. As a rule, such a status group did not have an administrative staff of its own, especially not one with independent governing powers.

9a. *Traditional Domination and the Economy*

The primary effect of traditional domination on economic activities is usually in a very general way to strengthen traditional attitudes. This is most conspicuous under gerontocratic and purely patriarchal domination, which cannot use an administrative machinery against the members

of the group and hence is strongly dependent for its own legitimacy upon the safeguarding of tradition in every respect.

I. Beyond this, the typical mode of financing a traditional structure of domination affects the economy (cf. ch. II, sec. 38). In this respect, patrimonialism may use a wide variety of approaches. The following, however, are particularly important:

A. An *oikos* maintained by the ruler where needs are met on a liturgical basis wholly or primarily in kind (in the form of contributions and compulsory services). In this case, economic relationships tend to be strictly tradition-bound. The development of markets is obstructed, the use of money is primarily consumptive, and the development of capitalism is impossible.

B. Provisioning the services of socially privileged groups has very similar effects. Though not necessarily to the same extent, the development of markets is also limited in this case by the fact that the property and the productive capacity of the individual economic units are largely pre-empted for the ruler's needs.

C. Furthermore, patrimonialism can resort to monopolistic want satisfaction, which in part may rely on profit-making enterprises, fee-taking or taxation. In this case, the development of markets is, according to the type of monopolies involved, more or less seriously limited by irrational factors. The important openings for profit are in the hands of the ruler and of his administrative staff. Capitalism is thereby either directly obstructed, if the ruler maintains his own administration, or is diverted into political capitalism, if there is tax farming, leasing or sale of offices, and capitalist provision for armies and administration (see ch. II, sec. 31).

Even where it is carried out in money terms, the financing of patrimonialism and even more of sultanism tends to have irrational consequences for the following reasons:

1) The obligations placed on sources of direct taxation tend both in amount and in kind to remain bound to tradition. At the same time there is complete freedom—and hence arbitrariness—in the determination of a) fees and b) of newly imposed obligations, and c) in the organization of monopolies. This element of arbitrariness is at least claimed as a right. It is historically most effective in case a), because the lord and his staff must be asked for the "favor" of action, far less effective in case b), and of varying effectiveness in case c).

2) Two bases of the rationalization of economic activity are entirely lacking; namely, a basis for the calculability of obligations and of the extent of freedom which will be allowed to private enterprise.

D. In individual cases, however, patrimonial fiscal policy may have a

rationalizing effect by systematically cultivating its sources of taxation and by organizing monopolies rationally. This, however, is "accidental" and dependent on specific historical circumstances, some of which existed in the Occident.

If there is estate-type division of powers, fiscal policy tends to be a result of compromise. This makes the burdens relatively predictable and eliminates or at least sharply limits the ruler's powers to impose new burdens and, above all, to create monopolies. Whether the resulting fiscal policy tends to promote or to limit rational economic activity depends largely on the type of ruling group; primarily, it depends on whether it is a *feudal* or a *patrician* stratum. The dominance of the feudal stratum tends, because the structure of feudalized powers of government is normally patrimonial, to set rigid limits to the freedom of acquisitive activity and the development of markets. It may even involve deliberate attempts to suppress them to protect the power of the feudal stratum. The predominance of a patrician [urban] stratum may have the opposite effect.

1. What has been said above must suffice for the present. It will be necessary to return to these questions repeatedly in different connections.

2. Examples for IA): the *oikos* of ancient Egypt and in India; IB): large parts of the Hellenistic world, the late Roman Empire, China, India, to some extent Russia and the Islamic states; IC): Ptolemaic Egypt, to some extent the Byzantine Empire, and in a different way the regime of the Stuarts in England; ID): the Occidental patrimonial states in the period of "enlightened despotism," especially Colbert's policies.

II. It is not only the financial policy of most patrimonial regimes which tends to restrict the development of rational economic activity, but above all the general character of their administrative practices. This is true in the following respects:

a) Traditionalism places serious obstacles in the way of formally rational regulations, which can be depended upon to remain stable and hence are calculable in their economic implications and exploitability.

b) A staff of officials with formal technical training is typically absent.

(The fact that it developed in the patrimonial states of the Occident is, as will be shown, accounted for by unique conditions. This stratum developed for the most part out of sources wholly different from the general structure of patrimonialism.)

c) There is a wide scope for actual arbitrariness and the expression of purely personal whims on the part of the ruler and the members of his administrative staff. The opening for bribery and corruption, which is

simply a matter of the disorganization of an unregulated system of fees, would be the least serious effect of this if it remained a constant quantity, because then it would become calculable in practice. But it tends to be a matter which is settled from case to case with every individual official and thus highly variable. If offices are leased, the incumbent is put in a position where it is to his immediate interest to get back the capital he has invested by any available means of extortion, however irrational.

d) Patriarchalism and patrimonialism have an inherent tendency to regulate economic activity in terms of utilitarian, welfare or absolute values. This tendency stems from the character of the claim to legitimacy and the interest in the contentment of the subjects. It breaks down the type of *formal* rationality which is oriented to a technical legal order. This type of influence is decisive in the case of hierocratic patrimonialism. In the case of pure sultanism, on the other hand, it is fiscal arbitrariness which is likely to be most important.

For all these reasons, under the dominance of a patrimonial regime only certain types of capitalism are able to develop:

a) capitalist trading,

b) capitalist tax farming, lease and sale of offices,

c) capitalist provision of supplies for the state and the financing of wars,

d) under certain circumstances, capitalist plantations and other colonial enterprises.

All these forms are indigenous to patrimonial regimes and often reach a very high level of development. This is not, however, true of the type of profit-making enterprise with heavy investments in fixed capital and a rational organization of free labor which is oriented to the market purchases of private consumers. This type of capitalism is altogether too sensitive to all sorts of irrationalities in the administration of law, administration and taxation, for these upset the basis of *calculability*.

The situation is fundamentally different only in cases where a patrimonial ruler, in the interest of his own power and financial provision, develops a rational system of administration with technically specialized officials. For this to happen, it is necessary 1) that technical training should be available; 2) there must be a sufficiently powerful incentive to embark on such a policy—usually the sharp competition between a plurality of patrimonial powers within the same cultural area; 3) a very special factor is necessary, namely, the participation of urban communes as a financial support in the competition of the patrimonial units.

1. The major forerunners of the modern, specifically Western form of capitalism are to be found in the organized urban communes of Eu-

rope with their particular type of relatively rational administration. Its primary development took place from the sixteenth to the eighteenth centuries within the framework of the class structure and political organization (*ständischen politischen Verbände*) of Holland and England, which were distinguished by the unusual power of the bourgeois strata and the preponderance of their economic interests. The fiscal and utilitarian imitations, which were introduced into the purely patrimonial or largely feudal (*feudal-ständisch*) states of the Continent, have in common with the Stuart system of monopolistic industry the fact that they do not stand in the main line of continuity with the later autonomous capitalistic development. This is true in spite of the fact that particular measures of agricultural and industrial policy—so far and because they were oriented to English, Dutch, and later to French, models—played a very important part in creating some of the essential conditions for this later development. All this will be discussed further on.

2. In certain fields the patrimonial states of the Middle Ages developed a type of formally rational administrative staff which consisted especially of persons with legal training both in the civil and the canon law, and which differed fundamentally from the corresponding administrative staffs in political bodies of any other time or place. It will be necessary later to inquire more fully into the sources of this development and into its significance. For the present it is not possible to go beyond the very general observations introduced above.

IV

Charismatic Authority

10. *Charismatic Authority and Charismatic Community*

The term "charisma" will be applied to a certain quality of an individual personality by virtue of which he is considered extraordinary and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities. These are such as are not accessible to the ordinary person, but are regarded as of divine origin or as exemplary, and on the basis of them the individual concerned is treated as a "leader." In primitive circumstances this peculiar kind of quality is thought of as resting on magical powers, whether of prophets, persons with a reputation for therapeutic or legal wisdom, leaders in the hunt, or heroes in war. How the quality in question would be ultimately

judged from any ethical, aesthetic, or other such point of view is naturally entirely indifferent for purposes of definition. What is alone important is how the individual is actually regarded by those subject to charismatic authority, by his "followers" or "disciples."

For present purposes it will be necessary to treat a variety of different types as being endowed with charisma in this sense. It includes the state of a "berserk" whose spells of maniac passion have, apparently wrongly, sometimes been attributed to the use of drugs. In medieval Byzantium a group of these men endowed with the charisma of fighting frenzy was maintained as a kind of weapon. It includes the "shaman," the magician who in the pure type has to be subject to epileptoid seizures as a means of falling into trances. Another type is represented by Joseph Smith, the founder of Mormonism, who may have been a very sophisticated swindler (although this cannot be definitely established). Finally it includes the type of *littérateur*, such as Kurt Eisner,[6] who is overwhelmed by his own demagogic success. Value-free sociological analysis will treat all these on the same level as it does the charisma of men who are the "greatest" heroes, prophets, and saviors according to conventional judgements.

I. It is recognition on the part of those subject to authority which is decisive for the validity of charisma. This recognition is freely given and guaranteed by what is held to be a proof, originally always a miracle, and consists in devotion to the corresponding revelation, hero worship, or absolute trust in the leader. But where charisma is genuine, it is not this which is the basis of the claim to legitimacy. This basis lies rather in the conception that it is the duty of those subject to charismatic authority to recognize its genuineness and to act accordingly. Psychologically this recognition is a matter of complete personal devotion to the possessor of the quality, arising out of enthusiasm, or of despair and hope.

No prophet has ever regarded his quality as dependent on the attitudes of the masses toward him. No elective king or military leader has ever treated those who have resisted him or tried to ignore him otherwise than as delinquent in duty. Failure to take part in a military expedition under such leader, even though the recruitment is formally voluntary, has universally met with disdain.

II. If proof and success elude the leader for long, if he appears deserted by his god or his magical or heroic powers, above all, if his leadership fails to benefit his followers, it is likely that his charismatic authority will disappear. This is the genuine meaning of the divine right of kings (*Gottesgnadentum*).

Even the old Germanic kings were sometimes rejected with scorn. Similar phenomena are very common among so-called primitive peoples.

In China the charismatic quality of the monarch, which was transmitted unchanged by heredity, was upheld so rigidly that any misfortune whatever, not only defeats in war, but drought, floods, or astronomical phenomena which were considered unlucky, forced him to do public penance and might even force his abdication. If such things occurred, it was a sign that he did not possess the requisite charismatic virtue and was thus not a legitimate "Son of Heaven."

III. An organized group subject to charismatic authority will be called a charismatic community (*Gemeinde*). It is based on an emotional form of communal relationship (*Vergemeinschaftung*). The administrative staff of a charismatic leader does not consist of "officials"; least of all are its members technically trained. It is not chosen on the basis of social privilege nor from the point of view of domestic or personal dependency. It is rather chosen in terms of the charismatic qualities of its members. The prophet has his disciples; the warlord his bodyguard; the leader, generally, his agents (*Vertrauensmänner*). There is no such thing as appointment or dismissal, no career, no promotion. There is only a call at the instance of the leader on the basis of the charismatic qualification of those he summons. There is no hierarchy; the leader merely intervenes in general or in individual cases when he considers the members of his staff lacking in charismatic qualification for a given task. There is no such thing as a bailiwick or definite sphere of competence, and no appropriation of official powers on the basis of social privileges. There may, however, be territorial or functional limits to charismatic powers and to the individual's mission. There is no such thing as a salary or a benefice.

Disciples or followers tend to live primarily in a communistic relationship with their leader on means which have been provided by voluntary gift. There are no established administrative organs. In their place are agents who have been provided with charismatic authority by their chief or who possess charisma of their own. There is no system of formal rules, of abstract legal principles, and hence no process of rational judicial decision oriented to them. But equally there is no legal wisdom oriented to judicial precedent. Formally concrete judgments are newly created from case to case and are originally regarded as divine judgments and revelations. From a substantive point of view, every charismatic authority would have to subscribe to the proposition, "It is written . . . but I say unto you . . ." The genuine prophet, like the genuine military leader and every true leader in this sense, preaches, creates, or demands *new* obligations—most typically, by virtue of revelation, oracle, inspiration, or of his own will, which are recognized by

the members of the religious, military, or party group because they come from such a source. Recognition is a duty. When such an authority comes into conflict with the competing authority of another who also claims charismatic sanction, the only recourse is to some kind of a contest, by magical means or an actual physical battle of the leaders. In principle, only one side can be right in such a conflict; the other must be guilty of a wrong which has to be expiated.

Since it is "extra-ordinary," charismatic authority is sharply opposed to rational, and particularly bureaucratic, authority, and to traditional authority, whether in its patriarchal, patrimonial, or estate variants, all of which are everyday forms of domination; while the charismatic type is the direct antithesis of this. Bureaucratic authority is specifically rational in the sense of being bound to intellectually analysable rules; while charismatic authority is specifically irrational in the sense of being foreign to all rules. Traditional authority is bound to the precedents handed down from the past and to this extent is also oriented to rules. Within the sphere of its claims, charismatic authority repudiates the past, and is in this sense a specifically revolutionary force. It recognizes no appropriation of positions of power by virtue of the possession of property, either on the part of a chief or of socially privileged groups. The only basis of legitimacy for it is personal charisma so long as it is proved; that is, as long as it receives recognition and as long as the followers and disciples prove their usefulness charismatically.

The above is scarcely in need of further discussion. What has been said applies to purely plebiscitary rulers (Napoleon's "rule of genius" elevated people of humble origin to thrones and high military commands) just as much as it applies to religious prophets or war heroes.

IV. Pure charisma is specifically foreign to economic considerations. Wherever it appears, it constitutes a "call" in the most emphatic sense of the word, a "mission" or a "spiritual duty." In the pure type, it disdains and repudiates economic exploitation of the gifts of grace as a source of income, though, to be sure, this often remains more an ideal than a fact. It is not that charisma always demands a renunciation of property or even of acquisition, as under certain circumstances prophets and their disciples do. The heroic warrior and his followers actively seek booty; the elective ruler or the charismatic party leader requires the material means of power. The former in addition requires a brilliant display of his authority to bolster his prestige. What is despised, so long as the genuinely charismatic type is adhered to, is traditional or rational everyday economizing, the attainment of a regular income by continuous economic activity devoted to this end. Support by gifts, either on a grand scale involving donation,

endowment, bribery and honoraria, or by begging, constitute the voluntary type of support. On the other hand, "booty" and extortion, whether by force or by other means, is the typical form of charismatic provision for needs. From the point of view of rational economic activity, charismatic want satisfaction is a typical anti-economic force. It repudiates any sort of involvement in the everyday routine world. It can only tolerate, with an attitude of complete emotional indifference, irregular, unsystematic acquisitive acts. In that it relieves the recipient of economic concerns, dependence on property income can be the economic basis of a charismatic mode of life for some groups; but that is unusual for the normal charismatic "revolutionary."

> The fact that incumbency of church office has been forbidden to the Jesuits is a rationalized application of this principle of discipleship. The fact that all the "virtuosi" of asceticism, the mendicant orders, and fighters for a faith belong in this category, is quite clear. Almost all prophets have been supported by voluntary gifts. The well-known saying of St. Paul, "If a man does not work, neither shall he eat," was directed against the parasitic swarm of charismatic missionaries. It obviously has nothing to do with a positive valuation of economic activity for its own sake, but only lays it down as a duty of each individual somehow to provide for his own support. This because he realized that the purely charismatic parable of the lilies of the field was not capable of literal application, but at best "taking no thought for the morrow" could be hoped for. On the other hand, in a case of a primarily artistic type of charismatic discipleship it is conceivable that insulation from economic struggle should mean limitation of those really eligible to the "economically independent"; that is, to persons living on income from property. This has been true of the circle of Stefan George, at least in its primary intentions.

V. In traditionalist periods, charisma is *the* great revolutionary force. The likewise revolutionary force of "reason" works from *without:* by altering the situations of life and hence its problems, finally in this way changing men's attitudes toward them; or it intellectualizes the individual. Charisma, on the other hand, *may* effect a subjective or *internal* reorientation born out of suffering, conflicts, or enthusiasm. It may then result in a radical alteration of the central attitudes and directions of action with a completely new orientation of all attitudes toward the different problems of the "world."[7] In prerationalistic periods, tradition and charisma between them have almost exhausted the whole of the orientation of action.

V

The Routinization of Charisma

11. *The Rise of the Charismatic Community and the Problem of Succession*

In its pure form charismatic authority has a character specifically foreign to everyday routine structures. The social relationships directly involved are strictly personal, based on the validity and practice of charismatic personal qualities. If this is not to remain a purely transitory phenomenon, but to take on the character of a permanent relationship, a "community" of disciples or followers or a party organization or any sort of political or hierocratic organization, it is necessary for the character of charismatic authority to become radically changed. Indeed, in its pure form charismatic authority may be said to exist only *in statu nascendi*. It cannot remain stable, but becomes either traditionalized or rationalized, or a combination of both.

The following are the principal motives underlying this transformation: (a) The ideal and also the material interests of the followers in the continuation and the continual reactivation of the community, (b) the still stronger ideal and also stronger material interests of the members of the administrative staff, the disciples, the party workers, or others in continuing their relationship. Not only this, but they have an interest in continuing it in such a way that both from an ideal and a material point of view, their own position is put on a stable everyday basis. This means, above all, making it possible to participate in normal family relationships or at least to enjoy a secure social position in place of the kind of discipleship which is cut off from ordinary worldly connections, notably in the family and in economic relationships.

These interests generally become conspicuously evident with the disappearance of the personal charismatic leader and with the problem of *succession*. The way in which this problem is met—if it is met at all and the charismatic community continues to exist or now begins to emerge—is of crucial importance for the character of the subsequent social relationships. The following are the principal possible types of solution:—

(a) The *search* for a new charismatic leader on the basis of criteria of the qualities which will fit him for the position of authority.

This is to be found in a relatively pure type in the process of choice of a new Dalai Lama. It consists in the search for a child with characteristics which are interpreted to mean that he is a reincarnation of the Buddha. This is very similar to the choice of the new Bull of Apis.

In this case the legitimacy of the new charismatic leader is bound to certain distinguishing characteristics; thus, to rules with respect to which a tradition arises. The result is a process of traditionalization in favor of which the purely personal character of leadership is reduced.

(b) *Revelation* manifested in oracles, lots, divine judgments, or other techniques of selection. In this case the legitimacy of the new leader is dependent on the legitimacy of the *technique* of his selection. This involves a form of legalization.

It is said that at times the *Shofetim* [Judges] of Israel had this character. Saul is said to have been chosen by the old war oracle.

(c) Designation on the part of the original charismatic leader of his own successor and his recognition on the part of the followers.

This is a very common form. Originally, the Roman magistracies were filled entirely in this way. The system survived most clearly into later times in the appointment of the *dictator* and in the institution of the *interrex*.[5]

In this case legitimacy is *acquired* through the act of designation.

(d) Designation of a successor by the charismatically qualified administrative staff and his recognition by the community. In its typical form this process should quite definitely not be interpreted as "election" or "nomination" or anything of the sort. It is not a matter of free selection, but of one which is strictly bound to objective duty. It is not to be determined merely by majority vote, but is a question of arriving at the correct designation, the designation of the right person who is truly endowed with charisma. It is quite possible that the minority and not the majority should be right in such a case. Unanimity is often required. It is obligatory to acknowledge a mistake and persistence in error is a serious offense. Making a wrong choice is a genuine wrong requiring expiation. Originally it was a magical offence.

Nevertheless, in such a case it is easy for legitimacy to take on the character of an acquired right which is justified by standards of the correctness of the process by which the position was acquired, for the most part, by its having been acquired in accordance with certain formalities such as coronation.

This was the original meaning of the coronation of bishops and kings in the Western world by the clergy or the high nobility with the "con-

sent" of the community. There are numerous analogous phenomena all over the world. The fact that this is the origin of the modern conception of "election" raises problems which will have to be gone into later.[6]

(e) The conception that charisma is a quality transmitted by heredity; thus that it is participated in by the kinsmen of its bearer, particularly by his closest relatives. This is the case of *hereditary charisma*. The order of hereditary succession in such a case need not be the same as that which is in force for appropriated rights, but may differ from it. It is also sometimes necessary to select the proper heir within the kinship group by some of the methods just spoken of.

Thus in certain African states brothers have had to fight for the succession. In China, succession had to take place in such a way that the relation of the living group to the ancestral spirits was not disturbed. The rule either of seniority or of designation by the followers has been very common in the Orient. Hence, in the House of Osman, it used to be obligatory to kill off all other possible aspirants.

Only in Medieval Europe and in Japan, elsewhere sporadically, has the principle of primogeniture, as governing the inheritance of authority, become clearly established. This has greatly facilitated the consolidation of political groups in that it has eliminated struggle between a plurality of candidates from the same charismatic family.

In the case of hereditary charisma, recognition is no longer paid to the charismatic qualities of the individual, but to the legitimacy of the position he has acquired by hereditary succession. This may lead in the direction either of traditionalization or of legalization. The concept of divine right is fundamentally altered and now comes to mean authority by virtue of a personal right which is not dependent on the recognition of those subject to authority. Personal charisma may be totally absent.

Hereditary monarchy is a conspicuous illustration. In Asia there have been very numerous hereditary priesthoods; also, frequently, the hereditary charisma of kinship groups has been treated as a criterion of social rank and of eligibility for fiefs and benefices.

(f) The concept that charisma may be transmitted by ritual means from one bearer to another or may be created in a new person. The concept was originally magical. It involves a dissociation of charisma from a particular individual, making it an objective, transferrable entity. In particular, it may become the *charisma of office*. In this case the belief in legitimacy is no longer directed to the individual, but to the acquired qualities and to the effectiveness of the ritual acts.

The most important example is the transmission of priestly charisma by anointing, consecration, or the laying on of hands; and of royal au-

thority, by anointing and by coronation. The *character indelebilis* thus acquired means that the charismatic qualities and powers of the office are emancipated from the personal qualities of the priest. For precisely this reason, this has, from the Donatist and the Montanist heresies down to the Puritan revolution, been the subject of continual conflicts. The "hireling" of the Quakers is the preacher endowed with the charisma of office.

12. *Types of Appropriation by the Charismatic Staff*

Concomitant with the routinization of charisma with a view to insuring adequate succession, go the interests in its routinization on the part of the administrative staff. It is only in the initial stages and so long as the charismatic leader acts in a way which is completely outside everyday social organization, that it is possible for his followers to live communistically in a community of faith and enthusiasm, on gifts, booty, or sporadic acquisition. Only the members of the small group of enthusiastic disciples and followers are prepared to devote their lives purely idealistically to their call. The great majority of disciples and followers will in the long run "make their living" out of their "calling" in a material sense as well. Indeed, this must be the case if the movement is not to disintegrate.

Hence, the routinization of charisma also takes the form of the appropriation of powers and of economic advantages by the followers or disciples, and of regulating recruitment. This process of traditionalization or of legalization, according to whether rational legislation is involved or not, may take anyone of a number of typical forms.

1. The original basis of recruitment is personal charisma. However, with routinization, the followers or disciples may set up norms for recruitment, in particular involving training or tests of eligibility. Charisma can only be "awakened" and "tested"; it cannot be "learned" or "taught." All types of magical asceticism, as practiced by magicians and heroes, and all novitiates, belong in this category. These are means of closing the administrative staff. (On the charismatic type of education, see ch. IV below [unfinished].)

Only the proved novice is allowed to exercise authority. A genuine charismatic leader is in a position to oppose this type of prerequisite for membership; his successor is not free to do so, at least if he is chosen by the administrative staff.

This type is illustrated by the magical and warrior asceticism of the "men's house" with initiation ceremonies and age groups. An indi-

vidual who has not successfully gone through the initiation, remains a "woman"; that is, he is excluded from the charismatic group.

2. It is easy for charismatic norms to be transformed into those defining a traditional social status (on a hereditary charismatic basis). If the leader is chosen on a hereditary basis, the same is likely to happen in the selection and deployment of the staff and even the followers. The term "clan state" (*Geschlechterstaat*) will be applied when a political body is organized strictly and completely in terms of this principle of hereditary charisma. In such a case, all appropriation of governing powers, of fiefs, benefices, and all sorts of economic advantages follow the same pattern. The result is that all powers and advantages of all sorts become traditionalized. The heads of families, who are traditional gerontocrats or patriarchs without personal charismatic legitimacy, regulate the exercise of these powers which cannot be taken away from their family. It is not the type of position he occupies which determines the rank of a man or of his family, but rather the hereditary charismatic rank of his family determines the position he will occupy.

Japan, before the development of bureaucracy, was organized in this way. The same was undoubtedly true of China as well where, before the rationalization which took place in the territorial states, authority was in the hands of the "old families." Other types of examples are furnished by the caste system in India, and by Russia before the *mestnichestvo* was introduced. Indeed, all hereditary social classes with established privileges belong in the same category.

3. The administrative staff may seek and achieve the creation and appropriation of *individual* positions and the corresponding economic advantages for its members. In that case, according to whether the tendency is to traditionalization or legalization, there will develop (a) benefices, (b) offices, or (c) fiefs. In the first case a prebendal organization will result; in the second, patrimonialism or bureaucracy; in the third, feudalism. These revenue sources become appropriated and replace provision from gifts or booty without settled relation to the everyday economic structure.

Case (a), benefices, may consist in rights to the proceeds of begging, to payments in kind, or to the proceeds of money taxes, or finally, to the proceeds of fees. The latter may result from the former through the regulation of the original provision by free gifts or by "booty" in terms of a rational organization or finance.

Regularized begging is found in Buddhism; benefices in kind, in the Chinese and Japanese "rice rents"; support by money taxation has been

the rule in all the rationalized conquest states. The last case is common everywhere, especially on the part of priests and judges and, in India, even the military authorities.

Case (b), the transformation of the charismatic mission into an office, may have more of a patrimonial or more of a bureaucratic character. The former is much the more common; the latter is found principally in Antiquity and in the modern Western world. Elsewhere it is exceptional.

In case (c), only land may be appropriated as a fief, whereas the position as such retains its originally charismatic character, or powers and authority may be fully appropriated as fiefs. It is difficult to distinguish the two cases. However, orientation to the charismatic character of the position was slow to disappear, also in the Middle Ages.

12a. *Status Honor and the Legitimation of Authority*

For charisma to be transformed into an everyday phenomenon, it is necessary that its anti-economic character should be altered. It must be adapted to some form of fiscal organization to provide for the needs of the group and hence to the economic conditions necessary for raising taxes and contributions. When a charismatic movement develops in the direction of prebendal provision, the "laity" becomes differentiated from the "clergy"—derived from κλῆρος, meaning a "share"—, that is, the participating members of the charismatic administrative staff which has now become routinized. These are the priests of the developing "church." Correspondingly, in a developing political body—the "state" in the rational case—vassals, benefice-holders, officials or appointed party officials (instead of voluntary party workers and functionaries) are differentiated from the "tax payers."

This process is very conspicuous in Buddhism and in the Hindu sects—see the Sociology of Religion below. The same is true in all conquest states which have become rationalized to form permanent structures; also of parties and other originally charismatic structures.

It follows that, in the course of routinization, the charismatically ruled organization is largely transformed into one of the everyday authorities, the patrimonial form, especially in its estate-type or bureaucratic variant. Its original peculiarities are apt to be retained in the charismatic status honor acquired by heredity or office-holding. This applies to all who participate in the appropriation, the chief himself and the members

of his staff. It is thus a matter of the type of prestige enjoyed by ruling groups. A hereditary monarch by "divine right" is not a simple patrimonial chief, patriarch, or sheik; a vassal is not a mere household retainer or official. Further details must be deferred to the analysis of status groups.

As a rule, routinization is not free of conflict. In the early stages personal claims on the charisma of the chief are not easily forgotten and the conflict between the charisma of the office or of hereditary status with personal charisma is a typical process in many historical situations.

1. The power of absolution—that is, the power to absolve from mortal sins—was held originally only by personal charismatic martyrs or ascetics, but became transformed into a power of the office of bishop or priest. This process was much slower in the Orient than in the Occident because in the latter is was influenced by the Roman conception of office. Revolutions under a charismatic leader, directed against hereditary charismatic powers or the powers of office, are to be found in all types of organizations, from states to trade unions. (This last is particularly conspicuous at the present time [1918/20].) The more highly developed the interdependence of different economic units in a monetary economy, the greater the pressure of the everyday needs of the followers of the charismatic movement becomes. The effect of this is to strengthen the tendency to routinization, which is everywhere operative, and as a rule has rapidly won out. Charisma is a phenomenon typical of prophetic movements or of expansive political movements in their early stages. But as soon as domination is well established, and above all as soon as control over large masses of people exists, it gives way to the forces of everyday routine.

2. One of the decisive motives underlying all cases of the routinization of charisma is naturally the striving for security. This means legitimization, on the one hand, of positions of authority and social prestige, on the other hand, of the economic advantages enjoyed by the followers and sympathizers of the leader. Another important motive, however, lies in the objective necessity of adapting the order and the staff organization to the normal, everyday needs and conditions of carrying on administration. In this connection, in particular, there are always points at which traditions of administrative practice and of judicial decision can take hold as these are needed by the normal administrative staff and those subject to its authority. It is further necessary that there should be some definite order introduced into the organization of the administrative staff itself. Finally, as will be discussed in detail below, it is necessary for the administrative staff and all its administrative practices to be adapted to everyday economic conditions. It is not possible for the costs of permanent, routine administration to be met by "booty," contributions, gifts, and hospitality, as is typical of the pure type of military and prophetic charisma.

3. The process of routinization is thus not by any means confined to the problem of succession and does not stop when this has been solved. On the contrary, the most fundamental problem is that of making a transition from a charismatic administrative staff, and the corresponding principles of administration, to one which is adapted to everyday conditions. The problem of succession, however, is crucial because through it occurs the routinization of the charismatic focus of the structure. In it, the character of the leader himself and of his claim to legitimacy is altered. This process involves peculiar and characteristic conceptions which are understandable only in this context and do not apply to the problem of transition to traditional or legal patterns of order and types or administrative organization. The most important of the modes of meeting the problem of succession are the charismatic designation of a successor and hereditary charisma.

4. As has already been noted, the most important historical example of designation by the charismatic leader of his own successor is Rome. For the *rex*, this arrangement is attested by tradition; while for the appointment of the *dictator* and of the co-emperor and successor in the Principate, it has existed in historical times. The way in which all the higher magistrates were invested with the *imperium* shows clearly that they also were designated as successors by the military commander, subject to recognition by the citizen army. The fact that candidates were examined by the magistrate in office and that originally they could be excluded on what were obviously arbitrary grounds shows clearly what was the nature of the development.

5. The most important examples of designation of a successor by the charismatic followers of the leader are to be found in the election of bishops, and particularly of the Pope, by the original system of designation by the clergy and recognition by the lay community. The investigations of U. Stutz have made it probable that the election of the German king was modelled on that of the bishops.[10] He was designated by a group of qualified princes and recognized by the "people," that is, those bearing arms. Similar arrangements are very common.

6. The classical case of the development of hereditary charisma is that of caste in India. All occupational qualifications, and in particular all the qualifications for positions of authority and power, have there come to be regarded as strictly bound to the inheritance of charisma. Eligibility for fiefs, involving governing powers, was limited to members of the royal kinship group, the fiefs being granted by the eldest of the group. All types of religious office, including the extraordinarily important and influential position of *guru*, the *directeur de l'âme*, were treated as bound to hereditary charismatic qualities. The same is true of all sorts of relations to traditional customers and of all positions in the village organization, such as priest, barber, laundryman, watchman, etc. The foundation of a sect always meant the development of a hereditary hierarchy, as was true also of Taoism in China. Also in the Japanese

"feudal" state, before the introduction of a patrimonial officialdom on the Chinese model, which then led to prebends and a new feudalization, social organization was based purely on hereditary charisma.

This kind of hereditary charismatic right to positions of authority has been developed in similar ways all over the world. Qualification by virtue of individual achievement has been replaced by qualification by birth. This is everywhere the basis of the development of hereditary aristocracies, in the Roman nobility, in the concept of the *stirps regia*, which Tacitus describes among the Germans, in the rules of eligibility to tournaments and monasteries in the late Middle Ages, and even in the genealogical research conducted on behalf of the *parvenu* aristocracy of the United States. Indeed, this is to be found everywhere where hereditary status groups have become established.

Relationship to the economy: The process of routinization of charisma is in very important respects identical with adaptation to the conditions of the economy, since this is the principal continually operating force in everyday life. Economic conditions in this connection play a leading role and do not constitute merely a dependent variable. To a very large extent the transition to hereditary charisma or the charisma of office serves as a means of legitimizing existing or recently acquired powers of control over economic goods. Along with the ideology of loyalty, which is certainly by no means unimportant, allegiance to hereditary monarchy in particular is very strongly influenced by the consideration that all inherited and legitimately acquired property would be endangered if people stopped believing in the sanctity of hereditary succession to the throne. It is hence by no means fortuitous that hereditary monarchy is more adequate to the propertied strata than to the proletariat.

Beyond this, it is not possible to say anything in general terms, which would at the same time be substantial and valuable, on the relations of the various possible modes of adaptation to the economic order. This must be reserved to the more detailed treatment. The development of a prebendal structure, of feudalism, and the appropriation of all sorts of advantages on a hereditary charismatic basis may in all cases have the same stereotyping effect on the economic order if they develop from charismatic starting points as if they developed from early patrimonial or bureaucratic stages. In economic respects, too, the revolutionary impact of charisma is usually tremendous; at first, it is often destructive, because it means new modes of orientation. But routinization leads to the exact reverse.

The economics of charismatic revolutions will have to be discussed separately; it is a different matter altogether.

VI

Feudalism

12b. Occidental Feudalism and Its Conflict with Patrimonialism

The case noted above, under sec. 12:3c [the fief], requires separate discussion. This is because a structure of domination may develop out of it which is different both from patrimonialism and from genuine or hereditary charisma and which has had a very great historical significance, namely, feudalism. We will distinguish two types: the one based on fiefs (*Lehensfeudalismus*) and the other based on benefices (prebendal feudalism). All other forms in which the use of land is granted in exchange for military service really have a patrimonial character and hence will not be treated here separately. For the different kinds of benefices will be discussed later in detail.

A. A fief involves the following elements:

(1) The appropriation of powers and rights of exercising authority. Appropriation as a fief may apply only to powers relevant within a master's household or it may be extended to include those of a political association. The latter type may be restricted to economic rights—that is, fiscal rights—or it may also include political powers proper. Fiefs are granted in return for specific services. Normally they are primarily of a military character, but they may also include administrative functions. The grant of the fief takes a very specific form. It is carried out

(2) on a purely personal basis for the lifetime of the lord and of the recipient of the fief, his vassal.

(3) The relationship is established by a contract, thus it is supposed that the vassal is a free man.

(4) If feudalism is based on fiefs, the recipient adheres to the style of life of a knightly status group.

(5) The contract of fealty is not an ordinary business contract, but establishes a solidary, fraternal relationship which involves reciprocal obligations of loyalty, to be sure, on a legally unequal basis. These obligations are upheld by

(a) knightly status honor, and (b) are clearly delimited.

The transition pointed out above at the end of section 12 [i.e., from

mere appropriation of land to full appropriation of powers] takes place α) when fiefs are appropriated hereditarily, subject only to the condition that each new vassal have the necessary qualifications and will pledge fealty to his lord, and the existing vassals will do so to a new lord; β) when the feudal administrative staff compels the lord to fill every vacancy (*Leihezwang*), since all fiefs are considered part of the maintenance fund for the members of the knightly status group.

The first step took place relatively early in the Middle Ages; the second, later on. The struggle of kings and princes with their vassals were above all directed, though not usually explicitly, toward the elimination of this principle, since it prevented the rise of a patrimonial regime.

B. If an administration is based completely on the granting of fiefs —and *Lehensfeudalismus* has never been historically realized in the pure type any more than has pure patrimonialism—, this involves the following features:

(1) The authority of the lord is reduced to the likelihood that the vassals will remain faithful to their oaths of fealty.

(2) The political association is completely replaced by a system of relations of purely personal loyalty between the lord and his vassals and between these in turn and their own sub-vassals (sub-infeudation) and so on. Only a lord's own vassals are bound to fealty to him; whereas they in turn can claim the fealty of their own vassals, and so on.

(3) Only in the case of a "felony" does the lord have a right to deprive his vassal of his fief, and the same in turn applies to the vassal in his relation to his own vassal. When such a case, however, arises, in enforcing his rights against a vassal who has broken the oath of fealty, the lord is dependent on the help of his other vassals or on the passivity of the sub-vassals of the guilty party. Either source of support can only be counted on when the relevant group recognizes that a felony has actually been committed. However, even then the overlord cannot count on the non-interference of sub-vassals unless he has at least been able to secure recognition on their part of the principle that a struggle against an overlord is an exceptional state. Overlords have always attempted to establish this principle but not always with success.

(4) There is a hierarchy of social rank corresponding to the hierarchy of fiefs through the process of sub-infeudation—the order of the *Heerschilde* in the Mirror of Saxon Law (*Sachsenspiegel*). This is not, however, a judicious and administrative hierarchy. For whether an order or a decision can be challenged and to what authority appeal can be made is in principle a matter for the respective court of appeals (*Oberhof*)

and does not depend on the hierarchy of feudal relationships. (It is theoretically possible for the *Oberhof* authority to be granted to a status-equal of the local judicial lord, but in practice this was not the case.)

(5) The elements in the population who do not hold fiefs involving patrimonial or political authority are "subjects" (*Hintersassen*); that is, they are patrimonial dependents. They are dependent on the holders of fiefs to the extent that their traditional status determines or permits it, or so far as the coercive power in the hands of the possessors of military fiefs compels it, since they are to a large extent defenseless. Just as the supreme lord is under obligation to grant land in fief, those who do not hold fiefs are always under the authority of a lord; in both cases the rule is: ***nulle terre sans seigneur***. The sole survival of the old immediate political powers of the ruler is the principle, which is almost always recognized, that political authority, particularly judicial authority, is turned over to the ruler whenever he is personally present.

(6) Powers over the household (inluding domains, slaves and serfs), the fiscal rights of the political group to the receipt of taxes and contributions, and specifically political powers of jurisdiction and compulsion to military service—thus powers over free men—all become objects of feudal grants in the same way. However, as a rule the strictly political powers are subject to special regulation.

> In ancient China the granting of economic income in fiefs and of territorial authority were distinguished in name as well as in fact. The distinctions in name are not found in the European Middle Ages, but there were clear distinctions in the holder's status and in numerous other particular points.

It is not usual for political powers to be fully appropriated in the same way as property rights in fiefs. Numerous transitional forms and irregularities remain. One conspicuous difference is the existence of a status distinction between those enjoying only economic or fiscal rights and those with strictly political powers, notably judicial and military authority. Only the latter are *political* vassals.

It goes without saying that whenever *Lehensfeudalismus* is highly developed, the overlord's authority is precarious. This is because it is very dependent on the voluntary obedience and hence the purely personal loyalty of the members of the administrative staff, who, by virtue of the feudal structure, are themselves in possession of the means of administration. Hence, the latent struggle for authority becomes chronic between the lord and his vassal, and the ideal extent of feudal authority has never been effectively carried out in practice or remained effective on a permanent basis.

Rather, the feudal lord may attempt to improve his position in one of the following ways:

(a) He may not rely on the purely personal loyalty of his vassals, but may attempt to secure his position by limiting or forbidding sub-infeudation.

This was common in Western feudalism, but often was initiated by the administrative staff in the interest of their own power. The same was true of the alliance of princes in China in 630 B.C.

He may attempt to establish the principle that the fealty of a sub-vassal to his immediate lord is void in case of war against the higher lord.

Or, if possible, the attempt is made to obligate the sub-vassal to direct fealty to him, the liege lord.

(b) The feudal chief may seek to implement his control of the administration of political powers in a variety of ways. He may grant all the subjects a right of appeal to him or his courts. He may station supervising agents at the courts of his political vassals. He may attempt to enforce a right to collect taxes from the subjects of all his vassals. He may appoint certain officials of the political vassals. Finally, he may attempt to enforce the principle that all political authority is forfeited to him in his personal presence or beyond that to any agent he designates and that he, as the supreme lord, is entitled to try any case in his own court at will.

(c) It is possible for a supreme lord to attain and maintain his power against vassals, as well as against other types of holders of appropriated authority, only if he creates or re-creates an administrative staff under his personal control and organizes it in an appropriate manner. There are three main possibilities.

(1) It may be a patrimonial staff. (This was to a large extent what happened in the European Middle Ages and in Japan in the *Bakufu* of the *Shogun*, who exercised a very effective control over the feudal *Daimyos*.)

(2) It may be an extra-patrimonial staff recruited from a status group with literary education.

The principal examples are clerical officials, whether Christian or Brahman; *kayasths* (Buddhist, Lamaist, or Mohammedan);[10a] or humanists, such as the Confucian scholars in China. On the peculiarities of such groups and their immense importance for cultural development, see ch. IV [unfinished].

(3) Or it may be a group of technically trained officials, particularly legal and military specialists.

This was proposed in China in the eleventh century by Wang An Shi, but by that time it was directed against the classical scholars and not the feudal magnates. In the Occident, such a bureaucracy was recruited for civil administration from university-trained men. In the Church the primary training was in the Canon Law, in the State, the Roman Law. In England, it was the Common Law, which had, however, been rationalized under the influence of Roman modes of thought. In this development lie some origins of the modern Western state. The development of Western military organization took a somewhat different course. The feudal organization was first replaced by capitalistic military entrepreneurs, the *condottieri*. These structures were in turn appropriated by the territorial princes with the development of a rational administration of royal finance from the seventeenth century on. In England and France, it happened somewhat earlier.

This struggle of the feudal chief with his feudal administrative staff in the Western World, though not in Japan, largely coincided with his struggle against the power of corporately organized privileged groups (*Stände-Korporationen*). In modern times it everywhere issued in the ruler's victory, and that meant in bureaucratic administration. This happened first in the Western World, then in Japan; in India, and perhaps also in China, it happened in the wake of foreign rule. Along with purely historical power constellations, economic conditions have played a very important part in this process in the Western World. Above all, it was influenced by the rise of the bourgeoisie in the towns, which had an organization peculiar to Europe. It was in addition aided by the competition for power by means of rational—that is, bureaucratic—administration among the different states. This led, from fiscal motives, to a crucially important alliance with capitalistic interests, as will be shown later.

12c. *Prebendal Feudalism and Other Variants*

Not every kind of "feudalism" involves the fief in the Occidental sense. In addition, there is above all:

A. prebendal feudalism, which has a fiscal basis.

This was typical of the Islamic Near East and of India under the Moguls. On the other hand, *ancient* Chinese feudalism before the time of Shi Huang Ti had at least in part a structure of fiefs, though benefices were also involved. Japanese feudalism also involved fiefs, but they were subject in the case of the *Daimyos* to a rather stringent control on the part of the supreme lord (*Bakufu*), and the fiefs of the Samurai and the Buke were really benefices of *ministeriales* (although

they often came to be appropriated) which were registered according to their yield in terms of rice rent (*kokudaka*).

Prebendal feudalism exists when (1) benefices which are valued and granted according to the income they yield are appropriated and where (2) appropriation is, in principle, though not always effectively, carried out only on a personal basis in accordance with services, thus involving the possibility of promotion. (This was, at least from the legal point of view, true of the benefices held by the Turkish *sipahi*.)

Finally and above all, (3) it does not involve primarily a free relation of personal fealty arising from a contract of personal loyalty with the lord as the basis of a particular fief. It is rather a matter primarily of fiscal considerations in the context of a system of financing which is otherwise patrimonial, often sultanistic. This is for the most part made evident by the fact that the prebends are assessed according to their tax value.

It is very common for the *Lehensfeudalismus* to originate in a system of want satisfaction of the political group on the basis of a purely natural economy and in terms of personal obligations (personal services and military services). The principal motive is to replace the insufficiently trained popular levy, whose members can no longer equip themselves and are needed in the economy, with a well-trained and equipped army of knights who are bound to their chief by personal honor. Prebendal feudalism, on the other hand, usually originates in the reversion from monetary financing to financing in kind. The following are the principal reasons leading to such a policy:—

(a) The transfer of the risk involved in fluctuating income to an entrepreneur; that is, a sort of tax farming.

α) Rights to such income may be transferred in return for undertaking to supply certain particular army contingents, such as cavalry, sometimes war chariots, armored troops, supply trains, or artillery, for a patrimonial army. (This was common in the Chinese Middle Ages. Quotas for the army in each of the different categories were established for a particular territorial area.)

Either in addition to this or alone, prebendal feudalism may be established as a means of β) meeting the costs of civil administration and of γ) securing tax payments for the royal treasury. (This was common in India.)

δ) In return for these various services, in the first instance to enable those who undertook them to meet their obligations, an appropriation of governmental power in varying degrees and respects was permitted. Such appropriation has usually been for a limited period and subject to re-

purchase. But when means to do this have been lacking, it has often in fact been definitive. Those who hold such definitively appropriated powers then become, at the very least, landlords, as opposed to mere landowners, and often come into the possession of extensive political powers.

This process has been typical above all of India. It is the source of the powers over land of the *Zamindars*, the *Jagirdars*, and the *Tulukdars*. It is also found in a large part of the Near East, as C. H. Becker has clearly shown—he was the first to understand the difference from the European fief.[11] The primary basis lies in the leasing of taxes. As a secondary consequence, it developed into a "manorial" system. The Rumanian Boyars—the descendants of the most heterogeneous society the world has ever seen, of Jews, Germans, Greeks, and various others—were also tax farmers who on this basis appropriated governing authority.

(b) Inability to pay the contingents of a patrimonial army may lead to an usurpation of the sources of taxation on their part, which is subsequently legalized. The result is that appropriation of the land and of the subjects is carried out by the officers and members of the army. (This was true of the famous Khans of the empire of the Caliphs. It was the source or the model for all forms of Oriental appropriation, including the Mameluke army, which was formally composed of slaves.)

It is by no means inevitable that this should lead to systematic registration as a basis for the granting of benefices. But this is a readily available course and has often actually been followed out. (We shall not yet discuss how far the "fiefs" of the Turkish *sipahi* were genuine fiefs or whether they were closer to benefices. From a legal point of view, promotion according to achievement was possible.)

It is clear that the two types of feudalism are connected by gradual imperceptible transitions and that it is seldom possible to classify cases with complete definiteness under one category or the other. Furthermore, prebendal feudalism is closely related to a purely prebendal organization, and there are also gradual transitions in this direction.

According to an imprecise terminology, in addition to the fief resting on a free contract with the lord and the feudal benefice, there is:

B. so-called "polis" feudalism, resting on a real or fictitious "synoikism" of landlords. These enjoy equal rights in the conduct of a purely military mode of life with high status honor. The economic aspect of the *kleros* is the plot of land which is appropriated by qualified persons on a personal basis and passed on by individual hereditary succession. It is cultivated by the services of unfree persons—assigned as the property of the status group—and forms the basis of provision of military equipment.

This type is found only in Greece, in fully developed form, only in Sparta, and originated out of the "men's house." It has been called "feudalism" because of the set of conventions regulating status honor and of the element of chivalry in the mode of life of a group of landlords. This is hardly legitimate usage. In Rome the term *fundus* corresponds to the Greek *kleros*. There is, however, no information available about the organization of the *curia* (*co-viria* equals the Greek *andreion*, the "men's house"). We do not know how far it was similar to the Greek.)

The term "feudal" is often used in a very broad sense to designate all military strata, institutions and conventions which involve any sort of status privileges. This usage will be avoided here as entirely too vague.

C. The second doubtful type is called feudalism for the opposite reason. The fief is present but, on the other hand, is not acquired by a free contract (fraternization either with a lord or with equals), but is bestowed by the order of a patrimonial chief. On the other hand, it may not be administered in the spirit of a knightly mode of life. Finally, both criteria may be absent. Thus there may be service fiefs held by dependent knights; or, conversely, fiefs may be freely acquired but their holders are not subject to a code of chivalry. Finally, fiefs may be granted to clients, coloni, or slaves who are employed as fighting forces. All these cases will be treated here as *benefices*.

The case of dependent knights is illustrated by Occidental and Oriental *ministeriales*, in Japan by the Samurai. Freely recruited soldiers without a chivalrous code are known to the Orient; this was probably the origin of the Ptolemaic military organization. When the hereditary appropriation of service land has led further to the appropriation of the military function as such, the end result is a typical liturgical organization of the state. The third type, the use of unfree military forces, is typical of the so-called warrior caste of ancient Egypt, of the Mamelukes of medieval Egypt, and of various other unfree Oriental and Chinese warriors. These have not always been granted rights in land, but such an arrangement is common.

In such cases, it is imprecise to speak of "feudalism," since it involves military status groups, which, at least from a formal point of view, occupy a negatively privileged position. They will be discussed in Chapter IV.

13. *Combinations of the Different Types of Authority*

The above discussion makes it quite evident that "ruling organizations" which belong only to one or another of these pure types are very exceptional. Furthermore, in relation to legal and traditional authority

especially, certain important types, such as the collegial form and some aspects of the feudal, have either not been discussed at all or have been barely suggested. In general, it should be kept clearly in mind that the basis of every authority, and correspondingly of every kind of willingness to obey, is a *belief*, a belief by virtue of which persons exercising authority are lent prestige. The composition of this belief is seldom altogether simple. In the case of "legal authority," it is never purely legal. The belief in legality comes to be established and habitual, and this means it is partly traditional. Violation of the tradition may be fatal to it. Furthermore, it has a charismatic element, at least in the negative sense that persistent and striking lack of success may be sufficient to ruin any government, to undermine its prestige, and to prepare the way for charismatic revolution. For monarchies, hence, it is dangerous to lose wars since that makes it appear that their charisma is no longer genuine. For republics, on the other hand, striking victories may be dangerous in that they put the victorious general in a favorable position for making charismatic claims.

Groups approximating the purely traditional type have certainly existed. But they have never been stable indefinitely and, as is also true of bureaucratic authority, have seldom been without a head who had a personally charismatic status by heredity or office. Under certain circumstances, the charismatic chief can be different from the traditional one. Everyday economic needs have been met under the leadership of traditional authorities; whereas certain exceptional ones, like hunting and the quest of "booty" in war, have had charismatic leadership. The idea of the possibility of "legislation" is also relatively ancient, though for the most part it has been legitimized by oracles. Above all, however, whenever the recruitment of an administrative staff is drawn from extrapatrimonial sources, the result is a type of official which can be differentiated from those of legal bureaucracies only in terms of the ultimate basis of their authority and not in terms of formal status.

Similarly, entirely pure charismatic authority, including the hereditary charismatic type, etc., is rare. It is not impossible, as in the case of Napoleon, for the strictest type of bureaucracy to issue directly from a charismatic movement; or, if not that, all sorts of prebendal and feudal types of organization. Hence, the kind of terminology and classification set forth above has in no sense the aim—indeed, it could not have it—to be exhaustive or to confine the whole of historical reality in a rigid scheme. Its usefulness is derived from the fact that in a given case it is possible to distinguish what aspects of a given organized group can legitimately be identified as falling under or approximating one or

another of these categories. For certain purposes this is unquestionably an important advantage.

For all types of authority the fact of the existence and continual functioning of an administrative staff is vital. For the habit of obedience cannot be maintained without organized activity directed to the application and enforcement of the order. It is, indeed, the existence of such activity which is usually meant by the term "organization."[18] For this to exist in turn, it is essential that there should be an adequate degree of the solidarity of interests, both on the ideal and material levels, of the members of the administrative staff with their chief. It is fundamental in understanding the relation of the chief to these members that, so far as this solidarity exists, the chief is stronger than any individual member but is weaker than the members taken together. It is, however, by all means necessary for the members of an administrative staff to enter into a deliberate agreement in order to obstruct or even consciously oppose their chief so successfully that the leadership of the chief becomes impotent. Similarly, any individual who sets out to destroy a rulership must, if he is going to take over the position of power, build up an administrative staff of his own, unless he is in a position to count on the connivance and co-operation of the existing staff against their previous leader.

Solidarity of interest with a chief is maximized at the point where both the legitimacy of the status of the members and the provision for their economic needs is dependent on the chief retaining his position. For any given individual, the possibility of escaping this solidarity varies greatly according to the structure. It is most difficult where there is complete separation from the means of administration, thus in purely traditional patriarchal structures, under pure patrimonialism and in bureaucratic organizations resting on formal rules. It is easiest where fiefs or benefices have been appropriated by socially privileged groups.

It is most important, finally, to realize that historical reality involves a continuous, though for the most part latent, conflict between chiefs and their administrative staffs for appropriation and expropriation in relation to one another. For almost all of cultural development, it has been crucial in what way this struggle has worked out and what has been the character of the stratum of officials dependent upon the chief which has helped him win out in his struggle against the feudal classes or other groups enjoying appropriated powers. In different cases it has been ritually trained literati, the clergy, purely secular clients, household officials, legally trained persons, technically specialized financial officials, or private *honoratiores*, (about whom more will be said later).

One of the reasons why the character of these struggles and of their

outcome has been so important, not only to the history of administration as such, but to that of culture generally, is that the type of education has been determined by them and with it the modes of status group formation.

1. Both the extent and the way in which the members of an administrative staff are bound to their chief will vary greatly according to whether they receive salaries, opportunities for profit, allowances, or fiefs. It is, however, a factor common to all of these that anything which endangers the legitimacy of the chief who has granted and who guarantees them, tends at the same time to endanger the legitimacy of these forms of income and the positions of power and prestige which go with membership in the administrative staff. This is one of the reasons why legitimacy, which is often so much neglected in analysing such phenomena, plays a crucially important role.

2. The history of the dissolution of the old system of domination legitimate in Germany up until 1918 is instructive in this connection. The War, on the one hand, went far to break down the authority of tradition; and the German defeat involved a tremendous loss of prestige for the government. These factors combined with systematic habituation to illegal behavior, undermined the amenability to discipline both in the army and in industry and thus prepared the way for the overthrow of the older authority. At the same time, the way in which the old administrative staff continued to function and the way in which its order was simply taken over by the new supreme authorities, is a striking example of the extent to which, under rationalized bureaucratic conditions, the individual member of such a staff is inescapably bound to his technical function. As it has been noted above, this fact is by no means adequately explained by the private economic interests of the members —their concern for their jobs, salaries, and pensions—although it goes without saying that these considerations were not unimportant to the great majority of officials. In addition to this, however, the disinterested ideological factor has been crucial. For the breakdown of administrative organization would, under such conditions, have meant a breakdown of the provision of the whole population, including, of course, the officials themselves, with even the most elementary necessities of life. Hence an appeal was made to the sense of duty of officials, and this was successful. Indeed the objective necessity of this attitude has been recognized even by the previous holders of power and their sympathizers.

3. In the course of the past revolution in Germany, a new administrative staff came into being in the Soviets of workers and soldiers. In the first place it was necessary to develop a technique of organizing these new staffs. Furthermore, their development was closely dependent on the War, notably the possession of weapons by the revolutionary element. Without this factor the revolution would not have been possible at all. (This and its historical analogies will be discussed below.) It was only by the rise of charismatic leaders against the legal authorities and

by the development around them of groups of charismatic followers, that it was possible to take power away from the old authorities. It was furthermore only through the maintenance of the old bureaucratic organization that power once achieved could be retained. Previous to this situation every revolution which has been attempted under modern conditions has failed completely because of the indispensability of trained officials and of the lack of its own organized staff. The conditions under which previous revolutions have succeeded have been altogether different. (See below, the chapter on the theory of revolutions. [Unwritten].)

4. The overthrow of authority on the initiative of the administrative staff has occurred in the past under a wide variety of conditions. Some form of association of the members of the staff has always been a necessary prerequisite. According to the circumstances, it might have more the character of a limited conspiracy or more that of a general solidarity. This is peculiarly difficult under the conditions to which the modern official is subject; but as the Russian case has shown, it is not altogether impossible. As a general rule, however, such association does not go further than the kind which is open to workers through the ordinary procedure of the strike.

5. The patrimonial character of a body of officials is above all manifested in the fact that admission involves a relation of personal dependency. In the Carolingian system, one became a *puer regis*, under the Angevins, a *familiaris*. Survivals of this have persisted for a very long time.

VII

The Transformation of Charisma in a Democratic Direction

14. *Democratic Legitimacy, Plebiscitary Leadership and Elected Officialdom*[12]

The basically authoritarian principle of charismatic legitimation may be subject to an anti-authoritarian interpretation, for the validity of charismatic authority rests entirely on recognition by the ruled, on "proof" before their eyes. To be sure, this recognition of a charismatically qualified, and hence legitimate, person is treated as a duty. But when the charismatic organization undergoes progressive rationalization, it is readily possible that, instead of recognition being treated as a conse-

quence of legitimacy, it is treated as the basis of legitimacy: *democratic legitimacy*. Then designation of a successor by an administrative staff becomes "preselection," by the predecessor himself "nomination," whereas recognition by the group becomes an "election." The personally legitimated charismatic leader becomes leader by the grace of those who follow him since the latter are formally free to elect and even to depose him—just as the loss of charisma and its efficacy had involved the loss of genuine legitimacy. Now he is the freely elected leader.

Correspondingly, the recognition of charismatic decrees and judicial decisions on the part of the community shifts to the belief that the group has a right to enact, recognize, or appeal laws, according to its own free will, both in general and for an individual case. Under genuinely charismatic authority, on the other hand, conflicts over the correct law may actually be decided by a group vote, but this takes place under the pressure of feeling that there can be only *one* correct decision, and it is a matter of duty to arrive at this. However, in the new interpretation the treatment of law approaches the case of legal authority. The most important transitional type is the legitimation of authority by plebiscite: *plebiscitary leadership*. The most common examples are the modern party leaders. But it is always present in cases where the chief feels himself to be acting on behalf of the masses and is indeed recognized by them. Both the Napoleons are classical examples, in spite of the fact that legitimation by plebiscite took place only after they seized power by force. The second Napoleon also resorted to the plebiscite after a severe loss of prestige. Regardless of how its real value as an expression of the popular will may be regarded, the plebiscite has been the specific means of deriving the legitimacy of authority from the confidence of the ruled, even though the voluntary nature of such confidence is only formal or fictitious.

Once the elective principle has been applied to the chief by a reinterpretation of charisma, it may be extended to the administrative staff. Elective officials whose legitimacy is derived from the confidence of the ruled and who are therefore subject to recall, are typical of certain democracies, for instance, the United States. They are not "bureaucratic" types. Because they have an independent source of legitimacy, they are not strongly integrated into a hierarchical order. To a large extent their "promotion" and assignment is not influenced by their superiors. (There are analogies in other cases where several charismatic structures, which are qualitatively heterogeneous, exist side by side, as in the relations of the Dalai Lama and the Tashi Lama.) Such an administrative structure is greatly inferior as a precision instrument compared to the bureaucratic type with its appointed officials.

1. Plebiscitary democracy—the most important type of *Führer-Demokratie*—is a variant of charismatic authority, which hides behind a legitimacy that is *formally* derived from the will of the governed. The leader (demagogue) rules by virtue of the devotion and trust which his political followers have in him personally. In the first instance his power extends only over those recruited to his following, but if they can hand over the government to him he controls the whole polity. The type is best illustrated by the dictators who emerged in the revolutions of the ancient world and of modern times: the Hellenic *aisymnetai*, tyrants and demagogues; in Rome Gracchus and his successors; in the Italian city states the *capitani del popolo* and mayors; and certain types of political leaders in the German cities such as emerged in the democratic dictatorship of Zürich. In modern states the best examples are the dictatorship of Cromwell, and the leaders of the French Revolution and of the First and Second Empire. Wherever attempts have been made to legitimize this kind of exercise of power, legitimacy has been sought in recognition by the sovereign people through a plebiscite. The leader's personal administrative staff is recruited in a charismatic form usually from able people of humble origin. In Cromwell's case, religious qualifications were taken into account. In that of Robespierre along with personal dependability also certain "ethical" qualities. Napoleon was concerned only with personal ability and adaptability to the needs of his imperial "rule of genius."

At the height of revolutionary dictatorship the position of a member of the administrative staff tends to be that of a person entrusted *ad hoc* with a specific task, subject to recall. This was true of the role of the agents of the "Committee of Public Safety." When a certain kind of municipal "dictators" have been swept into power by the reform movements in American cities the tendency has been to grant them freedom to appoint their own staff. Thus both traditional legitimacy and formal legality tend to be equally ignored by the revolutionary dictator. The tendency of patriarchal authorities, in the administration of justice and in their other functions, has been to act in accordance with substantive ideas of justice, with utilitarian considerations and in terms of reasons of state. These tendencies are paralleled by the revolutionary tribunals and by the substantive postulates of justice of the radical democracy of Antiquity and of modern socialism (of which more will be said in the Soc. of Law, ch. VIII: *vii*). The process of routinization of revolutionary charisma then brings with it changes similar to those brought about by the corresponding process in other respects. Thus the development of a professional army in England goes back to the voluntary army of the faithful in the days of Cromwell. Similarly, the French system of administration by prefects is derived from the charismatic administration of the revolutionary democratic dictatorship.

2. The introduction of elected officials always involves a radical alteration in the position of the charismatic leader. He becomes the "servant" of those under his authority. There is no place for such a type in a technically rational bureaucratic organization. Since he is not ap-

pointed and promoted by his superiors and his position is derived from the votes of the ruled, he is likely to be little interested in the prompt and strict observance of discipline which would be likely to win the favor of superiors. The tendency is rather for electoral positions to become autocephalous spheres of authority. It is in general not possible to attain a high level of technical administrative efficiency with an elected staff of officials. (This is illustrated by a comparison of the elected officials in the individual states in the United States with the appointed officials of the Federal Government. It is similarly shown by comparing the elected municipal officials with the administration of the reform mayors with their own appointed staffs.) It is necessary to distinguish the type of plebiscitary democracy from that which attempts to dispense with leadership altogether. The latter type is characterized by the attempt to minimize the domination of man over man.

It is characteristic of the *Führerdemokratie* that there should in general be a highly emotional type of devotion to and trust in the leader. This accounts for a tendency to favor the type of individual who is most spectacular, who promises the most, or who employs the most effective propaganda measures in the competition for leadership. This is a natural basis for the utopian component which is found in all revolutions. It also dictates the limitations on the level of rationality which, in the modern world, this type of administration can attain. Even in America it has not *always* come up to expectations.

Relationship to the economy: 1. The anti-authoritarian direction of the transformation of charisma normally leads into the path of rationality. If a ruler is dependent on recognition by plebiscite he will usually attempt to support his regime by an organization of officials which functions promptly and efficiently. He will attempt to consolidate the loyalty of those he governs either by winning glory and honor in war or by promoting their material welfare, or under certain circumstances, by attempting to combine both. Success in these will be regarded as proof of the charisma. His first aim will be the destruction of traditional, feudal, patrimonial, and other types of authoritarian powers and privileges. His second aim will have to be to create economic interests which are bound up with his regime as the source of their legitimacy. So far as, in pursuing these policies, he makes use of the formalization and legalization of law he may contribute greatly to the formal rationalization of economic activity.

2. On the other hand, plebiscitary regimes can easily act so as to weaken the formal rationality of economic activity so far as their interests in legitimacy, being dependent on the faith and devotion of the masses, forces them to impose substantive ideas of justice in the economic sphere. This will result in an administration of justice emancipated from formal procedures, as it happens under revolutionary tribunals, war-time ration-

ing and in other cases of limited and controlled production and consumption. This tendency, which is by no means confined to the modern socialist type, will be dominant insofar as the leader is a "social dictator." The causes and consequences of this type cannot yet be discussed.

3. The presence of elective officials is a source of disturbance to formally rational economic life. This is true in the first place because such officials are primarily elected according to party affiliations and not technical competence. Secondly, the risks of recall or failure of re-election make it impossible to pursue a strictly objective course of decision and administration, without regard to such consequences. There is, however, one case where the unfavorable effects for the rationality of economic activity are not evident. This is true where there is a possibility of applying the economic and technical achievements of an old culture to new areas. In this case, the means of production are not yet appropriated and there is a sufficiently wide margin so that the almost inevitable corruption of officials can be taken account of as one of the cost factors, and large-scale profits still be attained [as in the United States].

On 1. The classical example of a favorable effect on economic rationality is to be found in the two Napoleonic regimes. Napoleon I introduced the *Code Napoléon,* compulsory division of estates by inheritance and everywhere destroyed the traditional authorities. It is true that his regime created what almost amounted to fiefs for his deserving followers, and that the soldiers got almost everything, the citizen nothing. But this was compensated for by *la gloire* and, on the whole, the small bourgeois were tolerably well off. Under Napoleon III there was continued adherence to the motto of the era of Louis Philippe: "enrichissez-vous"; grand-scale building; the *Crédit Mobilier,* with its well-known scandal.

On 2. The tendencies of "social dictatorship" are classically illustrated by the Greek democracy of the Periclean age and its aftermath. In Rome the jurors who tried a case were bound by the instructions of the *praetor,* and decisions followed the formal law. But in the Greek *heliaia*-court decisions were made in terms of "substantive" justice—in effect, on the basis of sentimentality, flattery, demagogic invectives and jokes. This can be clearly seen in the court orations of the Athenian rhetors. Analogous phenomena are found in Rome only in the case of political trials, such as Cicero participated in. The consequence was that the development of formal law and formal jurisprudence in the Roman sense became impossible. For the *heliaia* was a "people's court" directly comparable to the revolutionary tribunals of the French Revolution and of the Soviet phase of the revolution in Germany. The jurisdiction of these lay tribunals was by no means confined to politically relevant cases. On the other hand, no revolutionary movement in England has ever interfered with the administration of justice except in cases of major political sig-

nificance. However, it is true that there was a considerable arbitrary element in the decisions of the justices of the peace, but only insofar as they concerned pure "police" cases *not* involving interests of the propertied.

On 3. The United States of America is the classical example. As late as the early 1900's the author inquired of American workers of English origin why they allowed themselves to be governed by party henchmen who were so often open to corruption. The answer was, in the first place, that in such a big country even though millions of dollars were stolen or embezzled there was still plenty left for everybody, and secondly that these professional politicians were a group which even workers could treat with contempt whereas technical officials of the German type would as a group "lord it over" the workers.

A specialized discussion of relations of economic activity will have to be left for the more detailed treatment below [Part Two].

viii

Collegiality and the Division of Powers

15. *Types of Collegiality and of the Division of Powers*

On either a traditional or a rational basis authority may be limited and controlled by certain specific means.

The present concern is not with the limitations of authority as such, whether it is determined by tradition or by law. This has already been discussed (secs. 3ff.). Just now it is rather a question of specific social relationships and groups which have the function of limiting authority.

1. Patrimonial and feudal regimes generally have their authority limited by the privileges of status groups. This type of limitation is most highly developed when there is an estate-type division of powers. This situation has already been discussed (sec. 9:IV).

2. A bureaucratic organization may be limited and indeed must be by agencies which act on their own authority alongside the bureaucratic hierarchy. This limitation is inherent in the fully developed legality type so that administrative action can be restricted to what is in conformity with rules. Such limiting agencies have the following principal functions:

(a) supervision of adherence to the rules, if need be, through an inquiry;

(b) a monopoly of creation of the rules which govern the action of

officials completely, or at least of those which define the limits of their independent authority;

(c) above all a monopoly of the granting of the means which are necessary for the administrative function. These modes of limitation will be discussed separately below (sec. 16).

3. It is possible for any type of authority to be deprived of its monocratic character by the *principle of collegiality*. This may, however, occur in a variety of ways with widely varying significance. The following are the principal types:

(a) It may be that alongside the monocratic holders of governing powers there are other monocratic authorities which, by tradition or legislation, are in a position to delay or to veto acts of the first authority. This is the case of "veto collegiality" (*Kassationskollegialität*).

> The most important examples in Antiquity are the [Roman] tribune and, in its origins, the [Spartan] ephor, in the Middle Ages the *capitano del popolo*, and, in the period after November 9, 1918 until the regular administration was again emancipated from this control, the [German revolutionary] "Councils of Workers and Soldiers" whose delegates (*Vertrauensmänner*) were entitled to "countersign" official acts.

(b) The second type is precisely the opposite of this, namely the arrangement that the acts of an authority which is not monocratic must be carried out only after previous consultation and a vote. That is, their acts are subject to the rule that a plurality of individuals must co-operate for the act to be valid: the case of "functional collegiality." This cooperation may follow (α) the principle of unanimity or (β) of decision by majority.

(c) In effect closely related to case (a) is that in which, in order to weaken monocratic power, a plurality of monocratic officials exists, each of whom has equal authority, without specification of function. If a conflict arises over the same function, there must be a resort either to mechanical means such as lots, rotation, or oracles, or some controlling agency (2a) must intervene. In effect the tendency is for each member of the collegial body to have a power of veto over the others. (The most important example is the collegiality of the Roman magistrates, such as the consuls and the praetors.)

(d) A type which is closely related to case (b) is that in which, although there is an actually monocratic *primus inter pares*, his acts are normally subject to consultation with formally equal members, and disagreement in important matters may lead to breaking up of the collegial body by resignation, thus endangering the position of the monocratic chief. This may be called "functional collegiality with a preeminent head."

The most important example is that of the position of the British Prime Minister in relation to his cabinet. This organization has, as is well known, changed greatly in the course of its history. The above formulation, however, is substantially correct for most cases in the period of cabinet government.

Advisory collegial bodies do not necessarily involve a weakening of the power of an autocratic chief but may well lead to a tempering of the exercises of authority in the direction of rationalization. It is, however, also possible that in effect they should gain the upper hand over the chief. This is particularly true if they are representative of well-established status groups. The following are the more important types:

(e) The case noted above under (d) is closely related to that in which a body whose functions are formally only advisory is attached to a monocratic chief. Even though he is not formally bound to follow their advice but only to listen to it, the failure of his policies if this occurs may be attributed to neglect of this advice.

The most important case is that of the Roman Senate as a body advisory to the magistrates. From this there developed an actual dominance over the magistrates, chiefly through the Senate's control of finance. The Senate was probably actually only an advisory body in the early days, but through the actual control of finance and still more through the fact that senators and the formally elected magistrates belonged to the same status group, a situation developed in which the magistrates were in fact bound by the resolutions of the Senate. The formula "Si *eis placeret*," in which the traditional lack of formal obligation was expressed, came to mean something analogous to "if you please" accompanied by something like a command.

(f) A somewhat different type is found in the case where a collegial body is made up of individuals with specified functions. In such a case the preparation and presentation of a subject is assigned to the individual technical expert who is competent in that field or possibly to several experts, each in a different aspect of the field. Decisions, however, are taken by a vote of the body as a whole.

Most councils of state and similar bodies in the past have more or less closely approximated to this type. This was true of the English Privy Council in the period before the development of cabinet government. Though at times their power has been very great, they have never succeeded in expropriating monarchs. On the contrary, under certain circumstances the monarch has attempted to secure support in his council of state in order to free himself from the control of cabinets which were made up of party leaders. This attempt was made in England, but without success. This type is also an approximately correct description of the ministries or cabinets made up of specialized officials which hereditary

monarchs or elective presidents of the American type have appointed for their own support.

(g) A collegial body, the members of which have specified functions, may be a purely advisory body. In this case—as in (e)—it is open to the chief to accept or reject their recommendations, according to his own free decision.

The only difference is the extreme specialization of functions. This case was approached by the Prussian organization under Frederick William I [1713–40] and is always favorable to consolidating the power of the chief.

(h) The direct antithesis of rationally specialized collegiality is a traditional collegial body consisting of "elders." Their collegial function is primarily to guarantee that the law which is applied is really authentically traditional. Sometimes such bodies have a veto power as a means of upholding the genuine tradition against untraditional legislation. (Examples: *gerousia* [council of elders] in many cases in Antiquity; for veto power, the Areopagus in Athens and the *patres* in Rome, the latter, however, belong primarily in type (l) below.)

(i) One way of weakening domination is by applying the collegial principle to the highest authority whether its supremacy be formal or substantive. Several variations of this type are found, resembling the types d) through g). The powers of individual members of such bodies may be assumed in rotation or may be distributed on a permanent basis. Such bodies are collegial so long as there is a formal requirement that legitimate acts require the participation of all the members.

One of the most important examples is the Swiss Federal Council, the members of which do not have clearly defined specialized functions, while to some extent the principle of rotation is involved. Another example is found in the revolutionary councils of "People's Commissars" in Russia, Hungary, and for a short time in Germany. In the past such bodies as the "Council of Eleven" in Venice and the colleges of "Ancients" [in other Italian city states] belong in this category.

A great many cases of collegiality in patrimonial or feudal organizations belong in one or another of the following categories:

1) The estate-type division of powers ("estate collegiality").

2) The collegial organization of patrimonial officials which the chief has organized in order to counterbalance the power of organized privileged groups. This is often the position of the councils of state discussed above under (f).

3) Advisory bodies or sometimes bodies with executive authority over which the chief presides or the meetings of which he attends or from

which at least he receives reports. Such bodies are generally made up either of technical experts or of persons of high social prestige or both. In view of the increasingly specialized considerations involved in the functions of government he may hope, through the advice of such bodies, to attain a level of information sufficiently above pure dilettantism so that an intelligent personal decision is possible (case g) above).

In cases of the third type the chief is naturally interested in having heterogeneous and even opposed elements represented, whether this heterogeneity is one of technical opinions or of interest. This is because, on the one hand, he is concerned with the widest possible range of information, and on the other with being in a position to play the opposing interests off against each other.

In the second type, on the contrary, the chief is often, though not always, concerned with uniformity of opinions and attitudes. This is a main source of the "solidary" ministries and cabinets in so-called Constitutional states or others with an effective separation of powers. In the first case the collegial body which represents the appropriated interests will naturally lay stress on uniformity of opinion and solidarity. It is not, however, always possible to attain this, since every kind of appropriation through social privilege creates conflicting interests.

The first of these types is illustrated by the assemblies of estates and the assemblies of vassals which preceded them frequently not only in Europe but elsewhere—for instance in China. The second type is well illustrated by the administrative, mostly collegial organs which were formed in the early stages of the modern monarchies and which were primarily composed of legal and financial experts. The third type is illustrated by the councils of state of the same monarchies and is also found in other parts of the world. As late as the eighteenth century it was not unknown for an archbishop to have a seat in the English cabinet. Typically, these bodies have been composed of dignitaries such as *Räte von Haus aus*,[14] and typically have had a mixture of *honoratiores* and specialized officials.

(k) Where there is a conflict of interests of status groups it may work out to the advantage of a chief through negotiation and struggle with the various groups. For organizations which are composed of delegated representatives of conflicting interests, whether their basis be in ideal causes, in power, or in economic advantage, may at least in external form be collegial bodies. What goes on within the body is then supposedly a process of adjustment of these conflicts of interest by compromise. (This is the case of "compromise-oriented collegiality," in contrast to office and parliamentary collegiality.)

This type is present in a crude form wherever there is an estate-type

division of powers in such a way that decisions can only be arrived at by a compromise between the privileged groups. A more highly rationalized form is built up when the delegated members of the collegial bodies are selected in terms of their permanent status or class position, or in terms of the specific interests they represent. In such a body, unless its character is radically changed, action cannot result from a "vote" in the ordinary sense but is the outcome of a compromise which is either negotiated among the interests themselves or is imposed by the chief after the case for each of the groups involved has been considered.

The peculiar structure of the *Ständestaat* will be discussed more in detail below (ch. XIII). The above formulation applies to such situations as arose through the separation of the bodies representing different social groups. Thus in England the House of Lords was separated from the House of Commons, while the Church did not participate in Parliament at all but had its separate "Convocations." In France, the division came to be that of the nobility, the clergy, and the *tiers état*, while in Germany there were various more complex divisions. These divisions made it necessary to arrive at decisions by a process of compromise, first within one estate and then between estates. The decisions were then generally submitted to the king as recommendations which he was not necessarily bound to follow. Today the theory of representation by occupational groups is very much in vogue. The advocates of this proposal for the most part fail to see that even under these conditions compromises rather than majority decisions would be the only feasible means (see sec. 22 below). Insofar as free workers' councils were the bodies concerned, the tendency would be for questions to be settled in terms of the relative economic power of different groups, and not by majority vote.

(l) A related case is "voting collegiality," where collegial bodies which decide things by vote have been formed out of previously autocephalous and autonomous groups and a (variously gradated) right to a voice in decision-making has been appropriated by the leaders or the delegates of the component groups ("merger collegiality").

Examples are found in the representation of the phylae, the phratries, and the clans in the governing bodies of ancient city-states, in the medieval clans in the time of the *consules*, in the *mercadanza* of the guilds, in the delegates of the crafts (*Fachräte*) to the executive council of a federation of trade unions, in the federal council or senate in federal states, and finally in the distribution of appointments to cabinet posts in coalition ministries. This last case is particularly clear in the case of Switzerland, where posts are distributed in proportion to the number of votes for each party.

(m) A rather special case is the "voting collegiality" of elected parliamentary bodies which is hence in need of separate treatment. Its

composition rests on one of two bases. It is either based on leadership, in which case the particular members constitute the following of leaders, or it is composed of collegial party groups without subordination to a specific leader (*führerloser Parlamentarismus*). To understand this it is necessary to discuss the structure of parties (see sec. 18 below).

Except in the case of the monocratic type of "veto collegiality," collegiality almost inevitably involves obstacles to precise, clear, and above all, rapid decision. In certain irrational forms it also places obstacles in the way of technical experts, but in introducing specialized officials monarchs have often found this consequence not altogether unwelcome. With the progressive increase in the necessity for rapid decision and action, however, the importance of this type of collegiality has declined.

Generally speaking, where collegial bodies have had executive authority the tendency has been for the position of the leading member to become substantively and even formally pre-eminent. This is true of the positions of the Bishop and the Pope in the church and of the Prime Minister in cabinets. Any interest in reviving the principle of collegiality in actual executive functions is usually derived from the interest in weakening the power of persons in authority. This, in turn, is derived from mistrust and jealousy of monocratic leadership, not so much on the part of those subject to authority, who are more likely to demand a "leader," as on the part of the members of the administrative staff. This is not only or even primarily true of negatively privileged groups but is, on the contrary, typical of those enjoying positive privileges. Collegiality is in no sense specifically "democratic." Where privileged groups have had to protect their privileges against those who were excluded from them they have always attempted to prevent the rise of monocratic power. Indeed, they have had to do so because such a power could base itself on the support of the underprivileged. Thus, while on the one hand they have tended to enforce strict equality within the privileged group they have tended to set up and maintain collegial bodies to supervise or even to take over power.

> Examples are Sparta, Venice, the Roman Senate before the time of the Gracchi and in Sulla's days, England repeatedly in the eighteenth century, Berne and other Swiss cantons, the medieval patrician towns with their collegial consuls, and the *mercaanaza* which comprised the merchant guilds, but not those of the craft workers. The latter very easily became the prey of *nobili* and *signori*.

Collegiality favors greater thoroughness in the weighing of administrative decisions. Apart from the considerations already discussed, where this is more important than precision and rapidity, collegiality tends to be resorted to even to-day. Furthermore, it divides personal responsibility,

indeed in the larger bodies this disappears almost entirely, whereas in monocratic organizations it is perfectly clear without question where responsibility lies. Large-scale tasks which require quick and consistent solutions tend in general, for good technical reasons, to fall into the hands of monocratic "dictators," in whom all responsibility is concentrated.

It is impossible for either the internal or the foreign policy of great states to be strongly and consistently carried out on a collegial basis. The dictatorship of the proletariat for the purpose of carrying out the nationalization of industry requires an individual "dictator" with the confidence of the masses. The "masses" as such are not necessarily adverse to this but the people holding power in Parliaments, parties, or, what makes very little difference, in "Soviets," cannot put up with such a dictator. This type has emerged only in Russia through the help of military force and supported by the interests of the peasants in the solidary maintenance of their newly acquired control of the land.

Finally, a few remarks may be made which partly summarize and partly supplement what has already been said. From a historical point of view, collegiality has had two principal kinds of significance:

a) It has involved a plurality of incumbents of the same office, or a number of persons in offices whose spheres of authority were directly competing, each with a mutual power of veto. This is primarily a matter of a technical separation of powers in order to minimize authority. The most conspicuous instance of this type of collegiality is that of the Roman magistrates. Their most important significance lay in the fact that every official act was subject to intercession by a magistrate with equal authority, thus greatly limiting the power of any one magistrate. But the magistracy remained an individual office merely multiplied in several copies.

b) The second main type has been that involving collegial decision. In such cases an administrative act is only legitimate when it has been produced by the cooperation of a plurality of people according to the principle of unanimity or of majority. This is the type of collegiality which is dominant in modern times, though it was also known in Antiquity. It may involve collegiality 1) of governmental leadership, 2) of administrative agencies, 3) of advisory bodies.

1) Collegiality in the supreme authority may be derived from the following considerations:—

(a) Its basis may lie in the fact that the governing authority (*Herrschaftsverband*) has arisen from the *Vergemeinschaftung* or *Vergesellschaftung* of previously autocephalous groups and that each of these demands its share of power. This was true of the "synoikism" of the ancient city states with their councils organized on the basis of clans, phratries, and phylae. It was true of the medieval towns with a council representing the important noble families, and of the medieval guild federations, in the *Mercadanza* with the council of the "*Ancients*" or guild deputies. It is also found in the bodies representing the component states in modern federal

states and in the collegial structure of the ministries which have been built up by party coalitions (see again the increasing importance of proportional division in Switzerland). Collegiality in this case is a particular case of the representation of status or territorial groups.

(b) It may, secondly, be based on the absence of a leader. This may in turn result from mutual jealousy among those competing for leadership or from the attempt of the subjects to minimize the authority of any individual. It has appeared in most revolutions from a combination of these factors, in such forms as a council of officers or even soldiers of revolutionary troops or the Committee of Public Safety or the Councils of People's Commissars. In times of peace it has been mostly this last motive, antipathy to the individual "strong man," which has underlain the establishment of collegial bodies. Examples are Switzerland and the new constitution of Baden in 1919. (In the last case it was the socialists who most strongly manifested this antipathy; for fear of an "elected monarch" they sacrificed the strict administrative unification which was an absolutely essential condition of successful nationalization. The most decisive influence in this was the attitude of party officials in trade unions, local communities, and party headquarters, all of whom were suspicious of the powers of leadership.)

(c) The third basis may lie in the independent social position of the status groups primarily available for positions of power and monopolizing these positions. In this case collegiality is the product of an aristocratic regime. Every socially privileged class fears the type of leader who seeks support in the emotional devotion of the masses just as much as the type of democracy without leaders fears the rise of "demagogues." The senatorial regime in Rome, various attempts to rule through closed councils, and the Venetian and similar constitutions all belong in this category.

(d) The fourth basis may lie in the attempt of monarchs to counteract increasing expropriation at the hands of a technically trained bureaucracy. In the modern Western state, modern administrative organization was first introduced at the top with the establishment of collegial bodies. This was similar to what happened to the patrimonial states of the Orient, in China, Persia, the empire of the Caliphs, and in the Ottoman Empire, all of which served as models for Europe. A monarch is not only afraid of the power of particular individuals but hopes above all to be in a position, in the votes and counter-votes of a collegial body, to hold the balance himself. Furthermore, since he tends to become more and more of a dilettante he can also hope in this way to have a better comprehension of the details of administration than if he abdicated in favor of individual officials. (Generally speaking the functions of the highest bodies have been a mixture of advisory and executive elements. It is only in the field of finance, where arbitrariness has particularly irrational consequences, that, as in the case of the [1495–97] reform of Emperor Maximilian, the power of the monarch was immediately clipped by the professional officialdom. In this case there were powerful factors forcing the monarch to give way.)

(e) Another basis lies in the need to reconcile the points of view of different technical specialists and divergent interests, whether material or personal, by collegial discussion, that is, to make compromise possible. This has been particularly true in the organization of municipal affairs, which have on the one hand involved highly technical problems which could be appraised in local terms, and on the other hand have tended to rest heavily on the compromise of material interests. This has been true at least so long as the masses have put up with control by the strata privileged through property and education. The collegiality of ministries rests, from a technical point of view, on a similar basis. In Russia and to a less extent in Imperial Germany, however, it has not been possible to attain effective solidarity between the different parts of the government. The result has been bitter conflict between the different agencies.

The basis in cases (a), (c), and (d) is purely historical. Bureaucratic authority in the modern world has, wherever it has developed in large-scale associations such as states or metropolitan cities, led to a weakening of the role of collegiality in effective control. Collegiality unavoidably obstructs the promptness of decision, the consistency of policy, the clear responsibility of the individual, and ruthlessness to outsiders in combination with the maintenance of discipline within the group. Hence for these and certain other economic and technical reasons in all large states which are involved in world politics, where collegiality has been retained at all, it has been weakened in favor of the prominent position of the political leader, such as the Prime Minister. Incidentally a similar process has taken place in almost all of the large patrimonial organizations, particularly those which have been strictly Sultanistic. There has again and again been the need for a leading personality such as the Grand Vizier in addition to the monarch, unless a regime of favorites has provided a substitute. One person must carry the responsibility, but from a legal point of view the monarch himself could not do this.

2) Collegiality as employed in agencies acting under the direction of higher authorities has been primarily intended to promote objectivity and integrity and to this end to limit the power of individuals. As in respect to the highest authority it has almost everywhere, for the same reasons, given way to the technical superiority of monocratic organizations. This process is illustrated by the fate of the *Regierungen* [provincial "governments"] in Prussia.

3) In purely advisory bodies, collegiality has existed at all times and will probably always continue to exist. It has played a very important part historically. This has been particularly true in cases where the power structure was such that "advice" submitted to a magistrate or a monarch was for practical purposes binding. In the present discussion it is not necessary to carry the analysis further.

The type of collegiality under discussion here is always collegiality in the exercise of authority. It is thus a matter of bodies which either are administrative or which directly influence administrative agencies (through advice). The behavior of assemblies representing status groups

and of parliamentary bodies will be taken up later. [See below, sec. x of this chapter.]

From a historical point of view it is in terms of collegiality that the concept of an "administrative agency" first came to be fully developed. This is because collegiality has always been linked with a separation of the sphere of office of the members from their private affairs, of public and private staff, and finally of the means of administration from personal property. It is thus by no means fortuitous that the history of modern administration in the Western World begins with the development of collegial bodies composed of technical specialists. Collegial administration has also been the beginning of every permanent organization of patrimonial, feudal, or other types of traditional political structures though in a different way. Only collegial bodies of officials, which were capable of standing together, could gradually expropriate the Occidental monarch, who had become a "dilettante." If officials had been merely individual appointees, the obligation of personal obedience would have made it far more difficult to maintain consistent opposition to irrational decisions of the monarch. When it became evident that a transition to the rule of technical bureaucracy was inevitable, the monarch regularly attempted to extend the system of advisory collegial bodies in the form of councils of state, in order to remain the master in spite of his lack of technical competence by playing off the internal dissensions of these bodies against each other. It was only after rational technical bureaucracy had come to be finally and irrevocably supreme that a need has been felt, particularly in relation to parliaments, for solidarity of the highest collegial bodies under monocratic direction through a prime minister. These bodies were intended to cover the ruler, who in turn protected them. With the latest development the general tendency of monocracy, and hence bureaucracy, in the organization of administration has become definitely victorious.

1. The significance of collegiality in the early stages of the development of modern administration is particularly evident in the struggle which the financial bodies created by Emperor Maximilian to meet the emergencies of the Turkish invasions carried on against his tendency to go over the heads of his officials and to issue orders and pledge securities for loans in accordance with every momentary whim. It was in the sphere of finance that the expropriation of the monarch began, for it was here in the first place that he lacked technical competence. This development occurred first in the Italian city states with their commercially organized system of accounting, then in the Burgundian and French Kingdoms, in the German territorial states, and independently of these in the Norman state of Sicily and in England. In the Near East

the Divans played a similar role, as did the Yamen in China and the Bakufu in Japan. In these cases, however, no rationally trained group of technically competent officials was available, and it was necessary to resort to the empirical knowledge of "experienced" officials. This accounts for the fact that a rationally bureaucratic system did not result. In Rome a somewhat similar role was played by the Senate.

2. The role of collegiality in promoting the separation of the private household from the sphere of office is somewhat similar to that played by the large-scale voluntary trading companies in the separation of the household and the profit-making enterprise on the one hand, of personal property and capital on the other.

16. *The Functionally Specific Division of Powers*

4.[15] It is further possible for authoritative powers to be limited by a functionally specific separation of powers. This means entrusting different individuals with specifically differentiated "functions" and the corresponding powers. In the strictly legal type—as in the constitutional separation of powers—these functions are rationally determined. It follows that in questions which involve two or more authorities it is only by means of a compromise between them that legitimate measures can be taken.

1. Functionally specific separation of powers differs from that based on status groups in that powers are divided in terms of their functionally objective character. This involves some kind of "constitution," which need not, however be formally enacted or written. The setup is such either that different types of measures have to be undertaken by different authorities or that the same type involves the cooperation by informal compromise of a plurality of agencies. It is not merely spheres of competence which are separated in this case but also the ultimate powers.

2. The functionally specific separation of powers is not wholly a modern phenomenon. The division of an independent political authority and an equally independent hierocratic authority instead of either caesaropapism or theocracy belongs in this category. Similarly, there is a certain sense in which the specified spheres of competence of the different Roman magistracies may be thought of as a kind of "separation of powers." The same is true of the specialized charismata of Lamaist Buddhism. In China the Confucian Hanlin Academy and the "censors" had a position which, in relation to the Emperor, was largely independent. In most patrimonial states, but also in the Roman Principate it has been usual for the administration of justice and the civil aspect of finance to be separated from the military establishment, at least in the lower

reaches. But in these cases the concept of separation of powers loses all precision. It is best to restrict its application to the supreme authority itself. If this restriction is accepted then the rational, formally enacted constitutional form of the separation of powers is entirely a modern phenomenon. In a constitutional but non-parliamentary state a budget can be put through only by a process of compromise between the legal authorities, such as the crown, and one or more legislative chambers.

Historically, the separation of powers in Europe developed out of the old system of estates. Its theoretical basis for England was first worked out by Montesquieu and then by Burke. Further back the division of powers began in the process of appropriation of governing powers and of the means of administration by privileged groups. Another important factor lay in the increasing financial needs of the monarchs, both the recurring needs arising from the social and economic development and the exceptional ones of war time. They could not be met without the consent of privileged groups, even though the latter were often the first to insist that they be met. In this situation it was necessary for the estates to reach a compromise, which was the historical origin of compromises over the budget and over legislation. The latter phenomena do not, however, belong in the context of the separation of powers as between estates but to the constitutional type.

3. The constitutional separation of powers is a specifically unstable structure. What determines the actual power structure is the answer to the question what would happen if a constitutionally necessary compromise, such as that over the budget, were not arrived at. An English king who attempted to rule without a budget today would risk his crown, whereas in pre-revolutionary Germany a Prussian king would not, for under the German system the position of the dynasty was dominant.

17. *The Relations of the Political Separation of Powers to the Economy*

1. Collegiality of legal bodies with rationally defined functions may be favorable to objectivity and the absence of personal influences in their administrative actions. Even if such collegiality has a negative influence because it functions imprecisely, the general effect may favor the rationality of economic activity. On the other hand, the big capitalistic interests of the present day, like those of the past, are apt, in political life —in parties and in all other connections that are important to them—to prefer monocracy. For monocracy is, from their point of view, more "discreet." The monocratic chief is more open to personal influence and is more easily swayed, thus making it more readily possible to influence the

administration of justice and other governmental activity in favor of such powerful interests. This is also in accord with German experience.

Conversely, the type of collegiality involving mutual veto powers or that in which collegial bodies have arisen out of the irrational appropriation of power of a traditional administrative staff may have irrational consequences. The type of collegiality of financial bodies, which originated specialized officialdom, has on the whole certainly been favorable to the formal rationalization of economic activity.

In the United States the monocratic "party boss," rather than the official party organs which are often collegial, was preferred by the big contributors. This accounts for his indispensability. For the same reason, in Germany large sections of so-called "heavy industry" have favored bureaucratic domination rather than parliamentary government with its collegial system.

2. Like every form of appropriation, the separation of powers creates established spheres of authority which, though they may not yet be rational, still introduce an element of calculability into the functioning of the administrative apparatus. Hence, the separation of powers is generally favorable to the formal rationalization of economic activity. Movements which, like the Soviet type, the French Convention, and the Committee of Public Safety, aim to abolish the separation of powers, are definitely concerned with a more or less "just" economic distribution. Accordingly, they work against formal rationalization.

(All details must wait for the extended analyses.)

IX

Parties

18. *Definition and Characteristics*[10]

The term "party" will be employed to designate associations, membership in which rests on formally free recruitment. The end to which its activity is devoted is to secure power within an organization for its leaders in order to attain ideal or material advantages for its active members. These advantages may consist in the realization of certain objective policies or the attainment of personal advantages or both. Parties may have an ephemeral character or may be organized with a view to perma-

nent activity. They may appear in all types of organizations and may themselves be organized in any one of a large variety of forms. They may consist of the following of a charismatic leader, of traditional retainers, or of purpose- or value-rational adherents. They may be oriented primarily to personal interests or to objective policies. Officially or merely in fact, they may be solely concerned with the attainment of power for their leaders and with securing positions in the administrative staff for their own members. (Then they are "patronage parties".) They may, on the other hand, predominantly and consciously act in the interests of a status group or a class or of certain objective policies or of abstract principles. (In the latter case they are called "ideological parties.") The attainment of positions in the administrative staff for their members is, however, at the least a secondary aim and objective programs are often merely a means of persuading outsiders to participate.

By definition a party can exist only *within* an organization, in order to influence its policy or gain control of it. Federations of party groups which cut across several corporate bodies are, however, not uncommon.

A party may employ any one of the conceivable means of gaining power. In cases where the government is determined by a formally free ballot and legislation is enacted by vote they are primarily organizations for the attraction of votes. Where voting takes a course in accord with legitimate expectations they are legal parties. The existence of legal parties, because of the fact that their basis is fundamentally one of voluntary adherence, always means that the business of politics is the pursuit of *interests*. (It should, however, be noted that in this context, "interests" is by no means necessarily an economic category. In the first instance, it is a matter of political interests which rest either on an ideological basis or on an interest in power as such.)

In this case the political enterprise is in the hands of:

a) party leaders and their staffs, whereas

b) active party members have for the most part merely the function of acclaiming their leaders. Under certain circumstances, however, they may exercise some forms of control, participate in discussion, voice complaints, or even initiate resolutions within the party;

c) the inactive masses of electors or voters (*Mitläufer*) are merely objects whose votes are sought at election time. Their attitudes are important only for the agitation of the competing parties;

d) contributors to party funds usually remain behind the scenes.

Apart from formally organized legal parties in a polity, there are the following principal types:

a) Charismatic parties arising from disagreement over the charis-

matic quality of the leader or over the question of who, in charismatic terms, is to be recognized as the correct leader. They create a schism.

b) Traditionalistic parties arising from controversy over the way in which the chief exercises his traditional authority in the sphere of his arbitrary will and grace. They arise in the form of movements to obstruct innovations or in open revolt against them.

c) Parties organized about questions of faith (*Glaubensparteien*). These are usually, though not necessarily, identical with a). They arise out of a disagreement over the content of doctrines or declarations of faith. They take the form of heresies, which are to be found even in rational parties such as the socialist.

d) Appropriation parties [or spoils-oriented parties] arising from conflict with the chief and his administrative staff over the filling of positions in the administrative staff. This type is very often, though by no means necessarily, identical with b).

Structurally, parties may conform to the same types as any other organizations. They may thus be charismatically oriented by devotion to the leader, with the plebiscite as an expression of confidence. They may be traditional with adherence based on the social prestige of the chief or of an eminent neighbor, or they may be rational with adherence to a leader and staff set up by a "constitutional process" of election. These differences may apply both to the basis of obedience of the members, and of the administrative staff. Further elaboration must be reserved to the Sociology of the State. [The *Staatssoziologie* was never written.]

It is of crucial importance for the economic aspect of the distribution of power and for the determination of party policy by what method the party activities are financed. Among the possibilities are small contributions from the masses of members and sympathizers; large contributions from disinterested sympathizers with its cause; direct or indirect sell-out to interested parties; or taxation either of elements under obligation to the party, including its members, or of its defeated opponents. These details, too, belong in the *Staatssoziologie*.

1. As has been pointed out, parties can exist by definition only within an organization, whether political or other, and only when there is a struggle for its control. Within a party there may be and very often are sub-parties; for example, as ephemeral structures they are typical in the nomination campaigns of presidential candidates of the American parties. On a pennanent basis an example is the "Young Liberals" in Gennany. Parties which extend to a number of different polities are illustrated by the Guelphs and Ghibellines in Italy in the thirteenth century and by the modern socialists.

2. The criterion of formally voluntary solicitation and adherence in terms of the rules of the group within which the party exists is treated here as the crucial point. It involves a distinction of major sociological significance from all associations which are prescribed and controlled by the polity. Even where the order of the polity takes notice of the existence of parties, as in the United States and in the German system of proportional representation, the voluntarist component remains. It remains even if an attempt is made to regulate their constitution. But when a party becomes a closed group which is incorporated by law into the administrative staff, as was true of the Guelphs in the Florentine statutes of the thirteenth century, it ceases to be a party and becomes a part of the polity.

3. Under genuinely charismatic domination, parties are necessarily schismatic sects. Their conflict is essentially over questions of faith and, as such, is basically irreconcilable. The situation in a strictly patriarchal body may be somewhat similar. Both these types of parties, at least in the pure form, are radically different from parties in the modern sense. In the usual kind of hereditary monarchy and estate-type organization, it is common for groups of retainers, composed of pretenders to fiefs and offices, to rally around a pretender to the throne. Personal followings are also common in organizations of *honoratiores* such as the aristocratic city states. They are, however, also prominent in some democracies. The modern type of party does not arise except in the legal state with a representative constitution. It will be further analyzed in the Sociology of the State.

4. The classic example of parties in the modern state organized primarily around patronage are the two great American parties of the last generation. Parties primarily oriented to issues and ideology have been the older type of Conservatism and Liberalism, bourgeois Democracy, later the Social Democrats and the [Catholic] Center Party. In all, except the last, there has been a very prominent element of class interest. After the Center attained the principal points of its original program, it became very largely a pure patronage party. In all these types, even those which are most purely an expression of class interests, the (ideal and material) interests of the party leaders and the staff in power, office, and remuneration always play an important part. There is a tendency for the interests of the electorate to be taken into account only so far as their neglect would endanger electoral prospects. This fact is one of the sources of public opposition to political parties as such.

5. The different forms which the internal organization of parties take will be dealt with separately in the proper place. One fact, however, is common to all these forms, namely, that there is a central group of individuals who assume the active direction of party affairs, including the formulation of programs and the selection of candidates. There is, secondly, a group of "members" whose role is notably more passive, and finally, the great mass of citizens whose role is only that of objects of solicitation by the various parties. They merely choose between the

various candidates and programs offered by the different parties. Given the voluntary character of party affiliation this structure is unavoidable. It is th s which is meant by the statement that party activity is a matter of "play of interests." (As has already been stated, it is political interests and not economic interests which are involved.) The role of interests in this sense is the second principal point of attack for the opposition to parties as such. In this respect, there is a *formal* similarity between the party system and the system of capitalistic enterprise which rests on the recruitment of formally free labor.

6. The role in party finance of large-scale contributors is by no means confined to the "bourgeois" parties. Thus Paul Singer was a contributor to the Social Democratic party (and, by the way, humanitarian causes) of grand style (and purest motives so far as is known). His whole position as chairman of the party rested on this fact. Furthermore, the parties of the Russian revolution in the Kerensky stage were partly financed by very large Moscow business interests. Other German parties on the "right" have been financed by heavy industry, while the Center party occasionally had large contributions from Catholic millionaires.

For reasons which are readily understandable, the subject of party finances, though one of the most important aspects of the party system, is the most difficult to secure information about. It seems probable that in certain special cases a "machine" has actually been "bought." Apart from the role of individual large contributors, there are two basic alternatives: On the one hand, as in the English system, the electoral candidate may carry the burden of campaign expenses, with the result that the candidates are selected on a plutocratic basis. On the other hand, the costs may be borne by the "machine," in which case the candidates become dependent on the party organization. Parties as permanent organizations have always varied between these two fundamental types, in the thirteenth century in Italy just as much as today. These facts should not be covered up by fine phrases. Of course, there are limits to the power of party finance. It can only exercise an influence insofar as a "market" exists, but as in the case of capitalistic enterprise, the power of the seller as compared with the consumer has been tremendously increased by the suggestive appeal of advertising. This is particularly true of "radical" parties regardless of whether they are on the right or the left.

X

Direct Democracy and Representative Administration[17]

19. *The Conditions of Direct Democracy and of Administration by Notables*

Though a certain minimum of imperative powers in the execution of measures is unavoidable, certain organizations may attempt to reduce it as far as possible. This means that persons in authority are held obligated to act solely in accordance with the will of the members and in their service by virtue of the authority given by them. In small groups where all the members can be assembled at a single place, where they know each other and can be treated socially as equals this can be attained in a high degree. It has, however, been attempted in large groups, notably the corporate cities and city states of the past and certain regional groups.

The following are the principal technical means of attaining this end: (a) Short terms of office, if possible only running between two general meetings of the members; (b) Liability to recall at any time; (c) The principle of rotation or of selection by lot in filling offices so that every member takes a turn at some time. This makes it possible to avoid the position of power of technically trained persons or of those with long experience and command of official secrets; (d) A strictly defined mandate for the conduct of office laid down by the assembly of members. The sphere of competence is thus concretely defined and not of a general character; (e) A strict obligation to render an accounting to the general assembly; (f) The obligation to submit every unusual question which has not been foreseen to the assembly of members or to a committee representing them; (g) The distribution of powers between a large number of offices each with its own particular function; (h) The treatment of office as an avocation and not a full time occupation.

If the administrative staff is chosen by ballot, the process of election takes place in the assembly of members. Administration is primarily oral, with written records only so far as it is necessary to have a clear record of certain rights. All important measures are submitted to the assembly.

This and similar types of administration, as long as the assembly of members is effective, will be called "direct" or "immediate democracy."

1. The North American "township" and the smaller Swiss Cantons such as Glarus, Schwyz, and Appenzell are all, on account of their size alone, on the borderline of applicability of immediate democracy. The Athenian democracy actually overstepped this boundary to an important extent, and the *parlamentum* of the early medieval Italian cities still more radically. Voluntary associations, guilds, scientific, academic, and athletic associations of all sorts often have this form. It is, however, also applicable to the internal organization of aristocratic groups of masters who are unwilling to allow any individual to hold authority over them.

2. In addition to the small scale of the group in numbers or territorial extent, or still better in both, as essential conditions of immediate democracy, is the absence of qualitative functions which can only be adequately handled by professional specialists. Where such a group of professional specialists is present, no matter how strongly the attempt is made to keep them in a dependent position, the seeds of bureaucratization are present. Above all, such persons can neither be appointed nor dismissed according to the procedures appropriate to immediate democracy.

3. Closely related to the rational forms of immediate democracy is the primitive gerontocratic or patriarchal group. This is because those holding authority are expected to administer it in the "service" of the members. However, there are two principal differences: governing powers are normally appropriated and action is strictly bound to tradition. Immediate democracy is either a form of organization of rational groups or may become a rational form. The transitional types will be discussed presently.

20. *Administration by Notables*

Notables (*honoratiores*) are persons (1) whose economic position permits them to hold continuous policy-making and administrative positions in an organization without (more than nominal) remuneration; (2) who enjoy social prestige of whatever derivation in such a manner that they are likely to hold office by virtue of the member's confidence, which at first is freely given and then traditionally accorded.

Most of all, the notable's position presupposes that the individual is able to live *for* politics without living *from* politics. He must hence be able to count on a certain level of provision from private sources. This condition is most likely to be met by receivers of property income of all sorts, such as landowners, slaveowners, and owners of cattle, real estate, or securities. Along with these, people with a regular occupation are in a favorable position if their occupation is such as to leave them free for political activity as an avocation. This is particularly true of persons whose occupational activity is seasonal, notably agriculture, of lawyers,

who have an office staff to depend on, and certain others of the free professions. It is also to a large extent true of patrician merchants whose business is not continuously exacting. The most unfavorably situated are independent industrial entrepreneurs and industrial workers. Every type of immediate democracy has a tendency to shift to a form of government by notables. From an ideal point of view this is because they are held to be especially well-qualified by experience and objectivity. From a material point of view this form of government is especially cheap, indeed, sometimes completely costless. Such a person is partly himself in possession of the means of administration or provides them out of his own private resources, while in part they are put at his disposal by the organization.

1. The classification of notables as a status group will be undertaken later [ch. IV]. The primary basis in all primitive societies is wealth, which is often sufficient to make a man a "chief." In addition to this, according to different circumstances, hereditary charisma or economic availability may be more prominent.

2. In the American township the tendency has been to favor actual rotation on grounds of natural rights. As opposed to this the immediate democracy of the Swiss Cantons has been characterized by recurrence of the same names and, still more, families among the office holders. The fact that some persons were economically more available than others became also important in the Germanic communes (*Dinggemeinden*), and in the initially, at least in some cases, strictly democratic North-German towns this was one of the sources for the rise of the *meliores*, and hence of the patriciate, who monopolized the city councils.

3. Administration by notables is found in all kinds of organizations. It is, for instance, typical of political parties which are not highly bureaucratized. It always means an extensive rather than intensive type of administration. When there are very urgent economic or administrative needs for precise action, though it is free to the group as such, it is hence often very expensive for individual members.

Both immediate democracy and government by notables are technically inadequate, on the one hand in organizations beyond a certain limit of size, constituting more than a few thousand full-fledged members, or on the other hand, where functions are involved which require technical training or continuity of policy. If, in such a case, permanent technical officials are appointed alongside of shifting heads, actual power will normally tend to fall into the hands of the former, who do the real work, while the latter remain essentially dilettantes.

A typical example is to be found in the situation of the annually elected head (*Rektor*) of the German university, who administers academic affairs only as a sideline, *vis-á-vis* the syndics, or under certain circumstances even

the permanent officials in the university administration (*Kanzlei*). Only an autonomous university president with a long term of office like the American type would, apart from very exceptional cases, be in a position to create a genuinely independent self-government of a university which went beyond phrase-making and expressions of self-importance. In Germany, however, both the vanity of academic faculties and the interests of the state bureaucracy in their own power stand in the way of any such development. Varying according to particular circumstances, similar situations are to be found everywhere.

Immediate democracy and government by notables exist in their genuine forms, free from *Herrschaft*, only so long as parties which contend with each other and attempt to appropriate office do not develop on a permanent basis. If they do, the leader of the contending and victorious party and his staff constitute a structure of domination, regardless of how they attain power and whether they formally retain the previous mode of administration.

(Indeed, this is a relatively common form of destroying the old ways.)

XI

Representation

21. *The Principal Forms and Characteristics*

The primary fact underlying representation is that the action of certain members of an organization, the "representatives," is considered binding on the others or accepted by them as legitimate and obligatory (cf. ch. I, sec. 11). Within the structures of domination, representation takes a variety of typical forms.

1. *Appropriated representation.* In this case the chief or a member of the administrative staff holds appropriated rights of representation. In this form it is very ancient and is found in all kinds of patriarchal and charismatic groups. The power of representation has a traditionally limited scope.

This category covers the sheiks of clans and chiefs of tribes, the headmen of castes in India, hereditary priests of sects, the *patel* of the Indian village, the *Obermärker*, hereditary monarchs and all sorts of similar patriarchal or patrimonial heads of organizations. Authority to conclude contractual agreements and to agree on binding rules govern-

ing their relations with the elders of neighboring tribes exists in what are otherwise exceedingly primitive conditions, as in Australia.

2. Closely related to appropriated representation is *estate-type representation.* This does not constitute representation so far as it is a matter primarily of representing and enforcing appropriated rights or privileges. It may, however, have a representative character and be recognized as such, so far as the effect of the decisions of such bodies as estates extends beyond the personal holders of privileges to the unprivileged groups. This may not be confined to the immediate retainers but may include others who are not in the socially privileged group. These others are regularly bound by the action involved, whether this is merely taken for granted or a representative authority is explicitly claimed.

This is true of all feudal courts and assemblies of privileged estates, and included the Estates of the late Middle Ages in Germany and of more recent times. In Antiquity and in non-European areas this institution occurs only sporadically and has not been a universal stage of development.

3. The radical antithesis of this is *"instructed" representation.* In this case elected representatives or representatives chosen by rotation or lot or in any other manner exercise powers of representation which are *strictly limited by* an imperative mandate and a right of recall. This type of "representative" is, in effect, an agent of those he represents.

The imperative mandate has had for a very long time a place in the most various organizations. For instance, the elected representatives of the communes in France were almost always bound by the *cahiers de doléances.* At the present time this type of representation is particularly prominent in the Soviet type of republican organization where it serves as a substitute for immediate democracy, since the latter is impossible in a mass organization. Instructed mandates are certainly to be found in all sorts of organizations outside the Western World, both in the Middle Ages and in modern times, but nowhere else have they been of great historical significance.

4. *Free representation.* The representative, who is generally elected (and possibly subject to rotation), is not bound by instruction but is in a position to make his own decisions. He is obligated only to express his own genuine conviction, and not to promote the interests of those who have elected him.

Free representation in this sense is not uncommonly an unavoidable consequence of the incompleteness or absence of instructions, but in other cases it is the deliberate object of choice. In so far as this is true, the representative, by virtue of his election, exercises authority over the

electors and is not merely their agent. T e most prominent example of this type is modern parliamentary representation. It shares with legal authority t e general tendency to impersonality, the obligation to conform to abstract norms, political or ethical.

This feature is most pronounced in the ase of the parliaments, the representative bodies of the modern political organizations. Their function is not understandable apart from the voluntaristic intervention of the parties. It is the partie which present candidates and programs to the politically pa sive citizens. They also, by the process of compromise and balloting wit in the parliament, create t e norms which govern the administrative process. T ey subject the administration to control, support it by their confidence, or overthrow it by withdrawal of confidence whenever, by virtue of commanding a majority of votes, they are in a position to do this.

The party leader and the administrative staff which is appointed by him, consisting of minister , secretaries of state, and sometimes undersecretaries, constitute the political administration of the state, that is, their position is dependent upon t e electoral success of their party, and an electoral defeat forces their resignation. Where party government is fully developed they are imposed on the formal head of the state, the monarch, by the party composition of the parliament. The monarch is expropriated from the actual governing power and his role is limited to two things.

1.) By negotiation with the parties, he selects the effective head and formally legitimizes his position by appointment.

2.) He acts as an agency for legalizing the measures of the party chief who at the time is in power.

The "cabinet" of ministers, a committee of the majority party, may be organized in a monocratic or a more collegial form. The latter is unavoidable in coalition cabinets, whereas the former is more precise in its functioning. The cabinet protects itself from the attacks of its followers who seek office and its opponents by the usual means, by monopolizing official secrets and maintaining solidarity against all outsiders. Unless there is an effective separation of powers, this system involves the complete appropriation of all powers by the party organization in control at the time; not only the top positions but often many of the lower offices become benefices of the party followers. T is may be called *parliamentary cabinet government.*

The facts are in many respects best presented in the brilliantly polemi al attack on the system by W. Hasbach [*Die parlamentarische Kabinettsregierung, 1919*] which has erroneously been called a "political description." The author in his own es ay, *Parlament und Regierung im*

neugeordneten Deutschland, has been careful to emphasize that it is a polemical work which has arisen out of the particular situation of the time.

Where the appropriation of power by the party government is not complete but the monarch or a corresponding elected president enjoys independent power especially in appointments to office, including military officers, there is a *constitutional government.* This is likely to be found where there is a formal separation of powers. A special case is an *elective presidency combined with a representative parliament.*

The executive authorities or the chief executive of a parliamentary organization may also be chosen by parliament itself: this is *purely representative government.*

The governing powers of representative bodies may be both limited and legitimized where direct canvassing of the masses of members of the groups is permitted through the *referendum.*

1. It is not representation as such but free representation in conjunction with the presence of parliamentary bodies which is peculiar to the modern Western World. Only relatively small beginnings are to be found in Antiquity and elsewhere in such forms as assemblies of delegates in the confederations of city states. But in principle the members of these bodies were usually bound by instructions.

2. The abolition of imperative mandates has been very strongly influenced by the positions of the monarchs. The French kings regularly demanded that the delegates to the Estates General should be elected on a basis which left them free to vote for the recommendations of the king. If they had been bound by imperative mandates, the king's policy would have been seriously obstructed. In the English Parliament, as will be pointed out below, both the composition and the procedure of the body led to the same result. It is connected with this fact that right up to the Reform Bill of 1867, the members of Parliament regarded themselves as a specially privileged group. This is shown clearly by the rigorous exclusion of publicity. (As late as the middle of the eighteenth century, heavy penalties were laid upon newspapers which reported the transactions of Parliament.) The theory came to be that the parliamentary deputy was a "representative" of the people as a whole and that hence he was not bound by any specific mandates, was not an "agent" but a person in authority (*Herr*). This theory was already well developed in the literature before it received its classical rhetorical form in the French Revolution.

3. It is not yet possible at this point to analyse in detail the process by which the English king and certain others following his example came to be gradually expropriated by the unofficial cabinet system which represented only party groups. This seems at first sight to be a very peculiar development in spite of the universal importance of its consequences. But in view of the fact that bureaucracy was relatively undeveloped in

England, it is by no means so "fortuitous" as has often been claimed. It is also not yet possible to analyse the partly plebiscitarian and partly representative American system of functional separation of powers and the place in it of the referendum (which is essentially an expression of mistrust of corrupt legislative bodies). Also Swiss democracy, and the related forms of purely representative democracy which have recently appeared in some of the German states, will have to be left aside for the present. The purpose of the above discussion was only to outline a few of the most important types.

4. So-called constitutional monarchy, which is above all characterized by appropriation of the power of patronage including the appointment of ministers and of military commanders by the monarch, may come to be very similar to a purely parliamentary regime of the English type. Conversely, the latter by no means necessarily excludes a politically gifted monarch like Edward VII from effective participation in political affairs. He need not be a mere figurehead. Details will be given below.

5. Groups governed by representative bodies are by no means necessarily democratic in the sense that all their members have equal rights. Quite the contrary, it can be shown that the classic soil for the growth of parliamentary government has tended to be an aristocratic or plutocratic society. This was true of England.

Relations to the economic order: These are highly complex and will have to be analyzed separately. For the present primary purposes only the following general remarks will be made:

1. One factor in the development of free representation was the undermining of the economic basis of the older status groups. This made it possible for persons with demagogic gifts to pursue their career regardless of their social position. The source of this undermining process was modern capitalism.

2. Calculability and reliability in the functioning of the legal order and the administrative system is vital to rational capitalism. The need led the bourgeoisie to attempt to impose checks on patrimonial monarchs and the feudal nobility by means of a collegial body in which the bourgeois had a decisive voice, which controlled administration and finance and could exercise an important influence on changes in the legal order.

3. When this transition was taking place, the proletariat had not yet become a political power and did not yet appear dangerous to the bourgeoisie. Furthermore, there was no hesitation in eliminating any threat to the power of the propertied class by means of property qualifications for the franchise.

4. The formal rationalization of the economic order and the state, which was favorable to capitalistic development, could be strongly pro-

moted by parliaments. Furthermore, it seemed relatively easy to secure influence on party organizations.

5. The development of demagogy in the activities of the existing parties was a function of the extension of the franchise. Two main factors have tended to make monarchs and ministers everywhere favorable to universal suffrage, namely, the necessity for the support of the proletariat in foreign conflict and the hope, which has proved to be unjustified, that, as compared to the bourgeoisie, they would be a conservative influence.

6. Parliaments have tended to function smoothly as long as their composition was drawn predominantly from the classes of wealth and culture, that is, as they were composed of *honoratiores*. Established social status rather than class interests as such underlay the party structure. The conflicts tended to be only those between different forms of wealth, but with the rise of class parties to power, especially the proletarian parties, the situation of parliaments has changed radically. Another important factor in the change has been the bureaucratization of party organizations, with its specifically plebiscitary character. The member of parliament thereby ceases to be "master" of the electors and becomes merely a "servant" of the leaders of the party machine. This will have to be discussed more in detail elsewhere.

22. *Representation by the Agents of Interest Groups*

A fifth type of representation is that by the agents of interest groups. This term will be applied to the type of representative body where the selection of members is not a matter of free choice, but where the body consists of persons who are chosen on the basis of their occupations or their social or class membership, each group being represented by persons of its own sort. At the present time the tendency of this type is to representation on an occupational basis.

This kind of representation may, however, have a very different significance, according to certain possible variations within it. In the first place, it will differ widely according to the specific occupations, status groups and classes which are involved, and, secondly, according to whether direct balloting or compromise is the means of settling differences. In the first connection its significance will vary greatly according to the numerical proportions of the different categories. It is possible for such a system to be radically revolutionary or extremely conservative in its character. In every case it is a product of the development of powerful parties representing class interests.

As a rule, this kind of representation is propagated with a view toward disenfranchising certain strata:

(a) either by distributing mandates among the occupations and thus *in fact* disenfranchising the numerically superior masses; or·

(b) by *openly and formally* limiting suffrage to the non-propertied and thus by disenfranchising those strata whose power rests on their economic position (the case of a state of Soviets).

It is, at least, the theory that this type of representation weakens the exclusive sway of party interests, though, if experience so far is conclusive, it does not eliminate it. It is also theoretically possible that the role of campaign funds can be lessened, but it is doubtful to what degree this is true. Representative bodies of this type tend toward the absence of effective individual leadership (*Führerlosigkeit*), for the professional representative of an interest group is likely to be the only person who can devote his whole time to his function; among the non-propertied strata this task hence devolves upon the paid secretaries of the organized interest groups.

1. Representation where compromise has provided the means of settling differences is characteristic of all the older historical bodies of "estates." Today it is dominant in the labor-management committees and wherever negotiations between the various separate authorities is the order of the day. It is impossible to assign a numerical value to the "importance" of an occupational group. Above all the interests of the masses of workers on the one hand and of the increasingly smaller number of entrepreneurs, who are likely both to be particularly well informed and to have strong personal interests, somehow have to be taken account of regardless of numbers. These interests are often highly antagonistic, hence majority voting among elements which in status and class affiliation are highly heterogeneous, is exceedingly artificial. The ballot as a basis of final decision is characteristic of settling and expressing the compromise of *parties*. It is not, however, characteristic of the occupational interest groups.

2. The ballot is adequate in social groups where the representation consists of elements of roughly equal social status. Thus the so-called Soviets are made up only of workers. The prototype is the *mercadanza* of the time of the guilds' struggle [for power]. It was composed of delegates of the individual guilds who decided matters by majority vote. It was, however, in fact in danger of secession if certain particularly powerful guilds were out-voted. Even the participation of white-collar workers in Soviets raises problems. It has been usual to put mechanical limits to their share of votes. If representatives of peasants and craftsmen are admitted, the situation becomes still more complicated, and if the so-called "higher" professions and business interests are brought in, it is impossible for questions to be decided by ballot. If a labor-management body is organized in terms of equal representation, the tendency is for

"yellow" unions to support the employers and certain types of employers to support the workers. The result is that the elements which are most lacking in class loyalty (*Klassenwürde*) have the most decisive influence.

But even purely proletarian "Soviets" would in settled times be subject to the development of sharp antagonism between different groups of workers, which would probably paralyze the Soviets in effect. In any case, however, it would open the door for adroit politics in playing the different interests off against each other. This is the reason why the bureaucratic elements have been so friendly to the idea. The same thing would be likely to happen as between representatives of peasants and of industrial workers. Indeed any attempt to organize such representative bodies otherwise than on a strictly revolutionary basis comes down in the last analysis only to another opportunity for electoral manipulation in different forms.

3. The probability of the development of representation on an occupational basis is by no means low. In times of the stabilization of technical and economical development it is particularly high, but in such situations the importance of parties will be reduced at any rate. Unless this situation arises, it is obvious that occupational representative bodies will fail to eliminate parties. On the contrary, as can be clearly seen at the present time, all the way from the "Works Councils" to the Federal Economic Council in Germany, a great mass of new benefices for loyal party henchmen are being created and made use of. Politics is penetrating into the economic order at the same time that economic interests are entering into politics. There are a number of different possible value attitudes toward this situation, but this does not alter the facts.

Genuine parliamentary representation with the voluntaristic play of interests in the political sphere, the resulting plebiscitary party organization with its consequences, and the modern idea of *rational* representation by interest groups, are all peculiar to the Western World. None of these is understandable apart from the peculiar Western development of status groups and classes. Even in the Middle Ages the seeds of these phenomena were present in the Western World, and *only* there. It is only in the Western World that "cities" and "estates" (*rex et regnum*), "bourgeois" and "proletarians" have existed.

NOTES

Unless otherwise indicated, all notes are by Parsons.

1. Weber put *Autorität* in quotation marks and parentheses behind *Herrschaft*, referring to an alternative colloquial term, but the sentence makes it clear that this does not yet specify the basis of compliance. However, the chapter is devoted to a typology of legitimate domination, which will alternatively be translated as authority. The chapter begins with a reformulation of ch. X in Part Two,

and then presents a concise classification of the more descriptive exposition in chs. XI–XVI. (R)

2. Weber does not explain this distinction. By a "technical rule" he probably means a prescribed course of action which is dictated primarily on grounds touching efficiency of the performance of the immediate functions, while by "norms" he probably means rules which limit conduct on grounds other than those of efficiency. Of course, in one sense all rules are norms in that they are prescriptions for conduct, conformity with which is problematical.

3. It has seemed necessary to use the English word "office" in three different meanings, which are distinguished in Weber's discussion by at least two terms. The first is *Amt*, which means "office" in the sense of the institutionally defined status of a person. The second is the "work premises," as in the expression "he spent the afternoon in his office." For this Weber uses *Bureau* as also for the third meaning which he has just defined, the "organized work process of a group." In this last sense an office is a particular type of "enterprise," or *Betrieb* in Weber's sense. This use is established in English in such expressions as "the District Attorney's Office has such and such functions." Which of the three meanings is involved in a given case will generally be clear from the context.

3a. Under the *Oberhof* system, appeal against the local court's decision lay not to the court of the territorial prince but to that of one of the major independent cities with whose legal system the locality had originally been endowed by its ruler. Important "superior courts" (*Oberhöfe*) of this type for large parts of Germany and some areas in the Slavic East were the courts of Freiburg, Lübeck, Magdebur , and other towns. Cf. H. Mitteis, *Deutsche Rechtsgeschichte* (5th ed., München 1958), 159, 190. (Wi)

4. As Parsons noted, "the term *Stand* with its derivatives is perhaps the most troublesome single term in Weber's text. It refers to a social group the members of which occupy a relatively well-defined common status, particularly with reference to social stratification, though this reference is not always important. In addition to common status, there is the further criterion that the members of a *Stand* have a common mode of life and usually more or less well-defined code of behavior" (Parsons, ed., *Theory*, 347). Parsons chose "decentralized authority" for "estate-type domination" because the members of the administrative staff are independent of their master. However, since the term *ständisch* derives from a specific historical context, even though Weber uses it often in a generic sense, it appeared appropriate to use the English equivalent "estate," which can denote both the medieval Estates and high social rank. *Stand* alone, however, will usually be translated as "status group" or "socially privileged group." (R)

5. Cf. Georg v. Below, *Der deutsche Staat des Mittelalters*, 1914 (sec. ed., 1925); *id.*, *Territorium und Stadt* (sec. ed., 1923), 161ff; *id.*, *Vom Mittelalter bis zur Neuzeit*, 1924; for a critique, see Ernst Kern, *Moderner Staat und Staatsbegriff*, 1949. Karl Ludwig v. Haller, *Restauration der Staat wissenschaft* (sec. ed., vols. 1–4, 1820–22, vol. 5, 1834, vol. 6, 1825). (W)

6. Kurt Eisner, a brilliant Social Democratic (not Communist) intellectual proclaimed the Bavarian Republic in Nov. 1918. He was murdered on Feb. 21, 1919. When the death sentence of the murderer, Count Arco, was commuted to a life sentence in Jan. 1920, Weber announced at the beginning of one of his lectures that he favored Arco's execution on substantive and pragmatic grounds. In the next lecture this resulted in a packed audience and noisy right-wing demonstration, which prevented Weber from lecturing. See now the account of two eyewitnesses in René König and Johannes Winckelmann, eds., *Max Weber*

zum Gedächtnis. Special issue 7 of the *Kolner Zeitschrift für Soziologie,* 1963, 24–29. On this period, cf. also the references in ch. II, n. 20. (R)

7. Weber here uses *Welt* in quotation marks, indicating that it refers to its meaning in what is primarily a religious context. It is the sphere of "worldly" things and interests as distinguished from transcendental religious interests.

8. Cf. Theodor Mommsen, *Abriss des römischen Staatsrechts.* First ed. 1893, sec. ed., 1907, 102ff, 162f. (W)

9. Cf. Fritz Rörig, *Geblütsrecht und freie Wahl in ihrer Auswirkung auf die deutsche Geschichte* (Abhandlungen der Berliner Akademie, 1945/6, Philosophische-Historische Klasse Nr. 6). (W)

10. The works of Ulrich Stutz are listed in Brunner-v. Schwerin, *Grundzüge der deutschen Rechtsgeschichte.* 8th ed. (1930), paragraph 33, 137. (W)

10a. On the *kayasth,* a caste of scribes in Bengal and elsewhere in India, cf. Weber, *Religion of India,* 75f., 298. (Wi)

11. See. C. H. Becker, *Islamstudien* (Leipzig: Quelle und Meyer, 1924), I, ch. 9. (R)

12. For the older definition of "organization," see Part Two, ch. X:3. Weber's definition of *Organisation* refers to the activities of a staff or apparatus, including the sharing of executive powers with the "master" (chief, head). This definition comes close to that of "organized action" (*Verbandshandeln*) in sec. 12, ch. I. The term *Verband,* which I prefer to render as "organization," is more broadly defined, since rules may be enforced by a head alone. Usually, however, a *Verband* has a staff, and Weber almost always uses the term in this sense. Hence, the terminological difference between *Verband* and *Organisation* can be disregarded most of the time. This is an additional reason for rendering *Verband,* which Weber uses much more frequently than *Organisation,* as "organization" in English. (R)

13. Weber titled both headings "The Anti-Authoritarian (*herrschaftsfremde*) Reinterpretation of Charisma," because recognition by the followers may become the *formal* basis of legitimacy, in contrast to the earlier stage in which charisma claims legitimacy and recognition on its own grounds. Since Weber's meaning of "anti-authoritarian" is not obvious without explanation, more descriptive titles were chosen. (R)

14. German territorial princes, since the thirteenth and fourteenth centuries, occasionally called on feudal and ecclesiastic notables for advice. As these counselors were only visiting at court, they were called *Räte von Haus aus,* or *familiares domestici, consiliarii,* etc.; cf. Georg Ludwig von Maurer, *Geschichte der Fronhöfe, der Bauernhöfe und der Hofverfassung in Deutschland* (Erlangen, 1862), II, 237, 240ff, 312f. (GM)

15. This continues the enumeration at the beginning of sec. 15. (R)

16. For the early formulation, see Part Two, ch. IX:6e. (R)

17. For the early formulation, see Part Two, ch. X:2. (R)

CHAPTER IV

STATUS GROUPS AND CLASSES[1]

1. *Class Situation and Class Types*

"Class situation" means the typical probability of

1. procuring goods
2. gaining a position in life and
3. finding inner satisfactions,

a probability which derives from the relative control over goods and skills and from their income-producing uses within a given economic order.

"Class" means all persons in the same class situation.

a) A "*property* class" is primarily determined by property differences,

b) A "*commercial* class" by the marketability of goods and services,

c) A "*social* class" makes up the totality of those class situations within which individual and generational mobility is easy and typical.

Associations of class members—class organizations—may arise on the basis of all three types of classes. However, this does not necessarily happen: "Class situation" and "class" refer only to the same (or similar) interests which an individual shares with others. In principle, the various controls over consumer goods, means of production, assets, resources and skills each constitute a *particular* class situation. A *uniform* class situation prevails only when completely unskilled and propertyless persons are dependent on irregular employment. Mobility among, and stability of, class positions differs greatly; hence, the unity of a social class is highly variable.

2. *Property Classes*

The primary significance of a positively privileged property class lies in

α) its exclusive acquisition of high-priced consumers goods,

β) its sales monopoly and its ability to pursue systematic policies in this regard,

γ) its monopolization of wealth accumulation out of unconsumed surpluses,

δ) its monopolization of capital formation out of savings, i.e., of the utilization of wealth in the fonn of loan capital, and its resulting control over executive positions in business,

ε) its monopolization of costly (educational) status privileges.

I. Positively privileged property classes are typically *rentiers*, receiving income from:

a) men (the case of slave-owners),
b) land,
c) mines,
d) installations (factories and equipment),
e) ships,
f) creditors (of livestock, grain or money),
g) securities.

II. Negatively privileged property classes are typically
a) the unfree (see under "Status Group"),
b) the declassed (the *proletarii* of Antiquity), c) debtors,
d) the "paupers".

In between are the various "middle classes" (*Mittelstandsklassen*), which make a living from their property or their acquired skills. Some of them may be "commercial classes" (entrepreneurs with mainly positive privileges, proletarians with negative ones). However, not all of them fall into the latter category (witness peasants, craftsmen, officials).

The mere differentiation of property classes is not "dynamic," that is, it need not result in class struggles and revolutions. The strongly privileged class of slave owners may coexist with the much less privileged peasants or even the declassed, frequently without any class antagonism and sometimes in solidarity (against the unfree). However, the juxtaposition of property classes *may* lead to revolutionary conflict between

1. land owners and the declassed or

2. creditor and debtors (often urban patricians versus rural peasants or small urban craftsmen).

These struggles need not focus on a change of the economic system,

but may aim primarily at a redistribution of wealth. In this case we can speak of "property revolutions" (*Besitzklassenrevolutionen*).

A classic example of the lack of class conflict was the relationship of the "poor white trash" to the plantation owners in the Southern States. The "poor white trash" were far more anti-Negro than the plantation owners, who were often imbued with patriarchal sentiments. The major examples for the struggle of the declassed against the propertied date back to Antiquity, as does the antagonism between creditors and debtors and land owners and the declassed.

3. *Commercial Classes*

The primary significance of a positively privileged commercial class lies in

α) the monopolization of entrepreneurial management for the sake of its members and their business interests,

β) the safeguarding of those interests through influence on the economic policy of the political and other organizations.

I. Positively privileged commercial classes are typically *entrepreneurs*:

a) merchants,
b) shipowners,
c) industrial and
d) agricultural entrepreneurs,
e) bankers and financiers, *sometimes* also
f) professionals with sought-after expertise or privileged education (such as lawyers, physicians, artists), or
g) workers with monopolistic qualifications and skills (natural, or acquired through drill or training).

II. Negatively privileged commercial classes are typically *laborers* with varying qualifications:

a) skilled
b) semi-skilled
c) unskilled.

In between again are "middle classes": the self-employed farmers and craftsmen and frequently:

a) public and private officials.
b) the last two groups mentioned in the first category [i.e., the "liberal professions" and the labor groups with exceptional qualifications].

4. *Social Classes*

Social classes are

a) the working class as a whole—the more so, the more automated the work process becomes,

b) the petty bourgeoisie,

c) the propertyless intelligentsia and specialists (technicians, various kinds of white-collar employees, civil servants—possibly with considerable social differences depending on the cost of their training),

d) the classes privileged through property and education.

The unfinished last part of Karl Marx's *Capital* apparently was intended to deal with the issue of class unity in the face of skill differentials. Crucial for this differentiation is the increasing importance of semi-skilled workers, who can be trained on the job in a relatively short time, over the apprenticed and sometimes also the unskilled workers. Semi-skilled qualification too can often become monopolistic (weavers, for example, sometimes achieve their greatest efficiency after five years). It used to be that every worker aspired to be a self-employed small businessman. However, this is less and less feasible. In the generational sequence, the rise of groups a) and b) into c) (technicians, white-collar workers) is relatively the easiest. Within class d) money increasingly buys *everything*, at least in the sequence of generations. In banks and corporations, as well as in the higher ranks of the civil service, class c) members have a chance to move up into class d).

Class-conscious organization succeeds most easily

a) against the immediate economic opponents (workers against entrepreneurs, but *not* against stockholders, who truly draw "unearned" incomes, and also *not* in the case of peasants confronting manorial lords);

b) if large numbers of persons are in the same class situation,

c) if it is technically easy to organize them, especially if they are concentrated at their place of work (as in a "workshop community"),

d) if they are led toward readily understood goals, which are imposed and interpreted by men outside their class (intelligentsia).

5. *Status and Status Group* (Stand)

"Status" (*ständische Lage*) shall mean an effective claim to social esteem in terms of positive or negative privileges; it is typically founded on

a) style of life, hence

b) formal education, which may be

α) empirical training or

β) rational instruction, and the corresponding forms of behavior,

c) hereditary or occupational prestige.

In practice, status expresses itself through

α) connubium,

β) commensality, possibly

γ) monopolistic appropriation of privileged modes of acquisition or the abhorrence of certain kinds of acquisition,

δ) status conventions (traditions) of other kinds.

Status *may* rest on class position of a distinct or an ambiguous kind. However, it is not solely determined by it: Money and an entrepreneurial position are not in themselves status qualifications, although they may lead to them; and the lack of property is not in itself a status disqualification, although this may be a reason for it. Conversely, status may influence, if not completely determine, a class position without being identical with it. The class position of an officer, a civil servant or a student may vary greatly according to their wealth and yet not lead to a different status since upbringing and education create a common style of life.

A "status group" means a plurality of persons who, within a larger group, successfully claim

a) a special social esteem, and possibly also

b) status monopolies.

Status groups may come into being:

a) in the first instance, by virtue of their own style of life, particularly the type of vocation: "self-styled" or occupational status groups,

b) in the second instance, through hereditary charisma, by virtue of successful claims to higher-ranking descent: hereditary status groups, or

c) through monopolistic appropriation of political or hierocratic powers: political or hierocratic status groups.

The development of hereditary status groups is generally a form of the (hereditary) appropriation of privileges by an organization or qualified individuals. Every definite appropriation of political powers and the corresponding economic opportunities tends to result in the rise of status groups, and vice-versa.

Commercial classes arise in a market-oriented economy, but status groups arise within the framework of organizations which satisfy their wants through monopolistic liturgies, or in feudal or in *ständisch*-patrimonial fashion. Depending on the prevailing mode of stratification, we shall speak of a "status society" or a "class society." The status group

comes closest to the social class and is most unlike the commercial class. Status groups are often created by property classes.

Every status society lives by conventions, which regulate the style of life, and hence creates economically irrational consumption patterns and fetters the free market through monopolistic appropriations and by curbing the individual's earning power. More on that separately.

NOTES

1. For the early formulation of class and status, see Part Two, ch. IX:6. (R)

PART TWO

The Economy and the Arena of Normative and De Facto Powers

CHAPTER I

THE ECONOMY AND SOCIAL NORMS

1. *Legal Order and Economic Order*

A. THE SOCIOLOGICAL CONCEPT OF LAW. When we speak of "law," "legal order," or "legal proposition" (*Rechtssatz*), close attention must be paid to the distinction between the legal and the sociological points of view. Taking the former, we ask: What is intrinsically valid as law? That is to say: What significance or, in other words, what *normative* meaning ought to be attributed in correct logic to a verbal pattern having the form of a legal proposition. But if we take the latter point of view, we ask: What *actually* happens in a group owing to the *probability* that persons engaged in social action (*Gemeinschaftshandeln*), especially those exerting a socially relevant amount of power, subjectively consider certain norms as valid and practically act according to them, in other words, orient their own conduct towards these norms? This distinction also determines, in principle, the relationship between *law* and *economy*.

The juridical point of view, or, more precisely, that of legal dogmatics[1] aims at the correct meaning of propositions the content of which constitutes an order supposedly determinative for the conduct of a defined group of persons: in other words, it tries to define the facts to which this order applies and the way in which it bears upon them. Toward this end, the jurist, taking for granted the empirical validity of the legal propositions, examines each of them and tries to determine its logically correct meaning in such a way that all of them can be combined in a system which is logically coherent, i.e., free from internal contradictions. This system is the "legal order" in the juridical sense of the word.

Sociological economics (*Sozialökonomie*), on the other hand, con-

siders actual human activities as they are conditioned by the necessity to take into acount the facts of economic life. We shall apply the term *economic order* to the distribution of the actual control over goods and services, the distribution arising in each case from the particular mode of balancing interests consensually; moreover, the term shall apply to the manner in which goods and services are indeed used by virtue of these powers of disposition, which are based on *de facto* recognition (*Einverständnis*).

It is obvious that these two approaches deal with entirely different problems and that their subjects cannot come directly into contact with one another. The ideal "legal order" of legal theory has nothing directly to do with the world of real economic conduct, since both exist on different levels. One exists in the realm of the "ought," while the other deals with the world of the "is." If it is nevertheless said that the economic and the legal order are intimately related to one another, the latter is understood, not in the legal, but in the sociological sense, i.e., as being *empirically* valid. In this context "legal order" thus assumes a totally different meaning. It refers not to a set of norms of logically demonstrable correctness, but rather to a complex of actual determinants (*Bestimmungsgründe*) of human conduct. This point requires further elaboration.

The fact that some persons act in a certain way because they regard it as prescribed by legal propositions (*Rechtssätze*) is, of course, an essential element in the actual emergence and continued operation of a "legal order." But, as we have seen already in discussing the significance of the "existence" of rational norms,[2] it is by no means necessary that all, or even a majority, of those who engage in such conduct, do so from this motivation. As a matter of fact, such a situation has never occurred. The broad mass of the participants act in a way corresponding to legal norms, not out of obedience regarded as a legal obligation, but either because the environment approves of the conduct and disapproves of its opposite, or merely as a result of unreflective habituation to a regularity of life that has engraved itself as a custom. If the latter attitude were universal, the law would no longer "subjectively" be regarded as such, but would be observed as custom. As long as there is a chance that a coercive apparatus will enforce, in a given situation, compliance with those norms, we nevertheless must consider them as "law." Neither is it necessary—according to what was said above—that all those who share a belief in certain norms of behavior, actually live in accordance with that belief at all times. Such a situation, likewise, has never obtained, nor need it obtain, since, according to our general definition, it is the "orientation" of an action toward a norm, rather than the "success" of that norm that

is decisive for its validity. "Law," as understood by us, is simply an "order" endowed with certain specific guarantees of the probability of its empirical validity.

The term "guaranteed law" shall be understood to mean that there exists a "coercive apparatus" (in the sense defined earlier),[3] that is, that there are one or more persons whose special task it is to hold themselves ready to apply specially provided means of coercion (legal coercion) for the purpose of norm enforcement. The means of coercion may be physical or psychological, they may be direct or indirect in their operation, and they may be directed, as the case may require, against the participants in the consensual group (*Einverständnisgemeinschaft*) or the association (*Vergesellschaftung*), the organization (*Verband*) or the institution (*Anstalt*), within which the order is (empirically) valid; or they may be aimed at those outside. These means are the "legal regulations" of the group in question.

By no means all norms which are consensually valid in a group—as we shall see later—are "legal norms." Nor are all official functions of the persons constituting the coercive apparatus of a community concerned with legal coercion; we shall rather consider as legal coercion only those actions whose intention is the enforcement of conformity to a norm as such, i.e., because of its being formally accepted as binding. The term will not be applied, however, where conformity of conduct to a norm is sought because of considerations of expediency or other material circumstances. It is obvious that the effectuation of the validity of a norm may in fact be pursued for the most diverse motives. However, we shall designate it as "guaranteed law" only in those cases where there exists the probability that coercion will be applied for the norm's sake. As we shall have opportunity to see, not all law is guaranteed law. We shall speak of law—albeit in the sense of "indirectly guaranteed" or "unguaranteed" law—also in all those cases where the validity of a norm consists in the fact that the mode of orientation of an action toward it has some "legal consequences"; i.e., that there are other norms which associate with the "observance" or "infringement" of the primary norm certain probabilities of consensual action guaranteed, in their turn, by legal coercion. We shall have occasion to illustrate this case which occurs in a large area of legal life. However, in order to avoid further complication, whenever we shall use the term "law" without qualification, we shall mean norms which are directly guaranteed by legal coercion.

Such "guaranteed law" is by no means in all cases guaranteed by "violence" (*Gewalt*) in the sense of the prospect of physical coercion. In our terminology, law, including "guaranteed law" is not characterized by violence or, even less, by that modern technique of effectuating claims

of private law through bringing "suit" in a "court," followed by coercive execution of the judgment obtained. The sphere of "public" law, i.e., the norms governing the conduct of the organs of the state and other state-oriented activities, recognizes numerous rights and legal norms, upon the infringement of which a coercive apparatus can be set in motion only through "complaint" or through "remonstance" by members of a limited group of persons, and often without any means of physical coercion. Sociologically, the question of whether or not guaranteed law exists in such a situation depends on the availability of an organized coercive apparatus for the nonviolent exercise of legal coercion. This apparatus must also possess such power that there is in fact a significant probability that the norm will be respected because of the possibility of recourse to such legal coercion.

Today legal coercion by violence is the monopoly of the state. All other groups applying legal coercion by violence are today considered as heteronomous and mostly also as heterocephalous. This is the outcome, however, of certain stages of development. We shall speak of "state" law, i.e., of law guaranteed by the state, only when legal coercion is exercised through the specific, i.e., normally directly *physical*, means of coercion of the political community. Thus, the existence of a "legal norm" in the sense of "state law" means that the following situation obtains: In the case of certain events occurring there is general agreement that certain organs of the community can be expected to go into official action, and the very expectation of such action is apt to induce conformity with the commands derived from the generally accepted interpretation of that legal norm; or, where such conformity has become unattainable, at least to effect reparation or indemnification. The event inducing this consequence, the legal coercion by the state, may consist in certain human acts, for instance, the conclusion or the breach of a contract, or the commission of a tort. But this type of occurence constitutes only a special instance, since, upon the basis of some empirically valid legal proposition, the coercive instruments of the political powers against persons and things may also be applied where, for example, a river has risen above a certain level. It is in no way inherent, however, in the validity of a legal norm as normally conceived, that those who obey do so, predominantly or in any way, because of the availability of such a coercive apparatus as defined above. The motives for obedience may rather be of many different kinds. In the majority of cases, they are predominantly utilitarian or ethical or subjectively conventional, i.e., consisting of the fear of disapproval by the environment. The nature of these motives is highly relevant in determining the kind and the degree of validity of the law itself. But in so far as the formal sociological concept of guaranteed law,

as we intend to use it, is concerned, these psychological facts are irrelevant. In this connection nothing matters except that there be a sufficiently high probability of intervention on the part of a specially designated group of persons, even in those cases where nothing has occurred but the sheer fact of a norm infringement, i.e., on purely formal grounds.

The empirical validity of a norm as a legal norm affects the interests of an individual in many respects. In particular, it may convey to an individual certain calculable chances of having economic goods available or of acquiring them under certain conditions in the future. Obviously, the creation or protection of such chances is normally one of the aims of law enactment by those who agree upon a norm or impose it upon others. There are two ways in which such a "chance" may be attributed. The attribution may be a mere by-product of the empirical validity of the norm; in that case the norm is not *meant* to guarantee to an individual the chance which happens to fall to him. It may also be, however, that the norm is specifically meant to provide to the individual such a guaranty, in other words, to grant him a "right." Sociologically, the statement that someone has a right by virtue of the legal order of the state thus normally means the following: He has a chance, factually guaranteed to him by the consensually accepted interpretation of a legal norm, of invoking in favor of his ideal or material interests the aid of a "coercive apparatus" which is in special readiness for this purpose. This aid consists, at least normally, in the readiness of certain persons to come to his support in the event that they are approached in the proper way, and that it is shown that the recourse to such aid is actually guaranteed to him by a "legal norm." Such guaranty is based simply upon the "validity" of the legal proposition, and does not depend upon questions of expediency, discretion, grace, or arbitrary pleasure.

A law, thus, is valid wherever legal help in this sense can be obtained in a relevant measure, even though without recourse to physical or other drastic coercive means. A law can also be said to be valid, viz., in the case of unguaranteed law, if its violation, as, for instance, that of an electoral law, induces, on the ground of some empirically valid norm, legal consequences, for instance, the invalidation of the election, for the execution of which an agency with coercive powers has been established.

For purposes of simplification we shall pass by those "chances" which are produced as mere "by-products." A "right," in the context of the "state," is guaranteed by the coercive power of the political authorities. Wherever the means of coercion which constitute the guaranty of a "right" belong to some authority other than the political, for instance, a hierocracy, we shall speak of "extra-state law."

B. STATE LAW AND EXTRA-STATE LAW. A discussion of the various categories of such extra-state law would be out of place in the present context. All we need to recall is that there exist nonviolent means of coercion which may have the same or, under certain conditions, even greater effectiveness than the violent ones. Frequently, and in fairly large areas even regularly, the threat of such measures as the exclusion from an organization, or a boycott, or the prospect of magically conditioned advantages or disadvantages in this world, or of reward and punishment in the next, are under certain cultural conditions more effective in producing a certain behavior than a political apparatus whose coercive functioning is not always predictable with certainty. Legal forcible coercion exercised by the coercive apparatus of the political community has often come off badly as compared with the coercive power of other, e.g., religious, authorities. In general, the actual scope of its efficiency depends on the circumstances of each concrete case. Within the realm of sociological reality, legal coercion continues to exist, however, as long as some socially *relevant* effects are produced by its power machinery.

The assumption that a state "exists" only if the coercive means of the political community are superior to *all* other communities, is not sociological. "Ecclesiastical law" is still law even where it comes into conflict with "state" law, as it has happened many times and as it is bound to happen again in the case of the relations between the modern state and certain churches, for instance, the Roman-Catholic. In imperial Austria, the Slavic *Zadruga* not only lacked any kind of legal guaranty by the state, but some of its norms were outright contradictory to the official law. Since the consensual action constituting a *Zadruga* has at its disposal its own coercive apparatus for the enforcement of its norms, these norms are to be considered as "law." Only the state, if invoked, would refuse recognition and proceed, through its coercive power, to break it up.

Outside the sphere of the European-Continental legal system, it is no rare occurrence at all that modern state law explicitly treats as "valid" the norms of other organizations and reviews their concrete decisions. American law thus protects labor union labels or regulates the conditions under which a candidate is to be regarded as validly nominated by a party. English judges intervene, on appeal, in the judicial proceedings of a club. Even on the Continent German judges investigate, in defamation cases, the propriety of the rejection of a challenge to a duel, even though duelling is forbidden by law. We shall not enter into a casuistic inquiry of the extent to which such norms thus become "state law." For all the reasons given above and, in particular, for the sake of terminological consistency, we categorically deny that "law" exists only where legal coercion is guaranteed by the political authority. For us, there is no

practical reason for such a terminology. A "legal order" shall rather be said to exist wherever coercive means, of a physical or psychological kind, are available; i.e., wherever they are at the disposal of one or more persons who hold themselves ready to use them for this purpose in the case of certain events; in other words, wherever we find a consociation specifically dedicated to the purpose of "legal coercion." The possession of such an apparatus for the exercise of physical coercion has not always been the monopoly of the political community. As far as psychological coercion is concerned, there is no such monopoly even today, as demonstrated by the importance of law guaranteed only by the church.

We have also indicated already that direct guaranty of law and of rights by a coercive apparatus constitutes only one instance of the existence of "law" and of "rights." Even within this limited sphere the coercive apparatus can take on a great variety of forms. In marginal cases, it may consist in the consensually valid chance of coercive intervention by *all* the members of the community in the event of an infringement of a valid norm. However, in that case one cannot properly speak of a "coercive apparatus" unless the conditions under which participation in such coercive intervention is to be obligatory, are firmly fixed. In those cases where the protection of rights is guaranteed by the organs of the political authority, the coercive apparatus may be reinforced by pressure groups: the strict regulations of associations of creditors and landlords, especially their blacklists of unreliable debtors or tenants, often operate more effectively than the prospect of a lawsuit. It goes without saying that this kind of coercion may be extended to claims which the state does not guarantee at all; such claims are nevertheless based on *rights* even though they are guaranteed by authorities other than the state. The law of the state often tries to obstruct the coercive means of other associations; the English Libel Act thus tries to preclude blacklisting by excluding the defense of truth. But the state is not always successful. There are groups stronger than the state in this respect, for instance, those status groups which rely on the "honor code" of the duel as the means of resolving conflicts. With courts of honor and boycott as the coercive means at their disposal, they usually succeed in compelling the fulfillment of obligations as "debts of honor," for instance, gambling debts or the duty to engage in a duel; such debts are intrinsically connected with the specific purposes of the group in question, but, as far as the state is concerned, they are not recognized, or are even proscribed. But the state has been forced, as least partially, to trim its sails.

It would indeed be distorted legal reasoning to demand that such a specific delict as duelling be punished as "attempted murder" or assault and battery. Those crimes are of a quite different character. But it re-

mains a fact that in Germany the readiness to participate in a duel is still a *legal* obligation imposed by the state upon its army officers even though the duel is expressly forbidden by the Criminal Code. The state itself has connected legal consequences with an officer's failure to comply with the honor code. Outside of the status group of army officers the situation is different, however. The typical means of statutory coercion applied by "private" organizations against refractory members is exclusion from the corporate body and its tangible or intangible advantages. In the professional organizations of physicians and lawyers as well as in social or political clubs, it is the *ultima ratio*. The modern political organization has to a large extent usurped the application of these measures of coercion. Thus, recourse to them has been denied to the physicians and lawyers in Germany; in England the state courts have been given jurisdiction to review, on appeal, exclusions from clubs; and in America the courts have power over political parties as well as the right of reviewing, on appeal, the legality of the use of a union label.

This conflict between the means of coercion of various organizations is as old as the law itself. In the past it has not always ended with the triumph of the coercive means of the political body, and even today this has not always been the outcome. A businessman, for instance, who has violated a cartel agreement, has no remedy against a systematic attempt to drive him out of business by underselling. Similarly, there is no protection against being blacklisted for having availed oneself of the plea of illegality of a contract in futures. In the Middle Ages the prohibitions of resorting to the ecclesiastical court contained in the statutes of certain merchants' guilds were clearly invalid from the point of view of canon law, but they persisted nonetheless.[4]

To a considerable extent the state must tolerate the coercive power of organizations even in cases where it is directed not only against members, but also against outsiders on whom the organization tries to impose its own norms. Illustrations are afforded by the efforts of cartels to force outsiders into membership, or by the measures taken by creditors' associations against debtors and tenants.

An important marginal case of coercively guaranteed law, in the sociological sense, is presented by that situation which may be regarded as the very opposite of that which is presented by the modern political communities as well as by those religious communities which apply their own "laws." In the modern communities the law is guaranteed by a "judge" or some other "organ" who is an impartial and disinterested umpire rather than a person who would be characterized by a special relationship with one or the other of the parties. In the situation which we have in mind the means of coercion are provided by those very per-

sons who are linked to the party by close personal relationship, for example, as members of his kinship group. Just as war under modern international law, so under these conditions "vengeance" and "feud" are the only, or at least, the normal, forms of law enforcement. In this case, the "right" of the individual consists, sociologically seen, in the mere probability that the members of his kinship group will respond to their obligation of supporting his feud and blood vengeance (an obligation originally guaranteed by fear of the wrath of supernatural authorities) and that they will possess strength sufficient to support the right claimed by him even though not necessarily to achieve its final triumph.

The term "legal relationship" will be applied to designate that situation in which the content of a right is constituted by a relationship, i.e., the actual or potential actions of concrete persons or of persons to be identified by concrete criteria. The rights contained in a legal relationship may vary in accordance with the actually occurring actions. In this sense a state can be designated as a legal relationship, even in the hypothetical marginal case in which the ruler alone is regarded as endowed with rights (the right to give orders) and where, accordingly, the opportunities of all the other individuals are reduced to reflexes of his regulations.

2. *Law, Convention, and Custom*[5]

A. SIGNIFICANCE OF CUSTOM IN THE FORMATION OF LAW. Law, convention, and custom belong to the same continuum with imperceptible transitions leading from one to the other. We shall define *custom* (*Sitte*) to mean a typically uniform activity which is kept on the beaten track simply because men are "accustomed" to it and persist in it by unreflective imitation. It is a collective way of acting (*Massenhandeln*), the perpetuation of which by the individual is not "required" in any sense by anyone.

Convention, on the other hand, shall be said to exist wherever a certain conduct is sought to be induced without, however, any coercion, physical or psychological, and, at least under normal circumstances, without any direct reaction other than the expression of approval or disapproval on the part of those persons who constitute the environment of the actor.

"Convention" must be strictly distinguished from *customary law*. We shall abstain here from criticizing this not very useful concept.[6] According to the usual terminology, the validity of a norm as customary law consists in the very likelihood that a coercive apparatus will go into action

for its enforcement although it derives from mere consensus rather than from enactment. Convention, on the contrary, is characterized by the very absence of any coercive apparatus, i.e., of any, at least relatively clearly delimited, group of persons who would continuously hold themselves ready for the special task of legal coercion through physical or psychological means.

The existence of a mere custom, even unaccompanied by convention, can be of far-reaching economic significance. The level of economic need, which constitutes the basis of all "economic activity," is comprehensively conditioned by mere custom. The individual might free himself of it without arousing the slightest disapproval. In fact, however, he cannot escape from it except with the greatest difficulty, and it does not change except where it comes gradually to give way to the imitation of the different custom of some other social group.

We shall see[7] that the uniformity of mere usages can be of importance in the formation of social groups and in facilitating intermarriage. It may also give a certain, though rather intangible, impetus toward the formation of feelings of "ethnic" identification and, in that way, contribute to the creation of community. At any rate, adherence to what has as such become customary is such a strong component of all conduct and, consequently, of all social action, that legal coercion, where it transforms a custom into a legal obligation (by invocation of the "usual") often adds practically nothing to its effectiveness, and, where it opposes custom, frequently fails in the attempt to influence actual conduct. Convention is equally effective, if not even more. In countless situations the individual depends on his environment for a spontaneous response not guaranteed by any earthly or transcendental authority. The existence of a "convention" may thus be far more determinative of his conduct than the existence of legal enforcement machinery.

Obviously, the borderline between custom and convention is fluid. The further we go back in history, the more we find that conduct, and particularly social action, is determined in an ever more comprehensive sphere exclusively by orientation to what is customary. The more this is so, the more disquieting are the effects of any deviation from the customary. In this situation, any such deviation seems to act on the psyche of the average individual like the disturbance of an organic function. This, in turn, seems to reinforce custom.

Present ethnological literature does not allow us to determine very clearly the point of transition from the stage of mere custom to the, at first vaguely and dimly experienced, "consensual" character of social action, or, in other words, to the conception of the binding nature of certain accustomed modes of conduct. Even less can we trace the changes

of the scope of activities with respect to which this transition took place. We shall thus by-pass this problem. It is entirely a question of terminology and convenience at which point of this continuum one shall assume the existence of the subjective conception of a "legal obligation." Objectively the chance of the factual occurrence of a violent reaction against certain types of conduct has always been present among human beings as well as among animals. It would be far-fetched, however, to assume in every such case the existence of a consensually valid norm, or that the action in question would be directed by a clearly conceived conscious purpose. Perhaps, a rudimentary conception of "duty" may be determinative in the behavior of some domestic animals to a greater extent than may be found in aboriginal man, if we may use this highly ambiguous concept in what is in this context a clearly intelligible sense. We have no access, however, to the "subjective" experiences of the first *homo sapiens* and such concepts as the allegedly primordial, or even *a priori*, character of law or convention are of no use whatsoever to empirical sociology. It is not due to the assumed binding force of some rule or norm that the conduct of primitive man manifests certain external factual regularities, especially in his relation to his fellows. On the contrary, those organically conditioned regularities which we have to accept as psychophysical reality, are primary. It is from them that the concept of "natural norms" arises. The inner orientation towards such regularities contains in itself very tangible inhibitions against "innovations," a fact which can be observed even today by everyone in his daily experiences, and it constitutes a strong support for the belief in such binding norms.

B. CHANGE THROUGH INSPIRATION AND EMPATHY. In view of such observation we must ask how anything new can ever arise in this world, oriented as it is toward the regular as the empirically valid. No doubt innovations have been induced from the outside, i.e., by changes in the external conditions of life. But the response evoked by external change may be the extinction of life as well as its reorientation; there is no way of foretelling. Furthermore, external change is by no means a necessary precondition for innovation: in some of the most significant cases, it has not even been a contributing factor in the establishment of a new order. The evidence of ethnology seems rather to show that the most important source of innovation has been the influence of individuals who have experienced certain "abnormal" states (which are frequently, but not always, regarded by present-day psychiatry as pathological) and hence have been capable of exercising a special influence on others. We are not discussing here the origin of these experiences which appear to be "new" as a consequence of their "abnormality," but rather their effects. These influences which overcome the inertia of the customary may

originate from a variety of psychological occurrences. To Hellpach[8] we owe the distinction between two categories which, despite the possibility of intermediate forms, nonetheless appear as polar types. The first, inspiration, consists in the sudden awakening, through drastic means, of the awareness that a certain action "ought" to be done by him who has this experience. In the other form, that of empathy or identification, the influencing person's attitude is emphathically experienced by one or more others. The types of action which are produced in these ways may vary greatly. Very often, however, a collective action (*massenhaftes Gemeinschaftshandeln*) is induced which is oriented toward the influencing person and his experience and from which, in turn, certain kinds of consensus with corresponding contents may be developed. If they are "adapted" to the external environment, they will survive. The effects of "empathy" and, even more so, of "inspiration" (usually lumped together under the ambiguous term "suggestion") constitute the major sources for the realization of actual innovations whose establishment as regularities will, in turn, reinforce the sense of "oughtness," by which they may possibly be accompanied. The feeling of oughtness—as soon as it has developed any conceptual meaning—may undoubtedly appear as something primary and original even in the case of innovation. Particularly in the case of "inspiration" it may constitute a psychological component. It is confusing, however, when imitation of new conduct is regarded as the basic and primary element in its diffusion. Undoubtedly, imitation is of extraordinary importance, but as a general rule it is secondary and constitutes only a special case. If the conduct of a dog, man's oldest companion, is "inspired" by man, such conduct, obviously, cannot be described as "imitation of man by dog." In a very large number of cases, the relation between the persons influencing and those influenced is exactly of this kind. In some cases, it may approximate "empathy," in others, "imitation," conditioned either by rational purpose or in the ways of "mass psychology."

In any case, however, the emerging innovation is most likely to produce consensus and ultimately law, when it derives from a strong inspiration or an intensive identification. In such cases a convention will result or, under certain circumstances, even consensual coercive action against deviants. As long as religious faith is strong, convention, the approval or disapproval by the environment, engenders, as historical experience shows, the hope and faith that the supernatural powers too will reward or punish those actions which are approved or disapproved in this world. Convention, under appropriate conditions, may also produce the further belief that not only the actor himself but also those around him may have to suffer from the wrath of those supernatural

powers, and that, therefore, reaction is incumbent upon all, acting either individually or through the coercive apparatus of some organization. In consequence of the constant recurrence of a certain pattern of conduct, the idea may arise in the minds of the guarantors of a particular norm, that they are confronted no longer with mere custom or convention, but with a legal obligation requiring enforcement. A norm which has attained such practical validity is called customary law. Eventually, the interests involved may engender a rationally considered desire to secure the convention, or the obligation of customary law, against subversion, and to place it explicitly under the guarantee of an enforcement machinery, i.e., to transform it into enacted law. Particularly in the field of the internal distribution of power among the organs of an institutional order experience reveals a continuous scale of transitions from norms of conduct guaranteed by mere convention to those which are regarded as binding and guaranteed by law. A striking example is presented by the development of the British "constitution."

C. BORDERLINE ZONES BETWEEN CONVENTION, CUSTOM AND LAW. Finally, any rebellion against convention may lead the environment to make use of its coercively guaranteed rights in a manner detrimental to the rebel; for instance, the host uses his right as master of the house against the guest who has merely infringed upon the conventional rules of social amenity; or a war lord uses his legal power of dismissal against the officer who has infringed upon the code of honor. In such cases the conventional rule is, in fact, indirectly supported by coercive means. The situation differs from that of "unguaranteed" law insofar as the initiation of the coercive measures is a factual, but not a legal, consequence of the infringement of the convention, although the legal right to exclude anyone from his house belongs to the master as such. But a directly unguaranteed legal proposition draws its validity from the fact that its violation engenders consequences somehow *via* a guaranteed legal norm. Where, on the other hand, a legal norm refers to "good morals" (*die guten Sitten*),[9] i.e., conventions worthy of approval, the fulfillment of the conventional obligations has also become a legal obligation and we have a case of indirectly guaranteed law.

There are also numerous instances of intermediate types, as, for example, the courts of love of the Troubadours of Provence which had "jurisdiction" in matters of love;[10] or the "judge" in his original role as arbitrator seeking to procure a settlement between feuding antagonists, perhaps also rendering a verdict, but lacking coercive powers of his own; or, finally, modern international courts of arbitration. In such cases, the amorphous approval or disapproval of the environment has crystallized into a set of commands, prohibitions, and permissions authoritatively

promulgated, i.e., a concretely organized pattern of psychic coercion. Excepting situations of mere play, as, for instance, the courts of love, such cases may be classified as "law" provided the judgment is normally backed not only by the personal, and therefore irrelevant, opinion of the judge, but by, at least, some boycott as self-help of the kinship group, the state, or some other group of persons whose right has been violated, as in the last two of the illustrations above.

According to our definition, the fact that some type of conduct is "approved" or "disapproved" by ever so many persons is insufficient to constitute it as a "convention"; it is essential that such attitudes are likely to find expression in a specific environment. This latter term is, of course, not meant in any geographical sense. But there must be some test for defining that group of persons which constitutes the environment of the person in question. It does not matter in this context whether the test is constituted by profession, kinship, neighborhood, status group, ethnic group, religion, political allegiance, or anything else. Nor does it matter that the membership is changeable or unstable. For the existence of a convention in our sense it is not required that the environment be constituted by an organization (as we understand that term). The very opposite is frequently the case. But the validity of law, presupposing, as we have seen, the existence of an enforcement machinery, is necessarily a corollary of organizational action. (Of course, this does not mean that only organizational action—or even mere social action—is legally regulated by organization.) In this sense the organization may be said to be the "sustainer" of the law.

On the other hand, we are far from asserting that legal rules, in the sense here used, would offer the only standard of subjective orientation for social, consensual, rationally controlled, organizational or institutional action, which, we must remember, is nothing but a segment of sociologically relevant conduct in general. If the order of an organization is understood to be characteristic of, or indispensable to, the actual course of social action, then this order is only to a small extent the result of an orientation toward legal rules. To the extent that the regularities are consciously oriented towards rules at all and do not merely spring from unreflective habituation, they are of the nature of "custom" and "convention"; often they are predominantly rational maxims of purposeful self-interested action, on the effective operation of which each participant is counting for his own conduct as well as that of all others. This expectation is, indeed, justified objectively, especially since the maxim, though lacking legal guaranties, often constitutes the subject matter of some association or consensus. The chance of legal coercion which, as already mentioned, motivates even "legal" conduct only to a slight extent, is also

objectively an ultimate guaranty for no more than a fraction of the actual course of consensually oriented conduct.

It should thus be clear that, from the point of view of sociology, the transitions from mere usage to convention and from it to law are fluid.

3. Excursus *in Response to Rudolf Stammler*

Even from a non-sociological point of view it is wrong to distinguish between law and ethics by asserting that legal norms regulate mere external conduct, while moral norms regulate only matters of conscience. The law, it is true, does not always regard the intention of an action as relevant, and there have been legal propositions and legal systems in which legal consequences, including even punishment, are merely determined by external events. But this situation is not the normal one. Legal consequences attach to *bona* or *mala fides*, or intention, or moral turpitude, and a good many other purely subjective factors. Moral commandments, on the other hand, are aiming at overcoming in external conduct those anti-normative impulses which form part of the "mental attitude."

From the normative point of view we should thus distinguish between the two phenomena not as external and subjective, but as representing different degrees of normativeness.

From the sociological point of view, however, ethical validity is normally identical with validity "on religious grounds" or "by virtue of convention." Only an abstract standard of conduct subjectively conceived as derived from ultimate axioms could be regarded as an exclusively ethical norm, and this only in so far as this conception would acquire practical significance in conduct. Such conceptions have in fact often had real significance. But wherever this has been the case, they have been a relatively late product of philosophical reflection. In the past, as well as in the present, "moral commandments" in contrast to legal commands are, from a sociological point of view, normally either religiously or conventionally conditioned maxims of conduct. They are not distinguished from law by hard and fast criteria. There is no socially important moral commandment which has not been a legal command at one time or another.

Stammler's distinction between convention and legal norm according to whether or not the fulfillment of the norm is dependent upon the free will of the individual[21] is of no use whatsoever. It is incorrect to say that the fulfillment of conventional "obligations," for instance of a rule of social etiquette, is not "imposed" on the individual, and that its non-

fulfillment would simply result in, or coincide with, the free and voluntary separation from a voluntary consociation. It may be admitted that there are norms of this kind, but they exist not only in the sphere of convention, but equally in that of law. The *clausula rebus sic stantibus* in fact often lends itself to such use. At any rate, the distinction between conventional rule and legal norm in Stammler's own sociology is not centered on this test. Not only the theoretically constructed anarchical society, the "theory" and "critique" of which Stammler has elaborated with the aid of his scholastic concepts, but also a good number of consociations existing in the real world have dispensed with the legal character of their conventional norms. They have done so on the assumption that the mere fact of the social disapproval of norm infringement with its, often very real, indirect consequences will suffice as a sanction. From the sociological point of view, legal order and conventional order do thus not constitute any basic contrast, since, quite apart from obvious cases of transition, convention, too, is sustained by psychological as well as (at least indirectly) physical coercion. It is only with regard to the sociological *structure* of coercion that they differ: The conventional order lacks specialized personnel for the implementation of coercive power (enforcement machinery: priests, judges, police, the military, etc.).

Above all, Stammler confuses the ideal validity of a norm with the assumed validity of a norm in its actual influence on empirical action. The former can be deduced systematically by legal theorists and moral philosophers; the latter, instead, ought to be the subject of empirical observation. Furthermore, Stammler confuses the normative regulation of conduct by rules whose "oughtness" is factually accepted by a sizable number of persons, with the factual regularities of human conduct. These two concepts are to be strictly separated, however.

It is by way of conventional rules that merely factual regularities of action, i.e., usages, are frequently transformed into binding norms, guaranteed primarily by psychological coercion. Convention thus makes tradition. The mere fact of the regular recurrence of certain events somehow confers on them the dignity of oughtness. This is true with regard to natural events as well as to action conditioned organically or by unreflective imitation of, or adaptation to, external conditions of life. It applies to the accustomed course of the stars as ordained by the divine powers, as well as to the seasonal floods of the Nile or the accustomed way of remunerating slave laborers, who by the law are unconditionally surrendered to the power of their masters.

Whenever the regularities of action have become conventionalized, i.e., whenever a statistically frequent action (*Massenhandeln*) has become a consensually oriented action (*Einverständnishandeln*)—this is, in

our terminology, the real meaning of this development—we shall speak of "tradition."

It cannot be overstressed that the mere habituation to a mode of action, the inclination to preserve this habituation, and, much more so, tradition, have a formidable influence in favor of a habituated legal order, even where such an order originally derives from legal enactment. This influence is more powerful than any reflection on impending means of coercion or other consequences, considering also the fact that at least some of those who act according to the "norms" are totally unaware of them.

The transition from the merely unreflective formation of a habit to the conscious acceptance of the maxim that action should be in accordance with a norm is always fluid. The mere statistical regularity of an action leads to the emergence of moral and legal convictions with corresponding contents. The threat of physical and psychologial coercion, on the other hand, imposes a certain mode of action and thus produces habituation and thereby regularity of action.

Law and convention are intertwined as cause and effect in the actions of men, with, against, and beside, one another. It is grossly misleading to consider law and convention as the "forms" of conduct in contrast with its "substance" as Stammler does. The belief in the legal or conventional oughtness of a certain action is, from a sociological point of view, merely a superadditum increasing the degree of probability with which an acting person can calculate certain *consequences* of his action. Economic theory therefore properly disregards the character of the norms to some extent. For the economist the fact that someone "possesses" something simply means that he can count on other persons not to interfere with his disposition over the object. This mutual respect of the right of disposition may be based on a variety of considerations. It may derive from deference to conventional or legal norms, or from considerations of self-interest on the part of each participant. Whatever the reason, it is of no primary concern to economic theory. The fact that a person "owes" something to another can be translated, sociologically, into the following terms: a certain commitment (through promise, tort, or other cause) of one person to another; the expectation, based thereon, that in due course the former will yield to the latter his right of disposition over the goods concerned; the existence of a chance that this expectation will be fulfilled. The psychological motives involved are of no primary interest to the economist.

An exchange of goods means: the transfer of an object, according to an agreement, from the factual control of one person to that of another, this transfer being based on the assumption that another object is to be

transferred from the factual control of the second to that of the first. Of those who take part in a debtor-creditor relationship or in a barter, each one expects that the other will conform to his own intentions. It is not necessary, however, to assume conceptually any "order" outside or above the two parties to guarantee, command, or enforce compliance by means of coercive machinery or social disapproval. Nor is it necessary to assume the subjetive belief of either or both parties in any "binding" norm. For the partner to an exchange can depend on the other partner's *egoistic interest* in the future continuation of exchange relationships or other similar motives to offset his inclination to break his promise—a fact which appears tangibly in the so-called "silent trade" among primitive peoples as well as in modern business, especially on the stock exchange.

Assuming purely expediential rationality, each participant can and does, in fact, depend on the probability that under normal circumstances the other party will act "as if" he accepted as "binding" the norm that one has to fulfill his promises. Conceptually this is quite sufficient. But it goes without saying that it makes a difference whether the partner's expectation in this respect is supported by one or both of the following guaranties: 1. the factually wide currency, in the environment, of the subjective belief in the objective validity of such a norm (consensus); 2. even more so, the creation of a conventional guaranty through regard for social approval or disapproval, or of a legal guaranty through the existence of enforcement machinery.

Can it be said that a stable private economic system of the modern type would be "unthinkable" without legal guaranties? As a matter of fact we see that in most business transactions it never occurs to anyone even to think of taking legal action. Agreements on the stock exchange, for example, take place between professional traders in such forms as in the vast majority of cases exclude "proof" in cases of bad faith: the contracts are oral, or are recorded by marks and notations in the trader's own notebook. Nevertheless, a dispute practically never occurs. Likewise, there are organizations pursuing purely economic ends the rules of which nonetheless dispense entirely, or almost entirely, with legal protection from the state. Certain types of "cartels" were illustrative of this class of organization. It often happened also that agreements which had been concluded and were valid according to private law were rendered inoperative through the dissolution of the organization, as there was no longer a formally legitimated plaintiff. In these instances, the organization with its own coercive apparatus had a system of "law" which was totally lacking in the power of forcible legal coercion. Such coercion, at any rate, was available only so long as the organization was in existence. As a result of the peculiar subjective attitude of the participants, cartel

contracts often had not even any effective conventional guarantee. However, they often functioned nonetheless for a long time and quite efficiently in consequence of the convergent interests of all the participants.

Despite all such facts, it is obvious that forcible legal guarantee, especially where exercised by the state, is not a matter of indifference to such organizations. Today economic exchange is quite overwhelmingly guaranteed by the threat of legal coercion. The normal intention in an act of exchange is to acquire certain subjective "rights," i.e., in sociological terms, the probability of support of one's power of disposition by the coercive apparatus of the state. Economic goods today are normally at the same time *legitimately acquired rights*; they are the very building material for the universe of the economic order. Nonetheless, even today they do not constitute the total range of objects of exchange.

Economic opportunities which are not guaranteed by the legal order, or the guaranty of which is even refused on grounds of policy by the legal order, can and do constitute objects of exchange transactions which are not only not illegitimate but perfectly legitimate. They include, for instance, the transfer, against compensation, of the goodwill of a business. The sale of a goodwill today normally engenders certain private law claims of the purchaser against the seller, namely, that he will refrain from certain actions and will perform certain others, for instance, "introduce" the purchaser to the customers. But the legal order does not enforce the claims against third parties. Yet, there have been and still are cases in which the coercive apparatus of the political authority is available for the exercise of direct coercion in favor of the owner or purchaser of a "market," as for instance in the case of a guild monopoly or some other legally protected monopoly. It is well known that Fichte[12] considered it as the essential characteristic of modern legal development that, in contrast to such cases, the modern state guarantees only claims on concrete usable goods or labor services. Besides, so-called "free competition" finds its legal expression in this very fact. Yet, although such "opportunities" have remained objects of economic exchange even without legal protection against third parties, the absence of legal guaranties has nevertheless far-reaching economic consequences. But from the point of view of economics and sociology it remains a fact that, on general principle, at least, the interference of legal guaranties merely increases the degree of certainty with which an economically relevant action can be calculated in advance.

The legal regulation of a subject matter has never been carried out in all its implications anywhere. This would require the availability of some human agency which in every case of the kind in question would be regarded as being capable of determining, in accordance with some conceived norm, what ought to be done "by law." We shall by-pass here

the interaction between consociation and legal order: as we have seen elsewhere, any rational consociation, and therefore, any order of social and consensual action is posterior in this respect. Nor shall we discuss here the proposition that the development of social and consensual action continually creates entirely new situations and raises problems which can be solved by the accepted norms or by the usual logic of jurisprudence only in appearance or by spurious reasoning (cf. in this respect the thesis of the "free-law" movement).

We are concerned here with a more basic problem: It is a fact that the most "fundamental" questions often are left unregulated by law even in legal orders which are otherwise thoroughly rationalized. Let us illustrate two specific types of this phenomenon:

(1) A "constitutional" monarch dismisses his responsible minister and fails to replace him by any new appointee so that there is no one to countersign his acts. What is to be done "by law" in such a situation? This question is not regulated in any constitution anywhere in the world. What is clear is no more than that certain acts of the government cannot be "validly" taken.

(2) Most constitutions equally omit consideration of the following question: What is to be done when those parties whose agreement is necessary for the adoption of the budget are unable to reach an agreement?

The first problem is described by Jellinek as "moot" for all practical purposes.[13] He is right. What is of interest to us is just to know why it is "moot." The second type of "constitutional gap," on the other hand, has become very practical, as is well known.[14] If we understand "constitution," in the sociological sense, as the modus of distribution of power which determines the possibility of regulating social action, we may, indeed, venture the proposition that any community's constitution *in the sociological sense* is determined by the fact of where and how its constitution *in the juridical sense* contains such "gaps," especially with regard to basic questions. At times such gaps of the second type have been left intentionally where a constitution was rationally enacted by consensus or imposition. This was done simply because the interested party or parties who exercised the decisive influence on the drafting of the constitution in question expected that he or they would ultimately have sufficient power to control, in accordance with their own desires, that portion of social action which, while lacking a basis in any enacted norm, yet had to be carried on somehow. Returning to our illustration: they expected to govern without a budget.

Gaps of the first type mentioned above, on the other hand, usually remain open for another reason: Experience seems to teach convincingly that the self-interest of the party or parties concerned (in our example,

of the monarch) will at all times suffice so to condition his way of acting that the "absurd" though legally possible situation (in our example, the lack of a responsible minister) will never occur. Despite the "gap," general consensus considers it as the unquestionable "duty" of the monarch to appoint a minister. As there are legal consequences attached to this duty, it is to be considered as an "indirectly guaranteed legal obligation." Such ensuing legal consequences are: the impossibility of executing certain acts in a valid manner, i.e., of attaining the possibility of having them guaranteed through the coercive apparatus. But for the rest, it is not established, either by law or convention, what is to be done to carry on the administration of the state in case the ruler should not fulfill this duty; and since this case has never occurred thus far, there is no custom either which could become the source for a decision. This situation constitutes a striking illustration of the fact that law, convention, and custom are by no means the only forces to be counted on as guarantee for such conduct of another person as is expected of, promised by, or otherwise regarded as due from, him. Beside and above these, there is another force to be reckoned with: the other person's self-interest in the continuation of a certain consensual action as such. The certainty with which the monarch's compliance with an assumedly binding duty can be anticipated is no doubt greater, but only by a matter of degree, than the certainty—if we may return now to our previous example—with which a partner to an exchange counts, and in the case of continued intercourse, may continue to count, upon the other party's conduct to conform with his own expectations. This certainty exists even though the transaction in question may lack any normative regulation or coercive guaranty.

What is relevant here is merely the observation that the legal as well as the conventional regulation of consensual or rationally regulated action may be, as a matter of principle, incomplete and, under certain circumstances, will be so quite consciously. While the orientation of social action to a norm is constitutive of consociation in any and every case, the coercive apparatus does not have this function with regard to the totality of all stable and institutionally organizational action. If the absurd case of illustration (1) were to occur, it would certainly set legal speculation to work immediately and then perhaps a conventional, or even legal, regulation would come into existence. But in the meantime the problem would already have been actually solved by some social or consensual or rationally regulated action the details of which would depend upon the nature of the concrete situation. Normative regulation is one important causal component of consensual action, but it is not, as claimed by Stammler, its universal "form."

For a discipline such as sociology, which searches for empirical

regularities and types, the legal guarantees and their underlying normative conceptions are of interest both as consequences and as causes or concomitant causes of certain regularities of human action which are as such directly relevant to sociology, or of regularities of natural occurrences engendered by human action which as such are indirectly relevant to sociology.

Factual regularities *of* conduct ("customs") can, as we have seen, become the source of rules *for* conduct ("conventions," "law"). The reverse, however, may be equally true. Regularities may be produced by legal norms, acting by themselves or in combination with other factors. This applies not only to those regularities which directly realize the content of the legal norm in question, but equally to regularities of a different kind. The fact that an official, for example, goes to his office regularly every day is a direct consequence of the order contained in a legal norm which is accepted as "valid" in practice. On the other hand, the fact that a traveling salesman of a factory visits the retailers regularly each year for the solicitation of orders is only an indirect effect of legal norms, viz., of those which permit free competition for customers and thus necessitate that they be wooed. The fact that fewer children die when nursing mothers abstain from work as a result of a legal or conventional "norm" is certainly a consequence of the validity of that norm. Where it is an enacted legal norm, this result has certainly been one of the rationally conceived ends of the creators of that norm; but it is obvious that they can decree only the abstention from work and not the lower death rate. Even with regard to directly commanded or prohibited conduct, the practical effectiveness of the validity of a coercive norm is obviously problematic. Observance follows to an "adequate" degree, but never without exceptions. Powerful interests may indeed induce a situation in which a legal norm is violated, without ensuing punishment, not only in isolated instances, but prevalently and permanently, in spite of the coercive apparatus on which the "validity" of the norm is founded. When such a situation has become stabilized and when, accordingly, prevailing practice rather than the pretense of the written law has become normative of conduct in the conviction of the participants, the guaranteeing coercive power will ultimately cease to compel conduct to conform to the latter. In such case, the legal theorist speaks of "derogation through customary law."

"Valid" legal norms, which are guaranteed by the coercive apparatus of the political authority, and conventional rules may also coexist, however, in a state of chronic conflict. We have observed such a situation in the case of the duel, where private revenge has been transformed by convention. And while it is not at all unusual that legal norms are ra-

tionally enacted with the purpose of changing existing "customs" and conventions, the normal development is more usually as follows: a legal order is empirically "valid" owing not so much to the availability of coercive guaranties as to its habituation as "usage" and its "routinization." To this should be added the pressure of convention which, in most cases, disapproves any flagrant deviation from conduct corresponding to that order.

For the legal theorist the (ideological) validity of a legal norm is conceptually the *prius*. Conduct which is not directly regulated by law is regarded by him as legally "permitted" and thus equally affected by the legal order, at least ideologically. For the sociologist, on the other hand, the legal, and particularly the rationally enacted, regulation of conduct is empirically only one of the factors motivating social action; moreover, it is a factor which usually appears late in history and whose effectiveness varies greatly. The beginnings of actual regularity and "usage," shrouded in darkness everywhere, are attributed by the sociologist, as we have seen, to the instinctive habituation of a pattern of conduct which was "adapted" to given necessities. At least initially, this pattern of conduct was neither conditioned nor changed by an enacted norm. The increasing intervention of enacted norms is, from our point of view, only one of the components, however characteristic, of that process of rationalization and association whose growing penetration into all spheres of social action we shall have to trace as a most essential dynamic factor in development.

4. *Summary of the Most General Relations Between Law and Economy*

In sum, we can say about the most general relationships between law and economy, which alone concern us here, the following:

(1) Law (in the sociological sense) guarantees by no means only economic interests but rather the most diverse interests ranging from the most elementary one of protection of personal security to such purely ideal goods as personal honor or the honor of the divine powers. Above all, it guarantees political, ecclesiastical, familial, and other positions of authority as well as positions of social preëminence of any kind which may indeed be economically conditioned or economically relevant in the most diverse ways, but which are neither economic in themselves nor sought for preponderantly economic ends.

(2) Under certain conditions a "legal order" can remain unchanged

while economic relations are undergoing a radical transformation. In theory, a socialist system of production could be brought about without the change of even a single paragraph of our laws, simply by the gradual, free contractual acquisition of all the means of production by the political authority. This example is extreme; but, for the purpose of theoretical speculation, extreme examples are most useful. Should such a situation ever come about—which is most unlikely, though theoretically not unthinkable—the legal order would still be bound to apply its coercive machinery in case its aid were invoked for the enforcement of those obligations which are characteristic of a productive system based on private property. Only, this case would never occur in fact.[15]

(3) The legal status of a matter may be basically different according to the point of view of the legal system from which it is considered. But such differences [of legal classification] need not have any relevant economic consequences provided only that on those points which generally are relevant economically, the *practical* effects are the same for the interested parties. This not only is possible, but it actually happens widely, although it must be conceded that any variation of legal classification may engender some economic consequences somewhere. Thus totally different forms of action would have been applicable in Rome depending on whether the "lease" of a mine were to be regarded legally as a lease in the strict sense of the term, or as a purchase. But the practical effects of the difference for economic life would certainly have been very slight.[16]

(4) Obviously, legal guaranties are directly at the service of economic interests to a very large extent. Even where this does not seem to be, or actually is not, the case, economic interests are among the strongest factors influencing the creation of law. For, any authority guaranteeing a legal order depends, in some way, upon the consensual action of the constitutive social groups, and the formation of social groups depends, to a large extent, upon constellations of material interests.

(5) Only a limited measure of success can be attained through the threat of coercion supporting the legal order. This applies especially to the economic sphere, owing to a number of external circumstances as well as to its own peculiar nature. It would be quibbling, however, to assert that law cannot "enforce" any particular economic conduct, on the ground that we would have to say, with regard to all its means of coercion, that *coactus tamen voluit* ("Although coerced, it was still his will.") For this is true, without exception, of all coercion which does not treat the person to be coerced simply as an inanimate object. Even the most drastic means of coercion and punishment are bound to fail where the subjects remain recalcitrant. In many spheres such a situation would always mean that the participants have not been educated to

acquiescence. Such education to acquiescence in the law of the time and place has, as a general rule, increased with growing pacification. Thus it should seem that the chances of enforcing economic conduct would have increased, too. Yet, the power of law over economic conduct has in many respects grown weaker rather than stronger as compared with earlier conditions. The effectiveness of maximum price regulations, for example, has always been precarious, but under present-day conditions they have an even smaller chance of success than ever before.

Thus the measure of possible influence on economic activity is not simply a function of the general level of acquiescence towards legal coercion. The limits of the actual success of legal coercion in the economic sphere rather arise from two main sources. One is constituted by the limitations of the economic capacity of the persons affected. There are limits not only to the stock itself of available goods, but also to the way in which that stock can possibly be used. For the patterns of use and of relationship among the various economic units are determined by habit and can be adjusted to heteronomous norms, if at all, only by difficult reorientations of all economic dispositions, and hardly without losses, which means, never without frictions. These difficulties increase with the degree of development and universality of a particular form of consensual action, namely, the interdependence of the individual economic units in the market, and, consequently, the dependence of every one upon the conduct of others. The second source of the limitation of successful legal coercion in the economic sphere lies in the relative proportion of strength of private economic interests on the one hand and interests promoting conformance to the rules of law on the other. The inclination to forego economic opportunity simply in order to act legally is obviously slight, unless circumvention of the formal law is strongly disapproved by a powerful convention, and such a situation is not likely to arise where the interests affected by a legal innovation are widespread. Besides, it is often not difficult to disguise the circumvention of a law in the economic sphere. Quite particularly insensitive to legal influence are, as experience has shown, those effects which derive directly from the ultimate sources of economic action, such as the estimates of economic value and the formation of prices. This applies particularly to those situations where the determinants in production and consumption do not lie within a completely transparent and directly manageable complex of consensual conduct. It is obvious, besides, that those who continuously operate in the market have a far greater rational knowledge of the market and interest situation than the legislators and enforcement officers whose interest is only formal. In an economy based on all-embracing interdependence on the market the possible and unintended repercussions of a legal measure

must to a large extent escape the foresight of the legislator simply because they depend upon private interested parties. It is those private interested parties who are in a position to distort the intended meaning of a legal norm to the point of turning it into its very opposite, as has often happened in the past. In view of these difficulties, the extent of factual impact of the law on economic conduct cannot be determined generally, but must be calculated for each particular case. It belongs thus to the field of case studies in social economics. In general, no more can be asserted than that, from a purely theoretical point of view, the complete monopolization of a market, which entails a far greater perspicuity of the situation, technically facilitates the control by law of that particular sector of the economy. If it, nevertheless, does not always in fact increase the opportunities for such control, this result is usually due either to legal particularism arising from the existence of competing political associations, or to the power of the private interests amenable to the monopolistic control and thus resisting the enforcement of the law.

(6) From the purely theoretical point of view, legal guaranty *by the state* is not indispensable to any basic economic phenomenon. The protection of property, for example, can be provided by the mutual aid system of kinship groups. Creditors' rights have sometimes been protected more efficiently by a religious community's threat of excommunication than by political bodies. "Money," too, has existed in almost all of its forms, without the state's guaranty of its acceptability as a means of payment. Even "chartal" money, i.e., money which derives its character as means of payment from the marking of pieces rather than from their substantive content, is conceivable without the guaranty by the state. Occasionally chartal money of non-state origin appeared even in spite of the existence of an apparatus of legal coercion by the state: the ancient Babylonians, for instance, did not have "coins" in the sense of a means of payment constituting legal tender by proclamation of the political authority, but contracts were apparently in use under which payment was to be made in pieces of a fifth of a shekel designated as such by the stamp of a certain "firm" (as we would say).[17] There was thus lacking any guaranty "proclaimed" by the state; the chosen unit of value was derived, not from the state, but from private contract. Yet the means of payment was "chartal" in character, and the state guaranteed coercively the concrete deal.

Conceptually the "state" thus is not indispensable to any economic activity. But an economic system, especially of the modern type, could certainly not exist without a legal order with very special features which could not develop except in the frame of a public legal order. Present-day economic life rests on opportunities acquired through contracts. It is true, the private interests in the obligations of contract, and the common

interest of all property holders in the mutual protection of property are still considerable, and individuals are still markedly influenced by convention and custom even today. Yet, the influence of these factors has declined due to the disintegration of tradition, i.e., of the tradition-determined relationships as well as of the belief in their sacredness. Furthermore, class interests have come to diverge more sharply from one another than ever before. The tempo of modern business communication requires a promptly and predictably functioning legal system, i.e., one which is guaranteed by the strongest coercive power. Finally, modern economic life by its very nature has destroyed those other associations which used to be the bearers of law and thus of legal guaranties. This has been the result of the development of the market. The universal predominance of the market consociation requires on the one hand a legal system the functioning of which is *calculable* in accordance with rational rules. On the other hand, the constant expansion of the market, which we shall get to know as an inherent tendency of the market consociation, has favored the monopolization and regulation of all "legitimate" coercive power by *one* universalist coercive institution through the disintegration of all particularist status-determined and other coercive structures which have been resting mainly on economic monopolies.

NOTES

Unless otherwise indicated, notes are by Rheinstein. For full references of works mentioned, see Sociology of Law, ch. VIII:*i*, n. 1.

1. Legal dogmatics (*dogmatische Rechtswissenschaft*)—the term frequently used in German to mean the legal science of the law itself as distinguished from such ways of looking upon law from the outside as philosophy, history, or sociology of law.

2. See now Part One, ch. I: 5, but the reference is presumably to "Some Categories of Interpretive Sociology," *GAzW* 443. (R)

3. See *op. cit.*, 445, 447f., 466. (R)

4. Cf. below, ch. VIII:*v*:8.

5. This is an early formulation of the relationship between usage, custom, interest constellation, law and convention, repeated in Part I, sec. 4–6. (R)

6. Cf. below, ch. VIII:*iii*:1.

7. Cf. Part Two, ch. IV:2. (W)

8. Willy Hellpach (1877–1955), professor of medicine, known by his highly original investigations on the influence of meteorological and geographic phenomena upon the mind. See his "Die geistigen Epidemien," *Die Gesellschaft*, XI, 1906.

9. Cf. German Civil Code, Sec. 138: "A transaction which is contrary to good morals is void"; Sec. 826: "One who causes harm to another intentionally and in a manner which is against good morals, has to compensate the other for such harm."

10. The "courts of love" (*cours d'amour*) belonged to the amusements of polite society at the high period of chivalry and the troubadours (twelfth to thir-

teenth century). They are reported to have consisted of circles of ladies who were organized in the way of courts and rendered judgments and opinions in matters of courtly love and manners. They flourished in southern France, especially Provence, where they came to an end with the collapse of Provençal society in the "crusade" against the Albigensian heretics. In the late Middle Ages, a brilliant court of love is reported to have flourished for some years at the Burgundian court; cf. HUIZINGA, WANING OF THE MIDDLE AGES (1924), c. 8, p. 103. On the courts of love in general, see CAPEFIGUE, LES COURS D'AMOUR (1863); RAJNA, LE CORTI D'AMORE (1890); and the article by F. Bonnardot in 2 LA GRANDE ENCYCLOPÉDIE 805, with further literature.

11. Rudolf Stammler, *Wirtschaft und Recht nach der materialistischen Geschichtsauffassung* (1896), 12.

12. Joh. Gottlieb Fichte, *Der geschlossene Handelsstaat* (1800), Bk. I, c. 7.

13. GESETZ UND VERORDNUNG (1887) 295; VERFASSUNGSÄNDERUNG UND VERFASSUNGSWANDEL (1906) 43.

14. The situation arose in Prussia when the predominantly liberal Diet early in 1860 refused to pass Bismarck's budget because of its disapproval of his policy of armaments (so-called Era of Conflict or *Konfliktsperiode*). In Austria, too, Parliament (*Reichsrat*) repeatedly was unable to reach agreement on a budget during that period of conflict between the several ethnic groups of the Monarchy which preceded the outbreak of World War I.

15. The norms of the legal order existing before the total socialization took place could also be applied after its occurrence, if legal title to the various means of production were to be ascribed not to one single, central public authority but to formally autonomous public institutions or corporations which are to regulate their relationships to each other by contractual transactions, subject to the directions of, and control by, the central planning authority. Such a situation does indeed exist in the Soviet Union. Cf. H. J. BERMAN, JUSTICE IN RUSSIA (1950), and review by Rheinstein (1951) 64 HARV. L. REV. 1387.

16. Cf. in American law the controversy as to the correct legal classification of a mining or oil and gas lease: does the transaction create a profit a prendre, or does it give to the "lessee" the title to the minerals, or does it result in the creation of a leasehold interest in the strict sense of the term? As in Rome, the "proper" classification may be relevant in some practical respect as, for instance, with regard to the question of whether, in the case of the death of the lessee—if he should ever be an individual!—his interest descends as real, or is to be distributed as personal, property. In the former case it would, ordinarily, not be touched for the payment of debts of the deceased until all the personal property has been exhausted; in the latter, the "lease" would be immediately available for the creditors along with the other "personal" assets of the decedent. But, by and large, the economic situation is one and the same whichever of the various legal classifications is applied.

17. No reference to a practice of the kind mentioned could be located except the following passage in B. MAISSNER, BABYLONIEN UND ASSYRIEN (1920) 356: "As one could not generally rely upon the weight and fineness of the silver and thus had to check (*xâtu*), one preferred to receive silver bearing a stamp (*kanku*) by which the weight and fineness would be guaranteed. In contracts from the period of the first Babylonian dynasty we find shekels mentioned 'with a stamp'(?) of Babylon (Vorderasiatische Bibliothek VI, No. 217, 15) or shekels 'from the city of Zahan' or 'from Grossippar' (Brit. Mus. Cuneiform Tablets IV, 47, 19a)."

CHAPTER II

THE ECONOMIC RELATIONSHIPS OF ORGANIZED GROUPS

1. *Economic Action and Economically Active Groups*

Most social groups engage in economic activities. Contrary to an unsuitable usage, we shall not consider every instrumental (*zweckrationale*) action as economic. Thus, praying for a spiritual good is not an economic act, even though it may have a definite purpose according to some religious doctrine. We also shall not include every economizing activity, neither intellectual economizing in concept formation nor an esthetic "economy of means"; artistic creations are often the highly unprofitable outcome of ever-renewed attempts at simplification. Just as little is the mere adherence to the technical maxim of the "optimum"—the relatively greatest result with the least expenditure of means—an economic act; rather, it is a matter of purpose-rational technique. We shall speak of economic action only if the satisfaction of a need depends, in the actor's judgment, upon relatively *scarce* resources and a *limited* number of possible actions, and if this state of affairs evokes specific reactions. Decisive for such rational action is, of course, the fact that this scarcity is *subjectively* presumed and that action is oriented to it.

We will not deal here with any detailed "casuistry" and terminology. However, we will distinguish two types of economic action: (1) The first is the satisfaction of one's own wants, which may be of any conceivable kind, ranging from food to religious edification, if there is a scarcity of goods and services in relation to demand. It is conventional to think particularly of everyday needs—the so-called material needs—when the

term "economy" is used. However, prayers and masses too *may* become economic objects if the persons qualified to say them are in short supply and can only be secured for a price, just like the daily bread. Bushmen drawings, to which a high artistic value is often attributed, are not economic objects, not even products of labor in the economic sense, yet artistic products that are rated much lower become economic objects if they are relatively scarce. (2) The second type of economic action concerns profit-making by controlling and disposing of scarce goods.

Social action (*soziales Handeln*) may be related to the economy in diverse ways.[1]

Rationally controlled action (*Gesellschaftshandeln*) may be oriented, in the actor's eyes, to purely economic results—want satisfaction or profit-making. In this case an "*economic group*" comes into being. However, rationally controlled action may use economic operations as a means for achieving different goals. In this case we have a "*group with secondary economic interests*" (*wirtschaftende Gemeinschaft*). Social action may also combine economic and non-economic goals, or none of these cases may occur. The dividing line between groups with primary and secondary economic interests is fluid. Strictly speaking, the first state of affairs prevails only in those groups that strive for profit by taking advantage of scarcity conditions, that is, profit-making enterprises, for all groups oriented merely toward want satisfaction resort to economic action only so far as the relation of supply and demand makes it necessary. In this regard, there is no difference between the economic activities of a family, a charitable endowment, a military administration, or an association for joint forest clearing or hunting. To be sure, there seems to be a difference between social action that comes into being essentially for the sake of satisfying economic demands, as in the case of forest clearing, and action with goals (such as military training) that necessitates economic activities merely because of scarcity conditions. But in reality this distinction is very tenuous and can be clearly drawn only to the extent that social action would remain the same in the absence of any scarcity.

Social action that constitutes a group neither with primary nor secondary economic interests may in various respects be influenced by scarcity factors and to that extent be economically determined. Conversely, such action may also determine the nature and course of economic activities. Most of the time both influences are at work. Social action unrelated to either of the two groups is not unusual. Every joint walk may be an example. Groups that are economically unimportant are quite frequent. However, a special case of economically relevant groups consists of those whose norms regulate the economic behavior of the

participants but whose organs do not continuously direct economic activities through immediate participation, concrete instructions or injunctions: These are *"regulatory groups."* They include all kinds of political and many religious groups, and numerous others, among them those associated specifically for the sake of economic regulation (such as cooperatives of fishermen or peasants).

As we have said, groups that are not somehow economically determined are extremely rare. However, the degree of this influence varies widely and, above all, the economic determination of social action is ambiguous—contrary to the assumption of so-called historical materialism. Phenomena that must be treated as constants in economic analysis are very often compatible with significant structural variations—from a sociological viewpoint—among the groups that comprise them or coexist with them, including groups with primary and secondary economic interests. Even the assertion that social structures and the economy are "functionally" related is a biased view, which cannot be justified as an historical generalization, if an unambiguous interdependence is assumed. For the forms of social action follow "laws of their own," as we shall see time and again, and even apart from this fact, they may in a given case always be co-determined by other than economic causes. However, at some point economic conditions tend to become causally important, and often decisive, for almost all social groups, at least those which have major cultural significance; conversely, the economy is usually also influenced by the autonomous structure of social action within which it exists. No significant generalization can be made as to when and how this will occur. However, we can generalize about the degree of elective affinity between concrete structures of social action and concrete forms of economic organization; that means, we can state in general terms whether they further or impede or exclude one another—whether they are "adequate" or "inadequate" in relation to one another. We will have to deal frequently with such relations of adequacy. Moreover, at least some generalization can be advanced about the manner in which economic interests tend to result in social action of a certain type.

2. *Open and Closed Economic Relationships*

One frequent economic determinant is the competition for a livelihood—offices, clients and other remunerative opportunities. When the number of competitors increases in relation to the profit span, the partic-

ipants become interested in curbing competition. Usually one group of competitors takes some externally identifiable characteristic of another group of (actual or potential) competitors—race, language, religion, local or social origin, descent, residence, etc.—as a pretext for attempting their exlusion. It does not matter which characteristic is chosen in the individual case: whatever suggests itself most easily is seized upon. Such group action may provoke a corresponding reaction on the part of those against whom it is directed.

In spite of their continued competition against one another, the jointly acting competitors now form an "interest group" toward outsiders; there is a growing tendency to set up some kind of association with rational regulations; if the monopolistic interests persist, the time comes when the competitors, or another group whom they can influence (for example, a political community), establish a legal order that limits competition through formal monopolies; from then on, certain persons are available as "organs" to protect the monopolistic practices, if need be, with force. In such a case, the interest group has developed into a "*legally privileged group*" (*Rechtsgemeinschaft*) and the participants have become "*privileged members*" (*Rechtsgenossen*). Such closure, as we want to call it, is an ever-recurring process; it is the source of property in land as well as of all guild and other group monopolies.

The tendency toward the monopolization of specific, usually economic opportunities is always the driving force in such cases as: "cooperative organization," which always means closed monopolistic groups, for example, of fishermen taking their name from a certain fishing area; the establishment of an association of engineering graduates, which seeks to secure a legal, or at least factual, monopoly over certain positions;[2] the exclusion of outsiders from sharing in the fields and commons of a village; "patriotic" associations of shop clerks;[3] the *ministeriales*, knights, university graduates and craftsmen of a given region or locality; ex-soldiers entitled to civil service positions—all these groups first engage in some joint action (*Gemeinschaftshandeln*) and later perhaps an explicit association. This monopolization is directed against competitors who share some positive or negative characteristics; its purpose is always the closure of social and economic opportunities to *outsiders*. Its extent may vary widely, especially so far as the group member shares in the apportionment of monopolistic advantages. These may remain open to all monopoly holders, who can therefore freely compete with one another; witness the holders of occupational patents (graduates entitled to certain positions or master-craftsmen privileged with regard to customers and the employment of apprentices). However, such opportunities may also

be "closed" to *insiders*. This can be done in various ways: (a) Positions may be rotated: the short-run appointment of some holders of office benefices had this purpose; (b) Grants may be revocable, such as the individual disposition over fields in a strictly organized rural commune, for example, the Russian *mir*;[4] (c) Grants may be for life, as is the rule for all prebends, offices, monopolies of master-craftsmen, rights in using the commons, and originally also for the apportionment of fields in most village communes; (d) The member and his heirs may get definite grants with the stipulation that they cannot be given to others or only to group members: witness the κλῆρος (the warrior prebend of Antiquity), the service fiefs of the *ministeriales*, and monopolies on hereditary offices and crafts; (e) Finally, only the number of shares may be limited, but the holder may freely dispose of his own without the knowledge or permission of the other group members, as in a stock-holding company. These different stages of internal closure will be called stages in the *appropriation* of the social and economic opportunities that have been monopolized by the group.

If the appropriated monopolistic opportunities are released for exchange outside the group, thus becoming completely "free" property, the old monopolistic association is doomed. Its remnants are the appropriated powers of disposition which appear on the market as "acquired rights" of individuals. For all property in natural resources developed historically out of the gradual appropriation of the monopolistic shares of group members. In contrast to the present, not only concrete goods but also social and economic opportunities of all kinds were the object of appropriation. Of course, manner, degree, and ease of the appropriation vary widely with the technical nature of the object and of the opportunities, which may lend themselves to appropriation in very different degrees. For example, a person subsisting by, or gaining an income from, the cultivation of a given field is bound to a concrete and clearly delimited material object, but this is not the case with customers. Appropriation is not motivated by the fact that the object produces a yield only through amelioration, hence that to some extent it is the product of the user's labor, for this is even more true of an acquired clientele, although in a different manner; rather, customers cannot be "registered" as easily as real estate. It is quite natural that the extent of an appropriation depends upon such differences among objects. Here, however, we want to emphasize that the process is in principle the same in both cases, even though the pace of appropriation may vary: monopolized social and economic opportunities are "closed" even to insiders. Hence, groups differ in varying degrees with regard to external or internal "openness" or "closure."

3. *Group Structures and Economic Interests: Monopolist versus Expansionist Tendencies*

This monopolistic tendency takes on specific forms when groups are formed by persons with shared qualities *acquired* through upbringing, apprenticeship and training. These characteristics may be economic qualifications of some kind, the holding of the same or of similar offices, a knightly or ascetic way of life, etc. If in such a case an association results from social action, it tends toward the *guild*. Full members make a vocation out of monopolizing the disposition of spiritual, intellectual, social and economic goods, duties and positions. Only those are admitted to the unrestricted practice of the vocation who (1) have completed a novitiate in order to aquire the proper training, (2) have proven their qualification, and (3) sometimes have passed through further waiting periods and met additional requirements. This development follows a typical pattern in groups ranging from the juvenile student fraternities, through knightly associations and craft-guilds, to the qualifications required of the modern officials and employees. It is true that the interest in guaranteeing an efficient performance may everywhere have some importance; the participants may desire it for idealistic or materialistic reasons in spite of their possibly continuing competition with one another: local craftsmen may desire it for the sake of their business reputation, *ministeriales* and knights of a given association for the sake of their professional reputation and also their own military security, and ascetic groups for fear that the gods and demons may turn their wrath against all members because of faulty manipulations. (For example, in almost all primitive tribes, persons who sang falsely during a ritual dance were originally slain in expiation of such an offense.)* But normally this concern for efficient performance recedes behind the interest in limiting the supply of candidates for the benefices and honors of a given occupation. The novitiates, waiting periods, masterpieces and other demands, particularly the expensive entertainment of group members, are more often economic than professional tests of qualification.

Such monopolistic tendencies and similar economic considerations have often played a significant role in *impeding* the expansion of a group. For example, Attic democracy increasingly sought to limit the number of those who could share in the advantages of citizenship, and thus limited its own political expansion. The Quaker propaganda was brought to a standstill by an ultimately similar constellation of economic interests. The Islamic missionary ardor, originally a religious obligation, found its limits in the conquering warriors' desire to have a non-Islamic, and hence underprivileged, population that could provide for the mainte-

nance of the privileged believers—the type case for many similar phenomena.

On the other hand, it is a typical occurrence that individuals live by representing group interests or, in some other manner, ideologically or economically from the existence of a group. Hence social action may be propagated, perpetuated and transformed into an association in cases in which this might not have happened otherwise. This kind of interest may have the most diverse intellectual roots: In the 19th century the Romantic ideologists and their epigoni awakened numerous declining language groups of "interesting" peoples to the purposive cultivation of their language. German secondary and university teachers helped save small Slavic language groups, about whom they felt the intellectual need to write books.

However, such purely ideological group existence is a less effective lever than economic interest. If a group pays somebody to act as a continuous and deliberate "organ" of their common interests, or if such interest representation pays in other respects, an association comes into being that provides a strong guarantee for the continuance of concerted action under all circumstances. Henceforth, some persons are professionally interested in the retention of the existing, and the recruitment of new, members. It does not matter here whether they are paid to represent (hidden or naked) sexual interests[6] or other "non-material" or, finally, economic interests (trade unions, management associations and similar organizations), whether they are public speakers paid by the piece or salaried secretaries. The pattern of intermittent and irrational action is replaced by a systematic rational "enterprise," which continues to function long after the original enthusiasm of the participants for their ideals has vanished.

In various ways capitalist interests proper may have a stake in the propagation of certain group activities. For example, [in Imperial Germany] the owners of German "Gothic" type fonts want to preserve this "patriotic" kind of lettering [instead of using Latin *Antiqua*]; similarly, innkeepers who permit Social Democratic meetings even though their premises are kept off limits for military personnel have a stake in the size of the party's membership. Everybody can think of many examples of this type for every kind of social action.

Whether we deal with employees or capitalist employers, all these instances of economic interest have one feature in common: The interest in the substance of the shared ideals necessarily recedes behind the interest in the persistence or propaganda of the group, irrespective of the content of its activities. A most impressive example is the complete disappearance of ideological substance in the American parties, but the

greatest example, of course, is the age-old connection between capitalist interests and the expansion of political communities. On the one hand, these communities can exert an extraordinary influence on the economy, on the other they can extract tremendous revenues, so that the capitalist interests can profit most from them: directly by rendering paid services or making advances on expected revenues, and indirectly through the exploitation of objects within the realm of the political community. In Antiquity and at the beginning of modern history the focus of capitalist acquisition centered on such politically determined "imperialist" profits, and today again capitalism moves increasingly in this direction. Every expansion of a country's power sphere increases the profit potential of the respective capitalist interests.

These economic interests, which favor the expansion of a group, may not only be counteracted by the monopolistic tendencies discussed above, but also by other economic interests that originate in a group's closure and exclusiveness. We have already stated in general terms that voluntary organizations tend to transcend their rational primary purpose and to create relationships among the participants that may have quite different goals: As a rule, an overarching communal relationship (*übergreifende Vergemeinschaftung*) attaches itself to the association (*Vergesellschaftung*). Of course, this is not always true; it occurs only in cases in which social action presupposes some personal, not merely business, contacts. For example, a person can acquire stocks irrespective of his personal qualities, merely by virtue of an economic transaction, and generally without the knowledge and consent of the other stockholders. A similar orientation prevails in all those associations that make membership dependent upon a purely formal condition or achievement and do not examine the individual himself. This occurs very often in certain purely economic groups and also in some voluntary political organizations; in general, this orientation is everywhere the more likely, the more rational and specialized the group purpose is. However, there are many associations in which admission presupposes, expressly or silently, qualifications and in which those overarching communal relationships arise. This, of course, happens particularly when the members make admission dependent upon an investigation and approval of the candidate's personal qualities. At least as a rule, the candidate is scrutinized not only with regard to his usefulness for the organization but also "existentially," with regard to personal characteristics esteemed by the members.

We cannot classify here the various modes of association according to the degree of their exclusiveness. It suffices to say that such selectness exists in associations of the most diverse kinds. Not only a religious sect, but also a social club, for instance, a veterans' association or even a bowl-

ing club, as a rule admit nobody who is personally objectionable to the members. This very fact "legitimizes" the new member toward the outside, far beyond the qualities that are important to the group's purpose. Membership provides him with advantageous connections, again far beyond the specific goals of the organization. Hence, it is very common that persons belong to an organization although they are not really interested in its purpose, merely for the sake of those economically valuable legitimations and connections that accrue from membership. Taken by themselves, these motives may contain a strong incentive for joining and hence enlarging the group, but the opposite effect is created by the members' interest in monopolizing those advantages and in increasing their economic value through restriction to the smallest possible circle. The smaller and the more exclusive such a circle is, the higher will be both the economic value and the social prestige of membership.

Finally, we must briefly deal with another frequent relationship between the economy and group activities: the deliberate offer of economic advantages in the interest of preserving and expanding a primarily non-economic group. This happens particularly when several similar groups compete for membership: witness political parties and religious communities. American sects, for instance, arrange artistic, athletic and other entertainment and lower the conditions for divorced persons remarrying; the unlimited underbidding of marriage regulations was only recently curbed by regular cartelization. In addition to arranging excursions and similar activities, religious and political parties establish youth groups and women chapters and participate eagerly in purely municipal or other basically non-political activities, which enable them to grant economic favors to local private interests. To a very large extent, the invasion of municipal, co-operative or other agencies by such groups has a direct economic motivation: it helps them to maintain their functionaries through office benefices and social status and to shift the operating costs to these other agencies. Suitable for this purpose are jobs in municipalities, producers' and consumers' co-operatives, health insurance funds, trade unions and similar organizations; and on a vast scale, of course, political offices and benefices or other prestigious or remunerative positions that can be secured from the political authorities—professorships included. If a group is sufficiently large in a system of parliamentary government, it can procure such support for its leaders and members, just like the political parties, for which this is essential.

In the present context we want to emphasize only the general fact that non-economic groups also establish economic organizations, especially for propaganda purposes. Many charitable activities of religious groups have such a purpose, and this is even more true of the Christian,

Liberal, Socialist and Patriotic trade unions and mutual benefit funds, of savings and insurance institutes and, on a massive scale, of the consumers' and producers' co-operatives. Some Italian co-operatives, for instance, demanded the certification of confession before hiring a worker. In Germany [before 1918] the Poles organized credit lending, mortgage payments and farm acquisition in an unusually impressive fashion; during the Revolution of 1905/6 the various Russian parties immediately pursued similarly modern policies. Sometimes commercial enterprises are established: banks, hotels (like the socialist *Hôtellerie du Peuple* in Ostende) and even factories (also in Belgium). If this happens, the dominant groups in a political community, particularly the civil service, resort to similar methods in order to stay in power, and organize everything from economically advantageous "patriotic" associations and activities to state-controlled loan associations (such as the *Preussenkasse*). The technical details of such propagandistic methods do not concern us here.

In this section we merely wanted to state in general terms, and to illustrate with some typical examples, the coexistence and opposition of expansionist and monopolist economic interests within diverse groups. We must forego any further details since this would require a special study of the various kinds of associations. Instead, we must deal briefly with the most frequent relationship between group activities and the economy: the fact that an extraordinarily large number of groups have secondary economic interests. Normally, these groups must have developed some kind of rational association; exceptions are those that develop out of the household (see ch. IV:2 below).

4. *Five Types of Want Satisfaction by Economically Active Groups*

Social action that has become rational association will have an established order for want satisfaction if it requires goods and services for its operations. In principle, there are five typical ways of securing these goods and services—as far as possible, the examples will be taken from political groups, since they have the most highly developed arrangements:

(1) The *oikos* type with its collective natural economy. The group members must render fixed personal services, which may be equal for all or specialized (for instance, universal conscription of all able-bodied men or specialized military duties as craftsmen—(*Ökonomiehandwerker*); moreover, they must meet the material needs by fixed payments

in kind (for the royal table or the military administration). Thus, these goods and services are not produced for the market but for the group's collective economy (for instance, a self-sufficient manorial or royal household—the pure type of the *oikos*—or a military administration that is completely dependent upon services and payments in kind, as—approximately—in ancient Egypt).

(2) *Market-oriented assessments* that make it possible for a group to meet its demands by buying equipment and employing workers, officials and mercenaries; these assessments may be compulsory taxes, regular dues, or fees at certain occasions; they may also be tributes from persons who are not otherwise group members, but who (a) benefit from certain advantages and opportunities (such as a Registry Office for real estate or some other agency) or physical facilities (such as roads)—the principle involved is that of a compensation for services rendered: fees in the technical sense; tributes may also be levied on persons who (b) simply happen to be within the group's power sphere (contributions from persons who are merely residents, duties from persons and goods passing through the group's territory).

(3) *Production for the market:* an enterprise sells its products and services and surrenders its profits to the group of which it is a part. The enterprise may not have a formal monopoly (witness the Prussian *Seehandlung* and the *Grande Chartreuse*), or it may be of the monopolist type that has been frequent in the past and the present (such as the post office). Obviously, every kind of combination is possible between these three, logically most consistent types. Money may be substituted for payments in kind, natural products may be sold on the market, capital goods may be secured directly by payments in kind or bought with the help of assessments. As a rule, the components of these types are combined with one another.

(4) The *maecenatic type:* Voluntary contributions are made by persons who can afford them and who have material or ideal interests in the group, whether or not they are members in other respects. (In the case of religious and political groups, the typical forms here are religious endowments, political subsidies by big contributors, but also the mendicant orders and the [not-so-] voluntary "gifts" to princes in early historical times.) There are no fixed rules and obligations and no necessary connections between contributions and other forms of participation: the sponsor may remain completely outside the group.

(5) *Contributions and services linked to positive and negative privileges.* (a) The positive variant occurs primarily when a certain economic or social monopoly is guaranteed or, conversely, when certain

privileged status groups or monopolized groups are completely or partly exempt. Hence contributions and services are not required according to general rules from the various property and income strata or the—at least in principle—freely accessible kinds of property and occupation; rather, they are required according to the specific economic and political powers and monopolies that have been granted to an individual or a group by the larger community. (Examples are manorial estates, tax privileges or special levies for guilds or certain status groups.) The point is that these demands are raised as a correlate of, or compensation for, the guarantee or appropriation of privileges. Thus, the method of want satisfaction creates or stabilizes a monopolistic differentiation of the group by virtue of the closure of the social and economic opportunities granted to its various strata. An important special case are the many diverse forms of feudal or patrimonial administration, with their linkage to appropriated power positions that permit the necessary amount of concerted action. (In the *Ständestaat* the prince must meet the costs of government from his patrimonial possessions, just like the feudal participants in political or patrimonial power and status, the vassals, *ministeriales* etc., must use their own means.) Most of the time, this mode of want satisfaction involves contributions in kind. However, under capitalism analogous phenomena may occur: for example, in one way or another, the political authorities may guarantee a monopoly to a group of entrepreneurs and in return impose contributions directly or through taxation. This method, which was widespread during the mercantilist era, is presently quite important again—witness the liquor tax in Germany.[7]

(b) Want satisfaction through negative privileges is called *liturgy*: We speak of *class liturgy*, if economically costly obligations are tied to a certain size or amount of property that is not privileged by any monopoly; at best, those affected can take turns. Examples are the *trierarchoi* and *choregoi* in Athens and the compulsory tax-farmers in the Hellenistic states. We speak of *status liturgy*, if the obligations are linked to monopolistic groups in such a manner that the members cannot withdraw unilaterally and hence remain collectively liable for satisfying the needs of the larger political unit. Examples are the compulsory guilds of ancient Egypt and late Antiquity; the hereditary attachment of the Russian peasants to the village, which is collectively liable for taxes; the more or less strict immobility of *coloni* and peasants throughout history, with their collective liability for paying taxes and, possibly, for providing recruits; and the Roman *decuriones*, who were collectively responsible for the taxes which they had to levy.

As a rule, the last type (5) of want satisfaction is inherently limited to compulsory associations, especially the political ones.

5. *Effects of Want Satisfaction and Taxation on Capitalism and Mercantilism*

The various modes of want satisfaction, always the result of struggles between different interests, often exert a far-reaching influence beyond their direct purpose. This may lead to a considerable degree of economic regulation: witness in particular the liturgical modes of want satisfaction. Even when this is not directly the case, these modes may strongly affect the development and the direction of the economy. For example, status-liturgy greatly contributed to the "closure" of social and economic opportunities, to the stabilization of status groups, and thus to the elimination of private capital formation. Moreover, if a political community satisfies its wants by public enterprises or by production for the market, private capitalism also tends to be eliminated. Monopolistic want satisfaction, too, affects private capitalism, but it may stimulate as well as impede private capital formation. This depends upon the particular nature of the state-sponsored monopolies. Ancient capitalism was suffocated because the Roman empire resorted increasingly to status-liturgy and partly also to public want satisfaction. Today, capitalist enterprises run by municipalities or the state in part redirect and in part displace private capitalism; the fact that the German exchanges have not quoted rail stocks since the railroads were nationalized is not only important for their position but also for the nature of property formation.* Private capitalism is retarded (for example, the growth of private distilleries), if monopolies are protected by the state and stabilized with state subsidies (as in the case of the German liquor tax). Conversely, during the Middle Ages and in early modern times, the trade and colonial monopolies at first facilitated the rise of capitalism, since under the given conditions only monopolies provided a sufficient profit span for capitalist enterprises. But later—in England during the 17th century—these monopolies impeded capitalist profit interests and provoked so much bitter opposition that they collapsed. Thus, the effect of tax-based monopolies is equivocal. However, clearly favorable to capitalist development has been want satisfaction through taxation and the market; in the extreme case, the open market is used as much as possible for administrative needs, including the recruitment and training of troops by private entrepreneurs, and all means are secured through tax monies. This presupposes, of course, a fully developed money economy and also a strictly rational and efficient administration: a bureaucracy.

This precondition is particularly important with regard to the taxation of personal ("mobile") property, a difficult undertaking everywhere, especially in a democracy. We must deal briefly with these difficulties,

since they have greatly affected the rise of modern capitalism. Even where the propertyless strata are dominant, the taxation of personal property meets certain limits as long as the propertied can freely leave the community. The degree of mobility depends not only on the relative importance of membership in this particular community for the propertied, but also on the nature of the property. Within compulsory associations, particularly political communities, all property utilization that is largely dependent on real estate is stationary, in contrast to personal property which is either monetary or easily exchangeable. If propertied families leave a community, those staying behind must pay more taxes; in a community dependent on a market economy, and particularly a labor market, the have-nots may find their economic opportunities so much reduced that they will abandon any reckless attempt at taxing the haves or will even deliberately favor them. Whether this will indeed happen, depends upon the economic structure of the community. In democratic Athens such considerations were outweighed by the incentives for taxing the propertied, since the Athenian state lived largely from the tributes of subjects and had an economy in which the labor market (in the modern sense of the term) did not yet determine the class situation of the masses.

Under modern conditions the reverse is usually true. Today communities in which the propertyless have seized power are often very cautious toward the propertied. Municipalities under socialist control, such as the city of Catania, have attracted factories with substantial tax-benefits, because the socialist rank and file were more interested in better job opportunities and in directly ameliorating their class situation, than in "just" property distribution and "equitable" taxation. Likewise, in spite of conflicting interests in a given case, landlords, speculators in building land, retailers and craftsmen tend to think first of their immediate class-determined interests; therefore, all kinds of mercantilism have been a frequent, though highly varied, phenomenon in all types of communities. This is all the more so since those concerned with the relative power position of a community also have an interest in preserving the tax base and great fortunes capable of granting them loans; hence, they are forced to treat personal property cautiously. Thus, even where the have-nots are in control, personal property may either expect mercantilist privileges or at least exemption from liturgies and taxes, *provided* a plurality of communities competes with one another among which the property owners can choose their domicile. One example is the United States, in which the separatism of the individual states led to the failure of all serious attempts at unifying consumer interests; more limited, but

still pertinent is the case of the municipalities of a country, and finally there are the independent countries themselves.

For the rest, the method of taxation depends, of course, very much on the relative power position of the various groups in a community, and on the nature of the economic system. Every increase of want satisfaction in kind favors the liturgical method. Thus, in Egypt the liturgical system originated in the Pharaonic period, and the course of the late Roman liturgical state, which was modelled after the Egyptian example, was determined by the largely natural economy of the conquered inland areas and the relative decline of the capitalist strata; in turn, these strata lost their former importance because the political and administrative transformation of the Empire eliminated the tax-farmer and the exploitation of the subjects through usury.

If personal ("mobile") property is dominant, the propertied everywhere unburden themselves of liturgical want satisfaction and shift the tax burden to the masses. In Rome military service used to be liturgically classified according to property and to involve the self-equipment of the propertied citizens; then, however, the knightly strata were freed from military service and replaced by the state equipped proletarian army, elsewhere the mercenary army, the costs of which were met by mass taxation. Instead of satisfying extraordinary public wants through the property tax or compulsory loans without interest, that is, through the liturgical liability of the propertied, the Middle Ages everywhere resorted to interest-bearing loans, land mortgages, customs and other assessments; thus, the propertied used pressing public needs as a source for profit and rent. Sometimes these practices would almost reduce a city's administration and tax system to an instrument of state creditors, as it happened for a time in Genoa.

Finally, at the beginning of modern history, the various countries engaged in the struggle for power needed ever more capital for political reasons and because of the expanding money economy. This resulted in that memorable alliance between the rising states and the sought-after and privileged capitalist powers that was a major factor in creating modern capitalism and fully justifies the designation "mercantilist" for the policies of that epoch. This usage is justified even though, in Antiquity and modern times, "mercantilism," as the protection of personal ("mobile") property, existed wherever several political communities competed with one another by enlarging their tax base and by promoting capital formation for the sake of obtaining private loans. The fact that "mercantilism" at the beginning of modern history had a specific character and specific effects had two reasons: (1) the political structure of the competing states and of their economy—this will be treated later—, and (2)

the novel structure of emergent modern capitalism, especially industrial capitalism, which was unknown to Antiquity and in the long run profited greatly from state protection. At any rate, from that time dates that European competitive struggle between large, approximately equal and purely political structures which has had such a global impact. It is well known that this political competition has remained one of the most important motives of the capitalist protectionism that emerged then and today continues in different forms. Neither the trade nor the monetary policies of the modern states—those policies most closely linked to the central interests of the present economic system—can be understood without this peculiar political competition and "equilibrium" among the European states during the last five hundred years—a phenomenon which Ranke recognized in his first work as the world-historical distinctiveness of this era.[9]

NOTES

1. This sentence appears to be a later insertion. The term *soziales Handeln* does not recur in the chapter; rather, Weber uses the older equivalent *Gemeinschaftshandeln*.

2. As is his wont, Weber uses the name of a given association in a generic sense, but also with an undertone of irony. In this case he refers to the *Verband der Diplomingenieure*, the association of engineering graduates from the Technical Colleges (*Hochschulen*), which ranked lower in prestige than the older universities. Such graduates often took pains to differentiate themselves from the products of engineering schools without university status and protected diplomas.

3. The Patriotic Association of Business Clerks was a union of white-collar employees who emphasized their social distance from the working class by pronounced nationalism. The association remained a prominent right-wing organization in the Weimar Republic.

4. Cf. Weber, *Economic History*, 30f.

5. Weber speaks later (ch. VI:8) of this as a practice among American Indians; Fischoff translates instead "India," but Ralph Linton locates the practice in Polynesia; see *The Tree of Culture* (New York: Knopf, 1955), 192.

6. Weber may refer here to contemporary events: female lecturers advocating free love and the right to illegitimate children, and a Freudian psychiatrist who proclaimed "sexual communism," appeared in Heidelberg and aroused his ire. However, Weber was by no means anti-feminist. When his wife organized a convention of the *Bund deutscher Frauenvereine* in Heidelberg in 1910, a faculty member attacked this meeting in a newspaper article as an assembly of spinsters, widows, Jewesses and sterile women—the last category obviously meant to include Marianne Weber. Weber wrote his wife's public defense, but this led to allegations that he was hiding behind her and refusing to duel in her behalf. The upshot was one of Weber's several involved lawsuits. Weber also helped Else von Richthofen, his first female doctorate candidate, to become the first female factory inspector in the state of Baden in 1900. (Her sister was the wife of D. H. Lawrence.) See Marianne Weber, *Max Weber*, 263f, 411ff and 472ff.

7. The Liquor Tax of 1909 was a major factor in ending the coalition between Liberals and Conservatives in the Reichstag and in precipitating Chancellor Bülow's resignation. At issue was a tax reform which would pay for the mounting military expenditures and at the same time distribute more equitably the tax burden among the various social strata.

8. In 1875, about half of the rapidly growing German railroads were still in private hands. Railshares were a major object of speculation before the great crash of 1873. The Prussian state, which had built railroads since 1847, embarked on large-scale nationalization after 1878. However, the interest in preventing further stock speculations was less important than were military considerations. Cf. Gustav Stolper, *German Economy: 1870–1940*. (New York: Reynal & Hitchcock, 1940), 72f.

9. Leopold von Ranke, *Histories of the Latin and Teuton Nations: 1495–1514* (London, 1909). G. R. Dennis, trans. First published in the summer of 1824. Cf. Theodore von Laue, *Leopold Ranke: The Formative Years* (Princeton: University Press, 1950), 24–32.

CHAPTER III

HOUSEHOLD, NEIGHBORHOOD AND KIN GROUP[1]

1. *The Household: Familial, Capitalistic and Communistic Solidarity*

An examination of the specific, often highly complex effects of the ways in which social groups satisfy their economic wants does not belong into this general review, and concrete individual instances will be considered merely as examples.

While abandoning any attempt to systematically classify the various kinds of groups according to the structure, content and means of social action—a task which belongs to general sociology—, we turn to a brief elucidation of those types of groups which are of the greatest importance for our exposition. Only the relationship of the economy to "society"—in our case, the general structures of human groups—will be discussed here and not the relationship between the economic sphere and specific areas of culture—literature, art, science, etc. Contents and directions of social action are discussed only insofar as they give rise to specific forms that are also economically relevant. The resulting boundary is no doubt quite fluid. At any rate, we shall be concerned only with certain universal types of groups. What follows is only a general characterization. Concrete historical forms of these groups will be discussed in greater detail in connection with "authority" [ch. X–XV].

The relationships between father, mother and children, established by a stable sexual union, appear to us today as particularly "natural"

relationships. However, separated from the household as a unit of economic maintenance, the sexually based relationship between husband and wife, and the physiologically determined relationship between father and children are wholly unstable and tenuous. The father relationship cannot exist without a stable economic household unit of father and mother: even where there is such a unit the father relationship may not always be of great import. Of all the relationships arising from sexual intercourse, only the mother-child relationship is "natural," because it is a biologically based household unit that lasts until the child is able to search for means of subsistence on his own.

Next comes the sibling group, which the Greeks called *homogalaktes* [literally: persons suckled with the same milk]. Here, too, the decisive point is not the fact of the common mother but that of common maintenance. Manifold group relationships emerge, in addition to sexual and physiological relationships, as soon as the family emerges as a specific social institution. Historically, the concept of the family had several meanings, and it is useful only if its particular meaning is always clearly defined. More will be said later on about this.

Although the grouping of mother and children must be regarded as (in the present sense) the most primitive sort of family, it does not mean —indeed, it is unimaginable—that there ever were societies with maternal groupings only. As far as it is known, wherever the maternal grouping prevails as a family type, group relationships, economic and military, exist among men as well, and so do those of men with women (both sexual and economic). The pure maternal grouping as a normal, but obviously secondary, form is often found precisely where men's everyday life is confined to the stable community of a "men's house," at first for military purposes, later on for other reasons. Men's houses [*Männerhäuser*] can be found in various countries as a specific concomitant and a resultant of militaristic development.

One cannot think of marriage as a mere combination of sexual union and socialization agency involving father, mother, and children. The concept of marriage can be defined only with reference to other groups and relationships besides these. Marriage as a social institution comes into existence everywhere only as an antithesis to sexual relationships which are *not* regarded as marriage. The existence of a marriage means that (1) a relationship formed against the will of the wife's or the husband's kin will not be tolerated and may even be avenged by an organization, such as in olden times the kinsmen of the husband or of the wife or both. (2) It means especially that only children born of stable sexual relationships within a more inclusive economic, political, religious, or other community to which one or both parents belong will be treated, by virtue of

their descent, as equal members of an organization—house, village, kin, political group, status group, religious group; while descendants who are a product of other sexual relationships will not be treated in such a manner. This and nothing else is the meaning of the distinction between birth in wedlock and out of wedlock. The prerequisites of a legitimate marriage, the classes of persons not allowed to enter into stable relationships with each other, the kinds of permission and kinds of kinship or other connections required for their validity, the usages which must be observed—all these matters are regulated by the "sacred" traditions and the laws of those groups. Thus, it is the regulations of groups other than mere sexual groupings and sibling communities of experience which endow the marriage with its specific quality. We do not intend to expound here the anthropologically very significant development of these regulations, since it is only their most important economic aspects which concern us.

Sexual relationships and the relationships between children based on the fact of their common parent or parents can engender social action only by becoming the normal, though not the only, bases of a specific economic organization: the household.

The household cannot be regarded as simply a primitive institution. Its prerequisite is not a "household" in the present-day sense of the word, but rather a certain degree of organized cultivation of soil.

The household does not seem to have existed in a primitive economy of hunters and nomads. However, even under the conditions of a technically well-advanced agriculture, the household is often secondary with respect to a preceding state which accorded more power to the inclusive kinship and neighborhood group on the one hand, and more freedom to the individual vis-a-vis the parents, children, grandchildren, and siblings on the other hand. The almost complete separation of the husband's and wife's means and belongings, which was very frequent especially where social differentiation was low, seems to point in this direction, as does the occasional custom according to which man and wife were seated back to back during their meals or even took their meals separately, and the fact that within the political group there existed independent organizations of women with female chieftains alongside the men's organizations. However, one should not infer from such facts the existence of an individualistic primitive condition. Rather, conditions that are due to a certain type of military organization, such as the man's absence from the house for his military service, lead to a "manless" household management by the wives and mothers. Such conditions were residually preserved in the family structure of the Spartans, which was based on the man's absence from the home and separation of belongings.

The size and inclusiveness of the household varies. But it is the most

widespread economic group and involves continuous and intensive social action. It is the fundamental basis of loyalty and authority, which in turn is the basis of many other groups. This "authority" is of two kinds: (1) the authority derived from superior strength; and (2) the authority derived from practical knowledge and experience. It is, thus, the authority of men as against women and children; of the able-bodied as against those of lesser capability; of the adult as against the child; of the old as against the young. The "loyalty" is one of subjects toward the holders of authority and toward one another. As reverence for ancestors, it finds its way into religion; as a loyalty of the patrimonial official, retainer, or vassal, it becomes a part of the relationships originally having a domestic character.

In terms of economic and personal relationships, the household in its "pure," though not necessarily primitive, form implies solidarity in dealing with the outside and communism of property and consumption of everyday goods within (household communism). The principle of solidarity in facing the outside world was still found in its pure form in the periodically contractually regulated households as entrepreneurial units in the medieval cities of northern and central Italy, especially those most advanced in capitalist economy. All members of the household, including at times even the clerks and apprentices who were members by contract, were jointly responsible to the creditors. This is the historic source of the joint liability of the owners of a private company for the debts incurred by the firm. This concept of joint liability was of great importance in the subsequent development of the legal forms of modern capitalism.[2]

There was nothing corresponding to our law of inheritance in the old household communism. In its place there was, rather, the simple idea that the household is "immortal." If one of its members dies, or is expelled (after committing an inexpiable ill deed), or is permitted to join another household (by adoption), or is dismissed (*emancipatio*), or leaves out of his own accord (where this is permitted), he cannot possibly lay claim to his "share." By leaving the household he has relinquished his share. If a member of the household dies, the joint economy of the survivors simply goes on. The Swiss *Gemeinderschaften* operate in such a way to the present day.[3]

The principle of household communism, according to which everybody contributes what he can and takes what he needs (as far as the supply of goods suffices), constitutes even today the essential feature of our family household, but is limited in the main to household consumption.

Common residence is an essential attribute of the pure type of household. Increase in size brings about a division and creation of separate households. In order to keep the property and the labor force intact, a

compromise based on local decentralization without partition can be adopted. Granting some special privileges to the individual household is an inevitable consequence of such a solution. Such a partition can be carried to a complete legal separation and independence in the control of the business, yet at the same time a surprisingly large measure of household communism can still be preserved. It happens in Europe, particularly in the Alpine countries (cf. Swiss hotel-keepers' families), and also in the large family firms of international trade that, while the household and household authority have outwardly completely disappeared, a communism of risk and profit, i.e., sharing of profit and loss of otherwise altogether independent business managements, continues to exist.

I have been told about conditions in international houses with earnings amounting to millions, whose capital belongs for the most part, but not exclusively, to relatives of varying degree and whose management is predominantly, but not solely, in the hands of the members of the family. The individual establishments operate in very diverse lines of business; they possess highly variable amounts of capital and labor force; and they achieve widely variable profits. In spite of this, after the deduction of the usual interest on capital, the annual returns of all the branches are simply thrown into one hopper, divided into equal portions, and allotted according to an amazingly simple formula (often by the number of heads). The household communism on this level is being preserved for the sake of mutual economic support, which guarantees a balancing of capital requirements and capital surplus between the business establishments and spares them from having to solicit credit from outsiders. The "calculative spirit" thus does not extend to the distribution of balance-sheet results, but it dominates all the more within the individual enterprise: even a close relative without capital and working as an employee will not be paid more than any other employee, because calculated costs of operation cannot be arbitrarily altered in favor of one individual without creating dissatisfaction in others. Beyond the balance sheet, those lucky enough to participate enter the "realm of equality and brotherhood."

2. *The Neighborhood: An Unsentimental Economic Brotherhood*

The household meets the everyday demands for goods and labor. In a self-sufficient agrarian economy a good deal of the extraordinary demands at special occasions, during natural calamities and social emer-

gencies are met by social action that transcends the individual household: the assistance of the neighborhood. For us, the neighborhood is not only the "natural" one of the rural settlement but every permanent or ephemeral community of interest that derives from physical proximity; of course, if not specified further, we refer most of the time to the neighborhood of households settled close to one another.

The group of neighbors may take on different forms depending on the type of settlement: scattered farms, a village, a city street or a slum; neighborly social action may have different degrees of intensity and, especially in the modern city, it may be almost non-existent. To be sure, the extent of mutual help and of sacrifices that even today occurs frequently in the apartment houses of the poor may be astonishing to one who discovers it for the first time. However, not only the fleeting "togetherness" in streetcar, railroad or hotel, but also the enduring one in an apartment house is by and large oriented toward maintaining the greatest possible *distance* in spite (or because) of the physical proximity, and some social action is likely only in cases of common danger. We cannot discuss here why this attitude has become so conspicuous under modern conditions as a result of the specific sense of individual dignity created by them. Suffice it to note that the same ambivalence has always occurred in the stable rural neighborhood. the individual peasant does not like any interference with his affairs, no matter how well-meant it may be. Neighborly co-operation is an exception, although it recurs regularly. It is always less intensive and more discontinuous than the social action of the household, and the circle of participants is far more unstable. For in general, the neighborhood group is merely based on the simple fact that people happen to reside close to one another. In the self-sufficient rural economy of early history the typical neighborhood is the village, a group of households bordering upon each other. However, the neighborhood may also be effective beyond the fixed boundaries of other, in particular political, structures. In practice, neighborhood means mutual dependence in case of distress, especially when the transportation technology is undeveloped. The neighbor is the typical helper in need, and hence neighborhood is brotherhood, albeit in an unpathetic, primarily economic sense. If the household is short of means, mutual help may be requested: the loans of implements and goods free of charge, and "free labor for the asking" (*Bittarbeit*) in case of urgent need. This mutual help is guided by the primeval popular ethics which is as unsentimental as it is universal: "Do unto others as you would have them do unto you." (This is also nicely indicated by the Roman term *mutuum* for an interest-free loan.) For everybody may get into a situation in which he needs the help of others. If a compensation is provided, it consists in

feasting the helpers, as in the typical case of neighborly help for house construction (still practiced in the German East). If an exchange takes place, the maxim applies: "Brothers do not bargain with one another." This eliminates the rational market principle of price determination.

Neighborliness is not restricted to social equals. Voluntary labor (*Bittarbeit*), which has great practical importance, is not only given to the needy but also to the economic powers-that-be, especially at harvest time, when the big landowner needs it most. In return, the helpers expect that he protect their common interests against other powers, and also that he grant surplus land free of charge or for the usual labor assistance —the *precarium* was land for the asking. The helpers trust that he will give them food during a famine and show charity in other ways, which he indeed does since he too is time and again dependent on them. In time this purely customary labor may become the basis of manorial services and thus give rise to patrimonial domination if the lord's power and the indispensability of his protection increase, and if he succeeds in turning custom into a right.

Even though the neighborhood is the typical locus of brotherhood, neighbors do not necessarily maintain "brotherly" relations. On the contrary: Wherever popularly prescribed behavior is vitiated by personal enmity and conflicting interests, hostility tends to be extreme and lasting, exactly because the opponents are aware of their breach of common ethics and seek to justify themselves, and also because the personal relations had been particularly close and frequent.

The neighborhood may amount to an amorphous social action, with fluctuating participation, hence be "open" and intermittent. Firm boundaries tend to arise only when a closed association emerges, and this occurs as a rule when the neighborhood becomes an economic group proper or an economically regulatory group. This may happen for economic reasons, in the typical fashion familiar to us; for example, when pastures and forests become scarce, their use may be regulated in a "co-operative" (*genossenschaftlich*) manner, that means, monopolistically. However, the neighborhood is not necessarily an economic, or a regulatory, group, and where it is, it is so in greatly varying degrees. The neighborhood may regulate the behavior of its members either through an association of its own: witness the *Flurzwang* [the compulsory regulation of tilling and crop rotation under the open-field system]; or a regulation may be imposed by outsiders (individuals or communities), with whom the neighbors are associated economically or politically (for example, the landlords of tenement houses). But all of this is not essential for neighborly social action. Even in the self-sufficient household economy of early times, there is no necessary identity among neighborhood, the forest

regulations of political communities, especially the village, the territorial economic association (for example, the *Markgemeinschaft*) and the polity; they may be related in very diverse ways. The size of the territorial economic associations may vary according to the objects they comprise. Fields, pastures, forests and hunting grounds are often controlled by different groups, which overlap with one another and with the polity. Wherever peaceful activities are the primary means of making a living, the agent of joint work, the household, is likely to have control, and wherever maintenance depends upon land seized by force, the polity, and more so for extensively used land, such as hunting grounds and forests, than for pastures and fields.

Furthermore, the individual types of possessions tend to become scarce at different historical stages and hence subject to regulatory association; forests may still be free objects when pastures and fields are already economic ones and their use has been regulated and appropriated. Hence, diverse territorial associations may appropriate different kinds of land.

The neighborhood is the natural basis of the local community (*Gemeinde*)—a structure which arises only, as we shall see later [cf. ch. XVI, "The City"], by virtue of political action comprising a ***multitude*** of neighborhoods. Moreover, the neighborhood may itself become the basis of political action, if it controls a territory such as a village; and in the course of organizational rationalization, it may engage in activities of all kinds (from public schools and religious functions to the systematic settling of necessary crafts), or the polity may impose them as an obligation. But the essence of neighborly social action is merely that sombre economic brotherhood practiced in case of need.

3. *The Regulation of Sexual Relations in the Household*

We shall now return to the household, the most "natural" of the externally closed types of social action. Typically, the development from the primeval household communism runs counter to the kind of communism described in the previous example [in sec. 1], when profits and losses were shared in spite of the separation of the households; rather, typical is the internal weakening of household communism, that means, the progress of internal closure in the face of the continued external unity of the household.

The earliest substantial inroads into unmitigated communist house authority proceed not directly from economic motives but apparently from the development of exclusive sexual claims of the male over women

subjected to their authority. This may result in a highly casuistic but strictly enforced regulation of sex relations, especially if social action is not much rationalized in other respects. It is true that sexual rights sometimes occur in "communist" form (polyandry), but in all known instances such polyandric rights constitute only a relative communism: a limited number of men (brothers or the members of a men's house) are exclusive co-owners by virtue of the common acquisition of a woman.

Nowhere do we find unregulated, amorphous sexual promiscuity within the house, even if sexual relations between siblings are a recognized institution; at least nowhere on a normative basis. On the contrary, any kind of communist sexual freedom is most thoroughly banished from a house in which there is communist property ownership. The [younger] members of such a household could adjust to this because their sexual attraction to one another was minimized by having grown up together. Subsequent normative elaboration was obviously in the interest of safeguarding solidarity and domestic peace in the face of jealousies. Where the members of the house belong to different sibs because of sib exogamy and hence would be free to engage in sexual relations, they are nevertheless forced to avoid one another because house exogamy is older than sib exogamy and persists next to it. The beginnings of regulated exogamy can perhaps be found in exchange arrangements of households and of sibs, which resulted from their division. At any rate, sexual relations are even disapproved of among close relatives among whom this would be permissible according to the sib code (for example, among very close paternal relatives under rules of matrilineal exogamy). As an institution, the marriage between siblings and relatives is commonly limited to socially prominent families, especially royal houses; its purpose is the preservation of economic resources, probably also the avoidance of struggles among pretenders, and finally the purity of the blood—hence it is a secondary phenomenon.

As a rule, then, a man acquires exclusive sexual rights over a woman when he takes her into his house or enters her house if his means are insufficient. Of course, this exclusiveness, too, has often enough been precarious vis-à-vis the autocratic head of the house. Notorious are the liberties, for example, which the father-in-law of an extended Russian family could take up until modern times. Normally, however, the household differentiates itself into permanent sexual unions with their offspring. In our times, the household consists of the parents and their children, together with the personal servants and at most a spinster relative. However, the household of earlier periods was not always very large; often it was small if finding sustenance required dispersion. However, history has known many households ("extended families") based

on parent and child relations but comprising grandchildren, brothers, cousins and outsiders, to a degree which has become very rare in advanced countries. The extended family prevails where a large number of hands are required, hence where agriculture is intensive, and also where property is intended to remain concentrated in the interest of social and economic dominance, hence in aristocratic and plutocratic strata.

Apart from the very early closure of sexual relations within the household, the sexual sphere was further narrowed, especially at otherwise low levels of cultural differentiation, by structures that overlapped with domestic authority. In fact, one can say that these imposed the first decisive limitations on domestic authority. As blood relationships gain importance, incest transcends the house to include other relatives and becomes subject to casuistic regulation by the *kin group* (*Sippe*).

4. *The Kin Group and Its Economic Effects on the Household*

The kin group is not as "natural" a group as the household or the neighborhood. As a rule, its social action is discontinuous and lacks association; in fact, the kin group proves that social action is possible even if the participants do not know one another and action is merely passive (refraining from sexual relations, for example). The kin group presupposes the existence of others within a larger community. It is the natural vehicle of all fealty (*Treue*). Friendship is originally an artificial blood brotherhood. The vassal as well as the modern officer are not only subordinates but also the lord's brothers, "comrades" (that means, "roommates," originally household members). Substantively, the kin group competes with the household in the sphere of sexual relations and in-group solidarity; it is a protective group, which substitutes for our detective force and vice squad; and it is also a group of expectant heirs made up of those former household members who left when it was divided or when they married, and of their descendants. Hence with the kin group begins inheritance outside the household. Since members are committed to blood revenge, the in-group solidarity of the kin group may become more important than loyalty toward partiarchal authority.

We should keep in mind that the kin group is not an extended or decentralized household or a superordinate structure uniting several households: that may be the case, but as a rule it is not. Whether a particular kin group cuts across the households or comprises all members depends upon its structure, which may assign father and children to

different groups, as we shall see later. Kin membership may not mean more than that marriage within the group is prohibited (exogamy); in this case the members may have common marks of identification and may believe in common descent from a natural object, most of the time an animal, which the members are usually not allowed to eat (totemism).

Furthermore, the kin members are forbidden to engage in combat with one another; they must practice blood revenge and be collectively liable to it, at least in the case of close relatives. Blood revenge in turn requires the joint declaration of a feud in case of a homicide and establishes the right and the duty of the kin members to receive and to pay a compensation (*Wergild*). The kin group is also open to Divine revenge in case of perjury, since it provides oath-bound witnesses at a trial. In this manner the kin group guarantees the security and legal personality of the individual.

Finally, the neighborhood established by a settlement (a village, a rural commune of villages—*Markgenossenschaft*) may coincide with the kin group; then the household is indeed a unit of the kin group. Even if this is not the case, the kin members often retain very palpable rights in relation to domestic authority: a veto against the sale of property, the right of participating in the selling of daughters into marriage and of receiving part of the bridal price, the rights of providing a legal guardian, etc.

Collective selfhelp is for the kin group the most typical means of reacting to infringements upon its interests. The oldest procedures approximating a trial are compulsory arbitration of conflict *within* the household or the kin group, either by the household head or the kin elder who best knows the customs, and mutually agreed arbitration *between* several households and kin groups. The kin group competes with political groups as an independent, overlapping group deriving from common descent, which may be actual, fictitious or artificially created through blood brotherhood; it is a complex of obligations and loyalties between persons who may belong not only to different households but also to different political and even language groups. The kin group may be completely unorganized, a kind of passive counter-image of the authoritarian household. For its normal functioning it does not require a leader with powers of control; indeed, as a rule, the kin group is merely an amorphous circle of persons who may be identified positively by forming a religious community and negatively by their refraining from the violation or consumption of a joint sacred object (taboo); we shall deal later [ch. VI] with the religious rationale for such behavior. It seems scarcely possible to assume, as Gierke has done, that kin groups with some kind of continuous government are the older form; rather, the reverse is the rule:

kin groups become associations only when it seems desirable to erect economic or social monopolies against outsiders. If the kin group has a head and functions as a political group, it may serve originally extraneous purposes of a political, military or economic nature; in this case it becomes part of a heterogeneous social structure—witness the *gens* as a subdivision of the *curia* or the [Germanic] "sibs" as military units.

Especially in periods in which social action is otherwise scarcely developed, household, kin group, neighborhood and political community typically overlap in such a manner that the members of a household and a village may belong to different kin groups, and the kin members to different political and even language communities. Hence it is possible that neighbors or members of the same political group and even of the same household are expected to practice blood revenge against one another. These drastically conflicting obligations were removed only when the political community gradually monopolized the use of physical force. However, if political action occurs only intermittently, when there is an external threat or booty seekers associate, the kin group's importance and the rationalization of its structure and obligations may approximate scholastic casuistry (as for example in Australia).

The manner in which the kin groups are organized and regulate sexual relations is important because of the repercussions on the composition and the economic structure of the households. Domestic authority over a child derives from matrilineal or patrilineal descent, and this in turn defines the other households in which the child has a property share, in particular access to economic opportunities which these households appropriated within economic, status, or political groups. Hence those other groups are interested in the manner in which household membership is established; in any given case the prevailing order is a resultant of the economic and also the political interests of all groups involved. It should be clearly understood from the beginning that as soon as a household becomes part of other groups that control economic and other opportunities, it cannot freely attribute membership, the less so the more limited these opportunities become. Patrilineal or matrilineal descent and their consequences are determined by the most diverse interests, which cannot be analyzed here in detail. In the case of matrilineal descent the child is protected and disciplined by the mother's brothers, apart from his father, and also receives his inheritance from them (*avunculate*); the mother exercises domestic authority only in rare cases subject to special conditions. In a patrilineal system, the child is subject to the power of his paternal relatives, apart from his father's, and he inherits from them. Today kinship and succession are as a rule cognate, that means, there is no difference between the father's and the mother's side, whereas do-

mestic authority is exercised by the father or, if he is not there, often by a close relative who is appointed as a guardian and supervised by the public authorities; however, in the past patrilineal and matrilineal principles were often mutually exclusive. This did not necessarily mean that only one applied in a given group to all households; one principle might apply in one household, the other in another one. In the simplest case this competition of the two principles originated in property differentiation. Like all children, daughters are considered economic assets of the household into which they are born. The household decides their disposition. The head might offer them to his guests, just like his own wife, or he might permit sexual relations temporarily or permanently in exchange for goods and services. This "prostitution" of female household members accounts for many cases that are subsumed under the imprecise collective name of *matriarchy* (*Mutterrecht*). Husband and wife each remain members of their own household, the children belong to the mother's household, and the father is for them an alien who merely pays "alimony" (in modern terminology) to the household head. Hence husband, wife and children do not form a household of their own.

However, if there is such a household it may have a patrilineal or matrilineal basis. The man who can afford to pay cash for a woman takes her out of her household and kin group into his own. In this case the woman and her children are fully owned by the man's household. However, a man who cannot pay for a woman whom he desires must join her household, if its head permits the union, either temporarily in order to work off her price ("service marriage") or permanently, and then the woman's household retains control over her and the children. Thus the head of a well-to-do household buys women from less prosperous households for himself and his sons (so-called *diga*-marriage); or forces impecunious suitors to join his own household (*tlma*-marriage). Hence patrilineal and matrilineal descent and the domestic authority of the father's or the mother's household may exist side by side for different persons within the *same* household. In this simple case patrilineal descent is always linked to control by the father's household, and vice versa. This relationship grows more complex when the husband takes the wife into his household and thus places her under its authority, but when matrilineal attribution remains, that means, when the children belong to the mother's kin group as her exogamous sex group and are subject to the rules of blood revenge and inheritance of her group. As a technical term, *matriarchy* ("mother right") should be restricted to this phenomenon. To be sure, as far as we know, matriarchy does not occur in this form in which the father's relation to the children is extremely restricted because they are legally aliens in spite of his authority. However, there are various

intermediate stages: The mother's house may yield her to the father's household and yet retain certain rights in her and her children. Frequently matrilineal rules of kin exogamy apply because superstitious fear of incest persists; moreover, matrilineal rules of succession are often retained in varying degrees. This is likely to give rise to many conflicts between the two kin groups, the outcome of which depends very much on the land holdings, the influence of the village neighborhood and the role of military associations.

NOTES

1 The chapter titles of chs. III and IV and the subheadings were chosen by the English editor in an attempt to make clearer the content of the various sections and to come closer to Weber's original outline, which envisaged a chapter on "Household, Oikos and Enterprise," to be followed by "Neighborhood, Kin Group and Community." However, the text reverses some of the chapter sequence, unless the changes were made by the original editors.

For another discussion of marriage and kinship in relation to economic factors, see Weber's *Economic History*, 37–53, and Marianne Weber's *Ehefrau und Mutter in der Rechtsentwicklung* (1907); for other background literature, see below, Soc. of Law, ch. VIII; *ii*, nn. 18, 70–74.

2. On this point, see Weber's dissertation: *Zur Geschichte der Handelsgesellschaften im Mittelalter* (Stuttgart 1889), reprinted in *GAzSW*, 312–443, esp. ch. III ("Die Familien- und Arbeitsgemeinschaften").

3. Cf. Eugen Huber, *System und Geschichte d. Schweizer Privatrechts* (1893), vol. IV, and Max Huber, *Gemeinderschaften der Schweiz* (Breslau 1897).

CHAPTER IV

HOUSEHOLD, ENTERPRISE AND OIKOS

1. *The Impact of Economic, Military and Political Groups on Joint Property Law and Succession in the Household*

Unfortunately, the relationships between kin group, village, the "commune" of villages (*Markgenossenschaft*) and political association belong to the most obscure and least investigated areas of ethnography and economic history. Not one case has been completely elucidated, neither the primitive stages of civilized peoples nor the so-called primitive tribes (*Naturvölker*), not even the American Indians, in spite of Morgan's research. The neighborhood organization of a village may originate in a given case in the division of the inheritance of a household. When nomadic cultivation is replaced by permanent agriculture, land may be assigned on a kinship basis, since the latter is usually taken into account in military organization; thus the territory of a village (*Dorfgemarkung*) may be considered kin property. This seems to have happened in ancient Germanic times, since the sources speak of *genealogiae* as the owners of village territory even when it appears that the land was not occupied by a noble family with its retainers. However, this was probably not the rule. As far as we know, the military bodies of a hundred or a thousand men, which developed from cadres into territorial units, were not unambiguously linked to the kin groups, and neither were the latter to the "rural communes" (*Markgemeinschaften*).

We can make only three generalizations: (1) Land may be primarily a place to work on. In this case all land and all yield belong to the women's kin groups, as long as cultivation is primarily women's work.

The father does not leave any land to his children, since it is handed down through the mother's house and kin group; the paternal inheritance comprises only military equipment, weapons, horses and tools of male crafts. In pure form this case is rare. (2) Conversely, land may be considered male property won and defended by force; unarmed persons, especially women, cannot have a share in it. Hence, the father's local political association may be interested in retaining his sons as military manpower; since the sons join the father's military group, they inherit the land from him, and only movable property from the mother. (3) The neighborhood composed of a village or a "rural commune" (*Markgenossenschaft*) always controls the land gained through joint deforestation, that means, through men's work, and does not permit its inheritance by children who do not continuously fulfill their obligations toward the association. The clash of these practices, and possibly of even more complex ones, may have very diverse results. However, we cannot make a fourth generalization that might suggest itself in view of these practices: that the primarily military character of a group points unambiguously to the predominance of the father's house and of male ("agnatic") family and property attribution. Rather this depends on the type of military organization. The able-bodied age-groups may permanently live in barracks; typical examples are the "men's house" described by Schurtz or the Spartan *syssitiae*.[1] In this case the men's absence frequently establishes the household as a "maternal grouping" in which children and property are attributed to the maternal household, or the woman achieves at least a relative domestic independence, as it is reported for Sparta. The numerous means that were specifically invented to intimidate and rob women—for example, the periodic predatory exploits of the *duk-duk*—[2] are an attempt by the men who have left the household to strengthen their threatened authority.

However, when the members of a military caste were landowners living dispersed in the countryside, the patriarchal and agnatic structure of household and kin group became usually predominant. As far as our historical knowledge goes, the empire-building peoples of the Far East and India, the Near East, the Mediterranean and the European North developed patrilineal descent and exclusively agnatic attribution of kinship and property, contrary to a frequent assumption, the Egyptians also had patrilineal descent even though they did not have agnatic attribution. The major reason for this phenomenon is that great empires cannot be maintained in the long run by small monopolistic, staff-like groups of warriors who live closely together in the manner of "men's houses"; in a natural economy empire-building requires as a rule the patrimonial and seigneurial control of the land, even if this subjection proceeds from

groups of closely settled warriors, as in Antiquity. The manorial administration develops quite naturally out of the patriarchal household that is turned into an apparatus of domination; everywhere the manor originates in patriarchal authority. Hence, there is no serious evidence for the assertion that the predominance of patrilineal descent among those peoples was ever preceded by another order, ever since kinship relations among them had been regulated by any law at all. Particularly worthless is the hypothesis of a once universal prevalence of matriarchal marriage. This construct confuses very heterogeneous phenomena: it blurs the difference between primitive conditions under which parent-child relations are not legally regulated at all, hence the mother is indeed closer to the children whom she feeds and rears, and a *legal* arrangement deserving the name "matriarchy" (*Mutterrecht*). Equally erroneous is the idea that marriage by abduction was a universal intermediate stage between "matriarchy" and "patriarchy." A woman can be legitimately acquired from another household only through exchange or purchase. Abduction results in feud and restitution. It is true that for the hero the abducted woman is a trophy, just like the scalp of the enemy, but we cannot say that actual abduction was a stage in legal history.

Because of the very predominance of patriarchy, property law develops in the great empires in the direction of steadily *weakening* unlimited patriarchal power. Since legal restraints were originally missing, no distinction was made between "legitimate" and "illegitimate" children; in the Germanic law of the Middle Ages the master's right to identify "his" child was a residue of the once unlimited power of the patriarch. This state of affairs was definitely changed only with the intervention of political and economic groups, which made membership dependent upon "legitimate" descent, that means, on permanent relations with women from their own circle. The most important stage in the development of this principle, the very distinction between "legitimate" and "illegitimate" children and the protection of the right of succession for the former, is usually reached when the propertied or status-privileged strata no longer regard women merely as chattel and begin to protect by contract daughters, and their children, against the original discretion of the buyer. From then on his property is supposed to be inherited only by the children from this marriage. Hence the motivating force of this development is not the man's but the woman's interest in "legitimate" children. As status aspirations and the corresponding costs of living rise, the woman, who is now regarded as a luxury possession, receives a dowry; at the same time this represents the compensation for her share in the household—a purpose clearly stipulated in ancient Oriental and Hellenic law—and provides her with the material means of destroying the

husband's unlimited discretion, since he must return the dowry if he divorces her. In time, this purpose was achieved, in different degrees and not always through formal law, but often so successfully that only an endowed marriage was considered a marriage proper (ἔγγραφος γάμος in Egypt).

We cannot deal here further with the development of joint property rights. Decisive changes occur wherever the military importance of land declines as a possession taken by force or as the basis of maintaining able-bodied men (capable of equipping themselves); then real estate can be used primarily for economic purposes, especially in the cities, and daughters too can succeed to land. The compromise between the interests of husband and wife and of their kin varies greatly depending on whether the family lives primarily from joint *labor earnings* or from rent-producing *property*.

In the Occidental Middle Ages the institution of joint property prevailed in the former case and that of joint administration (actually the administration and utilization of the wife's property by the husband) in the latter; in addition, since the feudal families did not want to release any land, widows were maintained through a rent attached to family holdings, as it occurred typically in England (dower marriage). For the rest the most diverse determinants may come into play. The social conditions of the Roman and English nobility were similar in some respects, but very different in others. Whereas in ancient Rome the wife became economically and personally emancipated by virtue of the freely dissolvable marriage, yet was completely unprotected as a widow and had no legal control whatsoever over her children, in England the wife remained under coverture which prevented any economic and legal independence and made it almost impossible for her to dissolve the feudal "dower marriage." The difference seems to have been owing to the more developed urban character of the Roman nobility, on the one hand, and the impact of Christian patriarchalism in the English family on the other. Whereas feudal marriage law persisted in England and French marriage law was shaped by petty-bourgeois and militaristic considerations—in the *Code Napoléon* through the personal influence of its creator—, bureaucratic states (such as Austria and Russia) have minimized sex differences in the joint property law; this levelling tends to go furthest where militarism has receded most in the ruling classes. With the advance of the market economy the marital property structure is also strongly influenced by the need to protect creditors. The manifold arrangements deriving from these factors do not belong in the present context.

The "legitimate" marriage that developed out of the wife's interests does not necessarily lead to a speedy adoption of monogamy. The wife

whose children are privileged in relation to succession may be distinguished as the "chief wife" in a circle of other wives, as it was the case in the Orient, in Egypt and in most civilized Asian areas. This type of semi-polygamy was of course everywhere a privilege of the propertied strata. The ownership of several wives is lucrative only when women still do most of the agricultural work, at most when their textile production is especially profitable (as is still assumed in the Talmud); for example, the possession of a large number of women is considered a profitable capital investment by the chieftains in Caffraria; this presupposes, of course, that the man has the necessary means to buy women. But polygamy is too costly for all middle-income groups in an economy in which male work predominates, and especially in social strata in which women work only as dilettantes or for luxury needs in jobs considered beneath the dignity of freemen. Monogamy was institutionalized first among the Hellenes (even though the royal families did not consistently adhere to it as late as the period of the Diadochs) and among the Romans; it fitted into the household structure of the emergent urban patriciate. Subsequently Christianity raised monogamy to an absolute norm for ascetic reasons, in contrast to at least the early stages of all other religions. In the main, polygamy persisted in those cases in which the strictly patriarchal structure of political authority helped to preserve the discretion of the household head.

The institution of the dowry affects the development of the household in two ways: (1) As against the children of concubines, the "legitimate" children achieve special legal status as the sole inheritors of the paternal property; (2) the husband's economic position tends to be differentiated according to the wife's dowry, which in turn depends on her family's wealth. It is true that the dowry becomes formally subject to the husband's discretion (especially in Roman law), but in fact it tends to be set aside as a "special account." Thus the calculating spirit enters into the relations between the family members.

However, at this stage other economic motives have usually begun this dissolution of the household. Undifferentiated communism was economically deflected at such an early stage that it existed historically perhaps only in marginal cases. In principle, artifacts such as tools, arms, jewelry and clothes may be used by their producer alone or preferentially, and they are inherited not necessarily by the group but by other qualified individuals. (Examples are riding horse and sword, in the Middle Ages the *Heergewäte*, the *Gerade*, etc.) These incipient forms of the individual right to succession developed very early even under authoritarian house communism; however, their beginnings probably antecede the household itself and are found wherever tools are produced by individ-

uals. In the case of arms, the same development was probably owing to the intervention of military powers interested in equipping the most able-bodied men.

2. *The Disintegration of the Household: The Rise of the Calculative Spirit and of the Modern Capitalist Enterprise*

In the course of cultural development, the internal and external determinants of the weakening of household authority gain ascendancy. Operating from within, and correlated with the quantitative growth of economic means and resources, is the development and differentiation of abilities and wants. With the multiplication of life chances and opportunities, the individual becomes less and less content with being bound to rigid and undifferentiated forms of life prescribed by the group. Increasingly he desires to shape his life as an individual and to enjoy the fruits of his own abilities and labor as he himself wishes.

The disintegration of the household authority is furthered by a number of other groups. One factor is the fiscal interest in a more intensive exploitation of the individual taxpayer. These groups may work contrary to the household's interests in keeping property intact for the sake of military self-equipment. The usual consequence of these disintegrative tendencies is, in the first place, the increasing likelihood of division in case of inheritance or marriage of children. In the early times of relatively primitive agriculture, employment of mass labor was the only means of increasing land yields. As a result, the household grew in size. However, the development of individualized production brought about a decrease in the size of households, which continued until the family of parents and children constitutes the norm today.

The function of the household has changed so radically that it is becoming increasingly inopportune for an individual to join a large communistic household. An individual no longer gets protection from the household and kinship groups but rather from political authority, which exercises compulsory jurisdiction. Furthermore, household and occupation become ecologically separated, and the household is no longer a unit of common production but of common consumption. Moreover, the individual receives his entire education increasingly from outside his home and by means which are supplied by various enterprises: schools, bookstores, theaters, concert halls, clubs, meetings, etc. He can no longer regard the household as the bearer of those cultural values in whose service he places himself.

This decrease in the size of households is not due to a growing "subjectivism," understood as a stage of social psychological development, but to the *objective* determinants of its growth. It should not be overlooked that there exist also hindrances to this development, particularly on the highest levels of the economic scale. In agriculture, the possibility of unrestricted splitting up of landed estates is tied in with certain technological conditions. An integrated estate, even a large one, with valuable buildings on it, can be partitioned only at a loss. The division is technically facilitated by mixed holdings and village settlement. Isolated location makes such a partition difficult. Separate farms and large estates, operated with an intensive expenditure of capital, therefore tend to be inherited by one individual. A small farm, operated with intensive expenditure of labor on scattered holdings, has a tendency to continuous splintering. In addition, the separate farm and large estate are much more suitable objects from which to extract payments in favor of movable property [i.e., money lenders] in the form of permanent or long-term mortgages, and they are thus kept intact for the benefit of the creditors.

Large property-holding, being a determinant of position and prestige, is conducive to the desire to keep it intact in the family. A small farm, on the other hand, is merely a place where work is done. There is an appositeness between the seigneurial standard of life, with its fixed conventions, and the large household. Given the spaciousness of, say, a castle and the almost inevitable "inner distance" even between the closest relatives, these large households do not restrain the freedom that the individual demands to such an extent as does the middle-class household, which may consist of an equally large number of persons but occupies a smaller space and lacks the aristocratic sense of distance, and whose members, moreover, typically have far more differentiated life interests than do those of an estate-seated gentry family. Today, the large household provides an appropriate way of life, aside from the seigneurial one, only for the highly intense ideological community of a sect, whether religious, social-ethical or artistic—corresponding to the monasteries and the cloister-like communities of the past.

Even where the household unit remains outwardly intact, the internal dissolution of household communism by virtue of the growing sense of calculation (*Rechenhaftigkeit*) goes on irresistibly in the course of cultural development. Let us look at the consequences of this factor in somewhat greater detail.

As early as in the large capitalistic households of medieval cities—for example, in Florence—every person had his own account. He has pocket money (*danari borsinghi*) at his disposal. Specific limits are set for certain expenditures—for example, if he invites a visitor for a stay. The member must settle his account in the same way as do partners in

any modern trading company. He has capital shares "in" the house and [separate "outside"] wealth (*fuori della compagnia*) which the house controls and for which it pays him interest, but which is not regarded as working capital proper and therefore does not share in the profit.[3] Thus, a rational association takes the place of the "natural" participation in the household's social action with its advantages and obligations. The individual is born into the household, but even as a child he is already a potential business partner of the rationally managed enterprise. It is evident that such conduct became possible only within the framework of a money economy, which therefore plays a crucial role in the internal dissolution of the household. The money eonomy makes possible an objective calculation both of the productive performances and of the consumption of the individuals, and for the first time makes it possible for them to satisfy their wants freely, through the indirect exchange medium of money.

The parallelism of money economy and attenuation of household authority is, of course, far from complete. Domestic authority and household are relatively independent of economic conditions, in spite of the latters' great importance, and appear "irrational" from an economic point of view; in fact, they often shape economic relationships because of their own historic structure. For example, the *patria potestas*, which the head of a Roman family retained until the end of his life, had economic and social as well as political and religious roots (the preservation of a patrician household, military affiliation according to kinship and, probably, house, and the father's position as house priest). The *patria potestas* persisted during the most diverse economic stages before it was finally attenuated under the Empire, even toward the children. In China, the same situation was perpetuated by the principle of filial piety, which was carried to an extreme by the code of duties and furthered by the state and the bureaucratic status ethic of Confucianism, in part for reasons of political domestication. This principle led not only to economically untenable consequences (as in the mourning regulations) but also to politically questionable results (for example, large-scale office vacancies, because piety toward the late father—originally, fear of the dead man's envy—forbade the use of his property and the occupation of his office).

Economic factors originally determined to a large extent whether a property was inherited by one person or principal heir or whether it was divided. This practice varies with economic influences, but it cannot be explained solely by economic factors, and especially not by modern economic conditions. This was demonstrated particularly in the recent studies of Sering and others.[4] Under identical conditions and in contiguous areas, there exist often quite disparate systems, affected especially by different ethnic composition, e.g., Poles and Germans. The fa-

reaching economic consequences of these differing structures were caused by factors that could be regarded as economically "irrational" from the very beginning, or that became irrational as a consequence of changes in economic conditions.

In spite of all, the economic realities intervene in a compelling manner. First, there are characteristic differences depending on whether economic gain is attributed to common work or to common property. If the former situation obtains, the household authority is usually basically unstable, no matter how autocratic it may be. Mere separation from the parental household and the establishment of an independent household is sufficient for a person to be set free from the household authority. This is mostly the case in the large households of primitive agricultural peoples. The *emancipatio legis Saxonicae* of the German law clearly has its economic foundation in the importance of personal labor, which prevailed at the time.

On the other hand, the household authority is typically stable wherever ownership of livestock, and property in general, forms the prime economic basis. This is particularly true when land ceases to be abundant and becomes a scarce commodity. For reasons already alluded to, family and lineage cohesion is generally an attribute of the landed aristocracy. The man without any landed property or with only little of it is also without lineage group.

The same difference is to be found in the capitalistic stage of development. The large households of Florence and other parts of northern Italy practiced the principle of joint responsibility and of maintaining the property intact. In the trading places of the Mediterranean, especially in Sicily and southern Italy, the exact opposite was the case: each adult member of the household could at any time request his share while the legator was still alive. Nor did joint personal liability to the outsiders exist. In the family enterprises of northern Italy, the inherited capital represented the basis of economic power to a greater degree than did the personal business activities of the partners. The opposite was true in southern Italy, where common property was treated as a product of common work. With the increasing importance of capital, the former practice gained ascendancy. In this case, the capitalist economy, a "later" stage in terms of a theory of development starting with undifferentiated social action, determines a theoretically "earlier" structure in which the household members are more tightly bound to the household and subjected to household authority.

However, at the same time a far more significant, and *uniquely Occidental,* transformation of domestic authority and household was under way in these Florentine and other business-oriented medieval houses.

The entire economic arrangements of such large households were periodically regulated by *contract*. Whereas, originally, the personal funds and the business organization were regulated by the same set of rules, the situation gradually changed. Continuous capitalist acquisition became a special vocation performed in an increasingly separate enterprise. An autonomous rational association emerged out of the social action of the household, in such a way that the old identity of household, workshop and office fell apart, which had been taken for granted in the undifferentiated household as well as the ancient *oikos*, to be discussed in the next section. First, the household ceased to exist as a necessary basis of rational business association. Henceforth, the partner was not necessarily—or typically—a house member. Consequently, business assets had to be separated from the private property of the partners. Similarly, a distinction began to be made between the business employees and the domestic servants. Above all, the commercial debts had to be distinguished from the private debts of the partners, and joint responsibility had to be limited to the former, which were identified as such by being contracted under the "firm," the business name.

This whole development is obviously a precise parallel to the separation of the bureaucratic office as a "vocation" from private life, the "bureau" from the private household, the official assets and liabilities from private property, and the official dealings from private dealings; this will be discussed in the analysis of authority [chapter XI]. The capitalist enterprise, created by the household which eventually retreats from it, thus is related from the very beginning to the "bureau" and the now obvious bureaucratization of the private economy.

But the factor of decisive importance in this development is not the spatial differentiation or separation of the household from the work-shop and the store. This is rather typical of the bazaar system of the Islamic cities in the Orient, which rests throughout on the separation of the castle (*kasbah*), bazaar (*suk*), and residences. What is crucial is the separation of household and business for accounting and legal purposes, and the development of a suitable body of laws, such as the commercial register, elimination of dependence of the association and the firm upon the family, separate property of the private firm or limited partnership, and appropriate laws on bankruptcy. This fundamentally important development is the characteristic feature of the Occident, and it is worthy of note that the legal forms of our present commercial law were almost all developed as early as the Middle Ages—whereas they were almost entirely foreign to the law of Antiquity with its capitalism that was quantitatively sometimes much more developed. This is one of the many phenomena characterizing most clearly the qualitative uniqueness of the

development of modern capitalism, since both the concentration of the family property for the purpose of mutual economic support and the development of a "firm" from a family name existed, for example, in China as well. There, too, the joint liability of the family stands behind the debts of the individual. The name used by a company in commercial transactions does not provide information about the actual proprietor: there, too, the "firm" is related to the business organization and not to the household. But the laws on private property and bankruptcy as they were developed in Europe seem to be absent in China, where two things are of special relevance: Association and credit, until the modern era, were to a large degree dependent on the kinship group. Likewise, the keeping of the property intact in the well-to-do kinship groups and the mutual granting of credit within the kinship groups served different purposes. They were concerned not with capitalistic profit but with raising money to cover the costs of family members' preparation for the examinations and afterwards for the purchase of an office. The incumbency of the office then offered the relatives an opportunity to recover their expenses with a profit from the legal and illegal revenues that the office afforded. Furthermore, these relatives could benefit from the protection of the office-holder. It was the chances of the politically rather than economically determined gain that were conducive to the "capitalistic" cohesion of the family, especially one that was well-off economically.

The capitalistic type of association which corresponds to our joint-stock company and is completely detached, at least formally, from kinship and personal ties has its antecedents in Antiquity only in the area of politically oriented capitalism, i.e., in companies of tax-farmers. In the Middle Ages, such associations were also organized in part for colonizing ventures—such as the big partnerships of the *maone* in Genoa—and in part for state credit—such as the Genoese group of creditors which for all practical purposes held the municipal finances under sequester. In the realm of private enterprise, a purely commercial and capitalistic type of association initially developed only in the form of *ad hoc* groupings in long-distance trade, such as the *commenda* association which can be found already in Old Babylonian law and later quite universally: A financier entrusts his capital to a travelling merchant for a concrete voyage, with profit or loss distribution on this basis. This is the form typical for the period of "intermittent trade" (*Gelegenheitshandel*). Enterprises in the form of joint-stock corporations which were monopolistically privileged by the political powers, especially colonial undertakings, constituted the transition to the application of such organizational types also in purely private business.

3. *The Alternative Development: The* Oikos

These kinds of undertakings which, as the basis of a capitalist enterprise, constitute its most radical separation from the original identity with the household do not particularly concern us at this point. Rather, we shall turn to a radically different way in which a household may evolve. The disintegration of the household and of domestic authority because of exchange with the outside, and the resulting rise of the capitalist enterprise proceed in juxtaposition to the household's internal evolution into an *oikos,* as Rodbertus called it.[5] This is not simply any large household or one which produces on its own various products, agricultural or industrial; rather, it is the authoritarian household of a prince, manorial lord or patrician. Its dominant motive is not capitalistic acquisition but the lord's organized want satisfaction in kind. For this purpose, he may resort to any means, including large-scale trade. Decisive for him is the utilization of property, not capital investment. The essence of the oikos is organized want satisfaction, even if market-oriented enterprises are attached to it. Of course, there is a scale of imperceptible transitions between the two modes of economic orientation, and often also a more or less rapid transformation from one into the other. In reality, if there is a relatively developed technology, the oikos is rarely a purely collective natural economy; for it can exist purely only if it permanently eliminates all exchange, and practices, or at least aims at, autarky, hence if it is a self-sufficient economy so far as possible. In this case an apparatus of house-dependent labor, which often is highly specialized, produces all the goods and personal services, economic, military and sacral, which the ruler requires. His own land provides the raw materials, his workshops with their personally unfree labor supply all other materials. The remaining services are provided by servants, officials, house priests and warriors. Exchange takes place only if surplus is to be dumped or if goods simply cannot be procured in any other way. This state of affairs was approximated to a considerable extent by the royal economies of the Orient, especially of Egypt, and to a lesser degree by the households of the Homeric aristocrats and princes; those of the Persian and Frankish kings also appear quite similar. In the Roman empire the landed estates moved increasingly in this direction as they grew in size, the slave supply fell off and capitalist acquisition was curbed by bureaucracy and liturgy. But the medieval manor took the opposite course with the increasing importance of trade, the cities and the money economy. However, in all these cases the oikos was never really self-sufficient. The Pharaoh engaged in foreign trade just as did the majority of the early princes and aristocrats of the Mediterranean; their treasuries depended heavily upon

trade proceeds. As early as the Frankish kingdom the seigneurs received substantial amounts of money or various tributes which had cash-value. The *capitularia* took for granted that the royal *fisci* were free to sell whatever was not needed by the court and the army. In all better known cases only a part of the unfree work-force of the big owners of land and people was completely tied to their household. Those most strictly attached to the household were the personal servants and the workers who labored in the master's self-sufficient household and were wholly maintained by him: the case of *autarkic utilization of labor*. However, another group of strictly attached workers consists of those who produced for the market; the Carthaginian, Sicilian and Roman plantation owners employed their barrack slaves in this fashion, as did the father of Demosthenes with the slaves in his two *ergasteria* or, in modern times, the Russian landlords with the peasants in their factories: these are cases of the *capitalist utilization of unfree labor*. However, many slaves on the plantations and in the *ergasteria* were bought on the market, hence they were not "produced" in the household. Unfree workers born in the master's household presuppose some kind of unfree "family," and this implies an attenuation of attachment and normally also of the full exploitation of labor power. Therefore, the majority of these hereditarily unfree workers is not employed in centralized enterprises, but surrenders only part of their work capacity to the master, and pays him more or less arbitrary and traditionally fixed taxes in kind or in coin. Whether the master prefers to use his unfree workers as a work-force or as a source of revenue depends above all on what yields most to him in a given situation. Barrack slaves without families can be replaced only if they are very cheap and plentiful; this presupposes continuous slavery wars and low food costs (a Southern climate). Hereditarily attached peasants, moreover, can pay money taxes only if there is a (local) market, and this in turn requires a degree of urban development. Where this was low, and the harvest yield could be fully used only through export, as in the German and European East at the beginning of modern times (in contrast to the West) and in the "Black Earth" regions of Russia in the nineteenth century, the forced labor of the peasants was the only way of making money. In this way large-scale market-oriented enterprise developed within the oikos. The owner of an oikos may become almost indistinguishable, or wholly identical, with a capitalist entrepreneur, if he establishes large industrial undertaking with his own unfree labor, or rented unfree or even free workers; he may use the latter two groups either partly or exclusively, and he may run his own or rented *ergasteria*. A major example for this transformation are the creators of the Silesian *starost* [i.e., village steward] industries.[6]

Ultimately, the oikos is defined only by the rent-producing utilization of property, but in terms of the owner's primary interest this meaning may become practically indistinguishable from, or outright identical with, entrepreneurial capital proper. The manorial origin of the *starost*-industry is visible only because of the particular combination of enterprises: large-scale lumbering with brick-yards, distilleries, sugar refineries, coal mines, that means, of enterprises that are not integrated, along technically or economically suggested, horizontal or vertical lines, like the modern combines and mixed firms. However, a manorial lord who adds a foundry or a steelmill to his coal mines, or a lumbermill and papermill to his lumbering operations may in practice bring about the same result. Only the starting point, not the end product are different. In the ancient *ergasteria*, too, we find incipient combinations based on the possession of raw materials. The father of Demosthenes, who descended from a family of Attic merchants, was an importer of ivory which he sold τῷ βουλομένῳ [i.e., to anyone desiring it, to any comer] and which was used as inlay for knife handles and furniture. He eventually trained slaves to manufacture knives in his own workshop and, in addition, had to take over the *ergasterion*, that means, mostly the slaves, of a banktupt cabinet-maker. He combined these holdings into both a cutlery and a furniture *ergasterion*. The *ergasterion* developed further during the Hellenistic period, especially in Alexandria, up until early Islamic times. The use of unfree craftsmen as a source of rent was widely known throughout Antiquity, both in the Orient and the Occident, during the early Middle Ages, and in Russia until the emancipation of the serfs. The master may rent his slaves, as Nikias did with masses of unskilled slaves for the mine-owners. He may turn them into skilled craftsmen, a practice found in all Antiquity, from a contract in which [the Persian] crown prince Kambyses [6th century B.C.] is mentioned as the owner of the trainer, up to the [late Roman] pandects, but it is also found in Russia as late as the 18th and 19th century. The master may also leave it to the slaves, after he arranged for their training, to work for their own account in exchange for a rent (Greek: *apophora*, Babylonian: *mandaku*, German: *Halssteuer*, Russian: *obrok*). The master may also provide them with a workshop and capital equipment (*peculium*) as well as working capital (*merx peculiaris*). Historically, we find all imaginable transitions from almost total mobility to complete regimentation in barracks. A more detailed description of the "enterprises" emerging within the oikos and run by either the master or the unfree belongs into a different set of topics. However, the transformation of the oikos into a patrimonial rulership will be discussed in the analysis of the forms of domination.

NOTES

1. Heinrich Schurtz, *Altersklassen und Männerbünde* (1902). (W)—For further literature, see Soc. of Law, ch. VIII:*ii*, n. 13.

2. *Duk-Duk:* secret society of the New Britain Archipelago N.E. of New Guinea. Cf. Graf von Pfeil, "Duk-Duk," 27 *Journal of Anthropol. Institut.*, 181; E. A. Weber, *The Duk-Duk* (1929). (Rh) For a more detailed description of the Duk-Duk, see below, ch. IX:2.

3. Cf. Weber, *Handelsgesellschaften*, ch. V, in *GAzSW*, 411ff.

4. See, e.g., Max Sering et al., *Die Vererbung des ländlichen Grundbesitzes im Königreich Preussen* (Berlin: Parey, 1908). Cf. also *GAzSW*, 463f.

5. Karl Johann Rodbertus (1805–75), who championed a conservative form of socialism, advanced the theory that all of Antiquity should be classified as falling into the stage of the "*oikos* economy," a concept created by him; cf. Weber, *Agrarverhältnisse*, in *GAzSW*, 7, and *supra*, Part One, ch. II, n. 34.

6. The term could not be traced, but elsewhere Weber refers to "the typical *starost*-industry of Silesia and Bohemia—thus styled, as is well known, by Engel—which is a form of 'wealth-utilization,' as contrasted to the 'capital-utilization' of bourgeois industry . . ." (*AfS*, Vol. 38 [1914], 544). The reference might be to the famous Prussian statistician Ernst Engel (1821–1896). On this phenomenon and the origin of Silesian and Bohemian linen industry, see also *Economic History*, 104; Arthur Salz, *Geschichte der böhmischen Industrie in der Neuzeit* (Munich: Duncker & Humblot, 1913), 365–383.

CHAPTER V

ETHNIC GROUPS

1. *"Race" Membership*[1]

A much more problematic source of social action than the sources analyzed above is "race-identity": common inherited and inheritable traits that actually derive from common descent. Of course, race creates a "group" only when it is subjectively perceived as a common trait: this happens only when a neighborhood or the mere proximity of racially different persons is the basis of joint (mostly political) action, or conversely, when some common experiences of members of the same race are linked to some antagonism against members of an *obviously* different group. The resulting social action is usually merely negative: those who are obviously different are avoided and despised or, conversely, viewed with superstitious awe. Persons who are externally different are simply despised irrespective of what they accomplish or what they are, or they are venerated superstitiously if they are too powerful in the long run. In this case antipathy is the primary and normal reaction. However, this antipathy is shared not just by persons with anthropological similarities, and its extent is by no means determined by the degree of anthropological relatedness; furthermore, this antipathy is linked not only to inherited traits but just as much to other visible differences.

If the degree of objective racial difference can be determined, among other things, purely physiologically by establishing whether hybrids reproduce themselves at approximately normal rates, the subjective aspects, the reciprocal racial attraction and repulsion, might be measured by finding out whether sexual relations are preferred or rare between two groups, and whether they are carried on permanently or temporarily and irregularly. In all groups with a developed "ethnic" consciousness the existence or absence of intermarriage (*connubium*) would then be a normal consequence of racial attraction or segregation. Serious research on the sexual attraction and repulsion between different ethnic groups is only incipient, but there is not the slightest doubt that racial factors,

that means, common descent, influence the incidence of sexual relations and of marriage, sometimes decisively. However, the existence of several million mulattoes in the United States speaks clearly against the assumption of a "natural" racial antipathy, even among quite different races. Apart from the laws against biracial marriages in the Southern states, sexual relations between the two races are now abhorred by both sides, but this development began only with the Emancipation and resulted from the Negroes' demand for equal civil rights. Hence this abhorrence on the part of the Whites is socially determined by the previously sketched tendency toward the monopolization of social power and honor, a tendency which in this case happens to be linked to race.

The *connubium* itself, that means, the fact that the offspring from a permanent sexual relationship can share in the activities and advantages of the father's political, economic or status group, depends on many circumstances. Under undiminished patriarchal powers, which we treat elsewhere, the father was free to grant equal rights to his children from slaves. Moreover, the glorification of abduction by the hero made racial mixing a normal event within the ruling strata. However, patriarchal discretion was progressively curtailed with the monopolistic closure, by now familiar to us, of political, status or other groups and with the monopolization of marriage opportunities; these tendencies restricted the *connubium* to the offspring from a permanent sexual union within the given political, religious, economic and status group. This also produced a high incidence of inbreeding. The "endogamy" of a group is probably everywhere a secondary product of such tendencies, if we define it not merely as the fact that a permanent sexual union occurs primarily on the basis of joint membership in some association, but as a process of social action in which only endogamous children are accepted as full members. (The term "sib endogamy" should not be used; there is no such thing unless we want to refer to the levirate marriage and arrangements in which daughters have the right to succession, but these have secondary, religious and political origins.) "Pure" anthropological types are often a secondary consequence of such closure; examples are sects (as in India) as well as pariah peoples, that means, groups that are socially despised yet wanted as neighbors because they have monopolized indispensable skills.

Reasons other than actual racial kinship influence the degree to which blood relationship is taken into account. In the United States the smallest admixture of Negro blood disqualifies a person unconditionally, whereas very considerable admixtures of Indian blood do not. Doubtlessly, it is important that Negroes appear esthetically even more alien than Indians, but it remains very significant that Negroes were slaves

and hence disqualified in the status hierarchy. The conventional *connubium* is far less impeded by anthropological differences than by status differences, that means, differences due to socialization and upbringing (*Bildung* in the widest sense of the word). Mere anthropological differences account for little, except in cases of extreme esthetic antipathy.

2. *The Belief in Common Ethnicity: Its Multiple Social Origins and Theoretical Ambiguities*

The question of whether conspicuous "racial" differences are based on biological heredity or on tradition is usually of no importance as far as their effect on mutual attraction or repulsion is concerned. This is true of the development of endogamous conjugal groups, and even more so of attraction and repulsion in other kinds of social intercourse, i.e., whether all sorts of friendly, companionable, or economic relationships between such groups are established easily and on the footing of mutual trust and respect, or whether such relationships are established with difficulty and with precautions that betray mistrust.

The more or less easy emergence of social circles in the broadest sense of the word (*soziale Verkehrsgemeinschaft*) may be linked to the most superficial features of historically accidental habits just as much as to inherited racial characteristics. That the different custom is not understood in its subjective meaning since the cultural key to it is lacking, is almost as decisive as the peculiarity of the custom as such. But, as we shall soon see, not all repulsion is attributable to the absence of a "consensual group." Differences in the styles of beard and hairdo, clothes, food and eating habits, division of labor between the sexes, and all kinds of other visible differences can, in a given case, give rise to repulsion and contempt, but the actual extent of these differences is irrelevant for the emotional impact, as is illustrated by primitive travel descriptions, the Histories of Herodotus or the older prescientific ethnography. Seen from their positive aspect, however, these differences may give rise to consciousness of kind, which may become as easily the bearer of group relationships as groups ranging from the household and neighborhood to political and religious communities are usually the bearers of shared customs. All differences of customs can sustain a specific sense of honor or dignity in their practitioners. The original motives or reasons for the inception of different habits of life are forgotten and the contrasts are then perpetuated as conventions. In this manner, any group can create customs, and it can also effect, in certain circumstances very decisively, the selection of anthropological types. This it can do by providing favor-

able chances of survival and reproduction for certain hereditary qualities and traits. This holds both for internal assimilation and for external differentiation.

Any cultural trait, no matter how superficial, can serve as a starting point for the familiar tendency to monopolistic closure. However, the universal force of imitation has the general effect of only gradually changing the traditional customs and usages, just as anthropological types are changed only gradually by racial mixing. But if there are sharp boundaries between areas of observable styles of life, they are due to conscious monopolistic closure, which started from small differences that were then cultivated and intensified; or they are due to the peaceful or warlike migrations of groups that previously lived far from each other and had accommodated themselves to their heterogeneous conditions of existence. Similarly, strikingly different racial types, bred in isolation, may live in sharply segregated proximity to one another either because of monopolistic closure or because of migration. We can conclude then that similarity and contrast of physical type and custom, regardless of whether they are biologically inherited or culturally transmitted, are subject to the same conditions of group life, in origin as well as in effectiveness, and identical in their potential for group formation. The difference lies partly in the differential instability of type and custom, partly in the fixed (though often unknown) limit to engendering new hereditary qualities. Compared to this, the scope for assimilation of new customs is incomparably greater, although there are considerable variations in the transmissibility of traditions.

Almost any kind of similarity or contrast of physical type and of habits can induce the belief that affinity or disaffinity exists between groups that attract or repel each other. Not every belief in tribal affinity, however, is founded on the resemblance of customs or of physical type. But in spite of great variations in this area, such a belief can exist and can develop group-forming powers when it is buttressed by a memory of an actual migration, be it colonization or individual migration. The persistent effect of the old ways and of childhood reminiscences continues as a source of native-country sentiment (*Heimatsgefühl*) among emigrants even when they have become so thoroughly adjusted to the new country that return to their homeland would be intolerable (this being the case of most German-Americans, for example).

In colonies, the attachment to the colonists' homeland survives despite considerable mixing with the inhabitants of the colonial land and despite profound changes in tradition and hereditary type as well. In case of political colonization, the decisive factor is the need for political support. In general, the continuation of relationships created by

marriage is important, and so are the market relationships, provided that the "customs" remained unchanged. These market relationships between the homeland and the colony may be very close, as long as the consumer standards remain similar, and especially when colonies are in an almost absolutely alien environment and within an alien political territory.

The belief in group affinity, regardless of whether it has any objective foundation, can have important consequences especially for the formation of a political community. We shall call "ethnic groups" those human groups that entertain a subjective belief in their common descent because of similarities of physical type or of customs or both, or because of memories of colonization and migration; this belief must be important for the propagation of group formation; conversely, it does not matter whether or not an objective blood relationship exists. Ethnic membership (*Gemeinsamkeit*) differs from the kinship group precisely by being a presumed identity, not a group with concrete social action, like the latter. In our sense, ethnic membership does not constitute a group; it only facilitates group formation of any kind, particularly in the political sphere. On the other hand, it is primarily the political community, no matter how artificially organized, that inspires the belief in common ethnicity. This belief tends to persist even after the disintegration of the political community, unless drastic differences in the custom, physical type, or, above all, language exist among its members.

This artificial origin of the belief in common ethnicity follows the previously described pattern [cf. chapter II:3] of rational association turning into personal relationships. If rationally regulated action is not widespread, almost any association, even the most rational one, creates an overarching communal consciousness; this takes the form of a brotherhood on the basis of the belief in common ethnicity. As late as the Greek city state, even the most arbitrary division of the polis became for the member an association with at least a common cult and often a common fictitious ancestor. The twelve tribes of Israel were subdivisions of a political community, and they alternated in performing certain functions on a monthly basis. The same holds for the Greek tribes (*phylai*) and their subdivisions; the latter, too, were regarded as units of common ethnic descent. It is true that the original division may have been induced by political or actual ethnic differences, but the effect was the same when such a division was made quite rationally and schematically, after the break-up of old groups and relinquishment of local cohesion, as it was done by Cleisthenes. It does not follow, therefore, that the Greek polis was actually or originally a tribal or lineage state, but that ethnic fictions were a sign of the rather low degree of rationalization of Greek political life. Conversely, it is a symptom of the greater rationalization of Rome

that its old schematic subdivisions (*curiae*) took on religious importance, with a pretense to ethnic origin, to only a small degree.

The belief in common ethnicity often delimits "social circles," which in turn are not always identical with endogamous connubial groups, for greatly varying numbers of persons may be encompassed by both. Their similarity rests on the belief in a specific "honor" of their members, not shared by the outsiders, that is, the sense of "ethnic honor" (a phenomenon closely related to status honor, which will be discussed later). These few remarks must suffice at this point. A specialized sociological study of ethnicity would have to make a finer distinction between these concepts than we have done for our limited purposes.

Groups, in turn, can engender sentiments of likeness which will persist even after their demise and will have an "ethnic" connotation. The political community in particular can produce such an effect. But most directly, such an effect is created by the *language group*, which is the bearer of a specific "cultural possession of the masses" (*Massenkulturgut*) and makes mutual understanding (*Verstehen*) possible or easier.

Wherever the memory of the origin of a community by peaceful secession or emigration ("colony," *ver sacrum*, and the like) from a mother community remains for some reason alive, there undoubtedly exists a very specific and often extremely powerful sense of ethnic identity, which is determined by several factors: shared political memories or, even more importantly in early times, persistent ties with the old cult, or the strengthening of kinship and other groups, both in the old and the new community, or other persistent relationships. Where these ties are lacking, or once they cease to exist, the sense of ethnic group membership is absent, regardless of how close the kinship may be.

Apart from the community of language, which may or may not coincide with objective, or subjectively believed, consanguinity, and apart from common religious belief, which is also independent of consanguinity, the ethnic differences that remain are, on the one hand, esthetically conspicuous differences of the physical appearance (as mentioned before) and, on the other hand and of equal weight, the perceptible differences in the *conduct of everyday life*. Of special importance are precisely those items which may otherwise seem to be of small social relevance, since when ethnic differentiation is concerned it is always the conspicuous differences that come into play.

Common language and the ritual regulation of life, as determined by shared religious beliefs, everywhere are conducive to feelings of ethnic affinity, especially since the intelligibility of the behavior of others is the most fundamental presupposition of group formation. But since we shall not consider these two elements in the present context, we ask: what is

it that remains? It must be admitted that palpable differences in dialect and differences of religion in themselves do not exclude sentiments of common ethnicity. Next to pronounced differences in the economic way of life, the belief in ethnic affinity has at all times been affected by outward differences in clothes, in the style of housing, food and eating habits, the division of labor between the sexes and between the free and the unfree. That is to say, these things concern one's conception of what is correct and proper and, above all, of what affects the individual's sense of honor and dignity. All those things we shall find later on as objects of specific differences between status groups. The conviction of the excellence of one's own customs and the inferiority of alien ones, a conviction which sustains the sense of ethnic honor, is actually quite analogous to the sense of honor of distinctive status groups.

The sense of ethnic honor is a specific honor of the masses (*Massenehre*), for it is accessible to anybody who belongs to the subjectively believed community of descent. The "poor white trash," i.e., the propertyless and, in the absence of job opportunities, very often destitute white inhabitants of the southern states of the United States of America in the period of slavery, were the actual bearers of racial antipathy, which was quite foreign to the planters. This was so because the social honor of the "poor whites" was dependent upon the social *déclassement* of the Negroes.

And behind all ethnic diversities there is somehow naturally the notion of the "chosen people," which is merely a counterpart of status differentiation translated into the plane of horizontal co-existence. The idea of a chosen people derives its popularity from the fact that it can be claimed to an equal degree by any and every member of the mutually despising groups, in contrast to status differentiation which always rests on subordination. Consequently, ethnic repulsion may take hold of all conceivable differences among the notions of propriety and transform them into "ethnic conventions."

Besides the previously mentioned elements, which were still more or less closely related to the economic order, conventionalization (a term expounded elsewhere) may take hold of such things as a hairdo or style of beard and the like. The differences thereof have an "ethnically" repulsive effect, because they are thought of as symbols of ethnic membership. Of course, the repulsion is not always based merely on the "symbolic" character of the distinguishing traits. The fact that the Scythian women oiled their hair with butter, which then gave off a rancid odor, while Greek women used perfumed oil to achieve the same purpose, thwarted—according to an ancient report—all attempts at social intercourse between the aristocratic ladies of these two groups. The smell of

butter certainly had a more compelling effect than even the most prominent racial differences, or—as far as I could see—the "Negro odor," of which so many fables are told. In general, racial qualities are effective only as limiting factors with regard to the belief in common ethnicity, such as in case of an excessively heterogeneous and esthetically unaccepted physical type; they are not positively group-forming.

Pronounced differences of custom, which play a role equal to that of inherited physical type in the creation of feelings of common ethnicity and notions of kinship, are usually caused, in addition to linguistic and religious differences, by the diverse economic and political conditions of various social groups. If we ignore cases of clear-cut linguistic boundaries and sharply demarcated political or religious communities as a basis of differences of custom—and these in fact are lacking in wide areas of the African and South American continents—then there are only gradual transitions of custom and no immutable ethnic frontiers, except those due to gross geographical differences. The sharp demarcations of areas wherein ethnically relevant customs predominate, which were not conditioned either by political or economic or religious factors, usually came into existence by way of migration or expansion, when groups of people that had previously lived in complete or partial isolation from each other and became accommodated to heterogeneous conditions of existence came to live side by side. As a result, the obvious contrast usually evokes, on both sides, the idea of blood disaffinity (*Blutsfremdheit*), regardless of the objective state of affairs.

It is understandably difficult to determine in general—and even in a concrete individual case—what influence specific ethnic factors (i.e., the belief in a blood relationship, or its opposite, which rests on similarities, or differences, of a person's physical appearance and style of life) have on the formation of a group.

There is no difference between the ethnically relevant customs and customs in general, as far as their effect is concerned. The belief in common descent, in combination with a similarity of customs, is likely to promote the spread of the activities of one part of an ethnic group among the rest, since the awareness of ethnic identity furthers imitation. This is especially true of the propaganda of religious groups.

It is not feasible to go beyond these vague generalizations. The content of joint activities that are possible on an ethnic basis remains indefinite. There is a corresponding ambiguity of concepts denoting ethnically determined action, that means, determined by the belief in blood relationship. Such concepts are *Völkerschaft*, *Stamm* (tribe), *Volk* (people), each of which is ordinarily used in the sense of an ethnic subdivision of the following one (although the first two may be used in

reversed order). Using such terms, one usually implies either the existence of a contemporary political community, no matter how loosely organized, or memories of an extinct political community, such as they are preserved in epic tales and legends; or the existence of a linguistic or dialect group; or, finally, of a religious group. In the past, cults in particular were the typical concomitant of a tribal or *Volk* consciousness. But in the absence of the political community, contemporary or past, the external delimitation of the group was usually indistinct. The cult communities of Germanic tribes, as late as the Burgundian period [6th century A.D.], were probably rudiments of political communities and therefore pretty well defined. By contrast, the Delphian oracle, the undoubted cultic symbol of Hellenism, also revealed information to the barbarians and accepted their veneration, and it was an organized cult only among some Greek segments, excluding the most powerful cities. The cult as an exponent of ethnic identity is thus generally either a remnant of a largely political community which once existed but was destroyed by disunion and colonization, or it is—as in the case of the Delphian Apollo—a product of a *Kulturgemeinschaft* brought about by other than purely ethnic conditions, but which in turn gives rise to the belief in blood relationship. All history shows how easily political action can give rise to the belief in blood relationship, unless gross differences of anthropological type impede it.

3. *Tribe and Political Community: The Disutility of the Notion of "Ethnic Group"*

The tribe is clearly delimited when it is a subdivision of a polity, which, in fact, often establishes it. In this case, the artificial origin is revealed by the round numbers in which tribes usually appear, for example, the previously mentioned division of the people of Israel into twelve tribes, the three Doric *phylai* and the various *phylai* of the other Hellenes. When a political community was newly established or reorganized, the population was newly divided. Hence the tribe is here a political artifact, even though it soon adopts the whole symbolism of blood-relationship and particularly a tribal cult. Even today it is not rare that political artifacts develop a sense of affinity akin to that of blood-relationship. Very schematic constructs such as those states of the United States that were made into squares according to their latitude have a strong sense of identity; it is also not rare that families travel from New York to Richmond to make an expected child a "Virginian."

Such artificiality does not preclude the possibility that the Hellenic *phylai*, for example, were at one time independent and that the polis used them schematically when they were merged into a political association. However, tribes that existed before the *polis* were either identical with the corresponding political groups which were subsequently associated into a *polis*, and in this case they were called *ethnos*, not *phyle*; or, as it probably happened many times, the politically unorganized tribe, as a presumed "blood community," lived from the memory that it once engaged in joint political action, typically a single conquest or defense, and then such political memories constituted the tribe. Thus, the fact that tribal consciousness was primarily formed by common political experiences and not by common descent appears to have been a frequent source of the belief in common ethnicity.

Of course, this was not the only source: Common customs may have diverse origins. Ultimately, they derive largely from adaptation to natural conditions and the imitation of neighbors. In practice, however, tribal consciousness usually has a political meaning: in case of military danger or opportunity, it easily provides the basis for joint political action on the part of tribal members or *Volksgenossen* who consider one another as blood relatives. The eruption of a drive to political action is thus one of the major potentialities inherent in the rather ambiguous notions of tribe and people. Such intermittent political action may easily develop into the moral duty of all members of tribe or people (*Volk*) to support one another in case of a military attack, even if there is no corresponding political association; violators of this solidarity may suffer the fate of the [Germanic, pro-Roman] sibs of Segestes and Inguiomer—expulsion from the tribal territory—, even if the tribe has no organized government. If the tribe has reached this stage, it has indeed become a continuous political community, no matter how inactive in peacetime, and hence unstable, it may be. However, even under favorable conditions the transition from the habitual to the customary and therefore obligatory is very fluid. All in all, the notion of "ethnically" determined social action subsumes phenomena that a rigorous sociological analysis—as we do not attempt it here—would have to distinguish carefully: the actual subjective effect of those customs conditioned by heredity and those determined by tradition; the differential impact of the varying content of custom; the influence of common language, religion and political action, past and present, upon the formation of customs; the extent to which such factors create attraction and repulsion, and especially the belief in affinity or disaffinity of blood; the consequences of this belief for social action in general, and specifically for action on the basis of shared custom or blood relationship, for diverse sexual relations, etc.—all of this would

have to be studied in detail. It is certain that in this process the collective term "ethnic" would be abandoned, for it is unsuitable for a really rigorous analysis. However, we do not pursue sociology for its own sake and therefore limit ourselves to showing briefly the diverse factors that are hidden behind this seemingly uniform phenomenon.

The concept of the "ethnic" group, which dissolves if we define our terms exactly, corresponds in this regard to one of the most vexing, since emotionally charged concepts: the *nation*, as soon as we attempt a sociological definition.

4. *Nationality and Cultural Prestige*[2]

The concept of "nationality" shares with that of the "people" (*Volk*) —in the "ethnic" sense—the vague connotation that whatever is felt to be distinctively common must derive from common descent. In reality, of course, persons who consider themselves members of the same nationality are often much less related by common descent than are persons belonging to different and hostile nationalities. Differences of nationality may exist even among groups closely related by common descent, merely because they have different religious persuasions, as in the case of Serbs and Croats. The concrete reasons for the belief in joint nationality and for the resulting social action vary greatly.

Today, in the age of language conflicts, a shared common language is pre eminently considered the normal basis of nationality. Whatever the "nation" means beyond a mere "language group" can be found in the specific objective of its social action, and this can only be the *autonomous polity*. Indeed, "nation state" has become conceptually identical with "state" based on common language. In reality, however, such modern nation states exist next to many others that comprise several language groups, even though these others usually have one official language. A common language is also insufficient in sustaining a sense of national identity (*Nationalgefühl*)—a concept which we will leave undefined for the present. Aside from the examples of the Serbs and Croats, this is demonstrated by the Irish, the Swiss and the German-speaking Alsatians; these groups do not consider themselves as members, at least not as full members, of the "nation" associated with their language. Conversely, language differences do not necessarily preclude a sense of joint nationality: The German-speaking Alsatians considered themselves—and most of them still do—as part of the French "nation," even though not in the same sense as French-speaking nationals. Hence there are qualitative degrees of the belief in common nationality.

Many German-speaking Alsatians feel a sense of community with the French because they share certain customs and some of their "sensual culture" (*Sinnenkultur*)—as Wittich in particular has pointed out—and also because of common political experiences. This can be understood by any visitor who walks through the museum in Colmar, which is rich in relics such as tricolors, *pompier* and military helmets, edicts by Louis Philippe and especially memorabilia from the French Revolution; these may appear trivial to the outsider, but they have sentimental value for the Alsatians.[3] This sense of community came into being by virtue of common political and, indirectly, social experiences which are highly valued by the masses as symbols of the destruction of feudalism, and the story of these events takes the place of the heroic legends of primitive peoples. *La grande nation* was the liberator from feudal servitude, she was the bearer of civilization (*Kultur*), her language was *the* civilized language; German appeared as a dialect suitable for everyday communication. Hence the attachment to those who speak the language of civilization is an obvious parallel to the sense of community based on common language, but the two phenomena are not identical; rather, we deal here with an attitude that derives from a partial sharing of the same culture and from shared political experiences.

Until a short time ago most Poles in Upper Silesia had no strongly developed sense of Polish nationality that was antagonistic to the Prussian state, which is based essentially on the German language. The Poles were loyal if passive "Prussians," but they were not "Germans" interested in the existence of the *Reich;* the majority did not feel a conscious or a strong need to segregate themselves from German-speaking fellow-citizens. Hence, in this case there was no sense of nationality based on common language, and there was no *Kulturgemeinschaft* in view of the lack of cultural development.

Among the Baltic Germans we find neither much of a sense of nationality amounting to a high valuation of the language bonds with the Germans, nor a desire for political union with the *Reich;* in fact, most of them would abhor such a unification. However, they segregate themselves rigorously from the Slavic environment, and especially from the Russians, primarily because of status considerations and partly because both sides have different customs and cultural values which are mutually unintelligible and disdained. This segregation exists in spite of, and partly because of, the fact that the Baltic Germans are intensely loyal vassals of the Tsar and have been as interested as any "national" Russian (*Nationalrusse*) in the predominance of the Imperial Russian system, which they provide with officials and which in turn maintains their descendants. Hence, here too we do not find any sense of nationality in

the modern meaning of the term (oriented toward a common language and culture). The case is similar to that of the purely proletarian Poles: loyalty toward the state is combined with a sense of group identity that is limited to a common language group within this larger community and strongly modified by status factors. Of course, the Baltic Germans are no longer a cohesive status group, even though the differences are not as extreme as within the white population of the American South.

Finally, there are cases for which the term nationality does not seem to be quite fitting; witness the sense of identity shared by the Swiss and the Belgians or the inhabitants of Luxemburg and Liechtenstein. We hesitate to call them "nations," not because of their relative smallness—the Dutch appear to us as a nation—, but because these neutralized states have purposively forsaken power. The Swiss are not a nation if we take as criteria common language or common literature and art. Yet they have a strong sense of community despite some recent disintegrative tendencies. This sense of identity is not only sustained by loyalty toward the body politic but also by what are perceived to be common customs (irrespective of actual differences). These customs are largely shaped by the differences in social structure between Switzerland and Germany, but also all other big and hence militaristic powers. Because of the impact of bigness on the internal power structure, it appears to the Swiss that their customs can be preserved only by a separate political existence.

The loyalty of the French Canadians toward the English polity is today determined above all by the deep antipathy against the economic and social structure, and the way of life, of the neighboring United States; hence membership in the Dominion of Canada appears as a guarantee of their own traditions.

This classification could easily be enlarged, as every rigorous sociological investigation would have to do. It turns out that feelings of identity subsumed under the term "national" are not uniform but may derive from diverse sources: Differences in the economic and social structure and in the internal power structure, with its impact on the customs, may play a role, but within the German *Reich* customs are very diverse; shared political memories, religion, language and, finally, racial features may be source of the sense of nationality. Racial factors often have a peculiar impact. From the viewpoint of the Whites in the United States, Negroes and Whites are not united by a common sense of nationality, but the Negroes have a sense of American nationality at least by claiming a right to it. On the other hand, the pride of the Swiss in their own distinctiveness, and their willingness to defend it vigorously, is neither qualitatively different nor less widespread than the same attitudes in any "great" and powerful "nation." Time and again we find that the

concept "nation" directs us to political power. Hence, the concept seems to refer—if it refers at all to a uniform phenomenon—to a specific kind of pathos which is linked to the idea of a powerful political community of people who share a common language, or religion, or common customs, or political memories; such a state may already exist or it may be desired. The more power is emphasized, the closer appears to be the link between nation and state. This pathetic pride in the power of one's own community, or this longing for it, may be much more widespread in relatively small language groups such as the Hungarians, Czechs or Greeks than in a similar but much larger community such as the Germans 150 years ago, when they were essentially a language group without pretensions to national power.

NOTES

1. On race and civilization, see also Weber's polemical speech against A. Ploetz at the first meeting of the German Sociological Association, Frankfurt, 1910, in *GAzSS*, 456–62. Two years later, at the second meeting of the Association in Berlin, Weber took the floor again after a presentation by Franz Oppenheimer. Among other things, Weber said (*op. cit.*, 489):

"With race theories you can prove and disprove anything you want. It is a scientific crime to attempt the circumvention, by the uncritical use of completely unclarified racial hypotheses, of the sociological study of Antiquity, which of course is much more difficult, but by no means without hope of success; after all, we can no longer find out to what extent the qualities of the Hellenes and Romans rested on inherited dispositions. The problem of such relationships has not yet been solved by the most careful and toilsome investigations of living subjects, even if undertaken in the laboratory and with the means of exact experimentation."

2. Cf. the related section on "The Nation" in ch. IX:5.

3. See Werner Wittich, *Deutsche und französische Kultur im Elsass* (Strassburg: Schlesier und Schweikhardt, 1900), 38ff; for a French transl., see "Le génie national des races française et allemande en Alsace." *Revue internationale de Sociologie*, vol. X, 1902, 777–824 and 857–907, esp. 814ff. Cf. also Weber, *GAzRS*, I, 25, n. 1; *GAzSS*, 484. "Outsiders," in contrast to the pre-1914 custodian who showed Weber his greatest treasures, cherish the Colmar museum for one of the most powerful works of art of the late Middle Ages, Grünewald's "Isenheim Altar."

CHAPTER VI

RELIGIOUS GROUPS (THE SOCIOLOGY OF RELIGION)[1]

i

The Origins of Religion

1. *The Original This-Worldly Orientation of Religious and Magical Action*

To define "religion," to say what it *is*, is not possible at the start of a presentation such as this. Definition can be attempted, if at all, only at the conclusion of the study. The essence of religion is not even our concern, as we make it our task to study the conditions and effects of a particular type of social action.

The external courses of religious behavior are so diverse that an understanding of this behavior can only be achieved from the viewpoint of the subjective experiences, ideas, and purposes of the individuals concerned—in short, from the viewpoint of the religious behavior's "meaning" (*Sinn*).

The most elementary forms of behavior motivated by religious or magical factors are oriented to *this* world. "That it may go well with thee . . . and that thou mayest prolong thy days upon the earth" [Deut.

4:40] expresses the reason for the performance of actions enjoined by religion or magic. Even human sacrifices, although uncommon among urban peoples, were performed in the Phoenician maritime cities without any otherworldly expectations whatsoever. Furthermore, religiously or magically motivated behavior is relatively rational behavior, especially in its earliest manifestations. It follows rules of experience, though it is not necessarily action in accordance with a means-end schema. Rubbing will elicit sparks from pieces of wood, and in like fashion the mimetical actions of a magician will evoke rain from the heavens. The sparks resulting from twirling the wooden sticks are as much a "magical" effect as the rain evoked by the manipulations of the rainmaker. Thus, religious or magical behavior or thinking must not be set apart from the range of everyday purposive conduct, particularly since even the ends of the religious and magical actions are predominantly economic.

Only we, judging from the standpoint of our modern views of nature, can distinguish objectively in such behavior those attributions of causality which are "correct" from those which are "fallacious," and then designate the fallacious attributions of causality as irrational, and the corresponding acts as "magic." Quite a different distinction will be made by the person performing the magical act, who will instead distinguish between the greater or lesser ordinariness of the phenomena in question. For example, not every stone can serve as a fetish, a source of magical power. Nor does every person have the capacity to achieve the ecstatic states which are viewed, in accordance with primitive experience, as the pre-conditions for producing certain effects in meteorology, healing, divination, and telepathy. It is primarily, though not exclusively, these extraordinary powers that have been designated by such special terms as "mana," "orenda," and the Iranian "maga" (the term from which our word "magic" is derived). We shall henceforth employ the term "charisma" for such extraordinary powers.

Charisma may be either of two types. Where this appellation is fully merited, charisma is a gift that inheres in an object or person simply by virtue of natural endowment. Such primary charisma cannot be acquired by any means. But charisma of the other type may be produced artificially in an object or person through some extraordinary means. Even then, it is assumed that charismatic powers can be developed only in people or objects in which the germ already existed but would have remained dormant unless evoked by some ascetic or other regimen. Thus, even at the earliest stage of religious evolution there are already present *in nuce* all forms of the doctrine of religious grace, from that of *gratia infusa* to the most rigorous tenet of salvation by good works. The strongly naturalistic orientation (lately termed "pre-animistic") of the earliest religious

phenomena is still a feature of folk religion. To this day, no decision of church councils, differentiating the "worship" of God from the "adoration" of the icons of saints, and defining the icons as merely a devotional means, has succeeded in deterring a south European peasant from spitting in front of the statue of a saint when he holds it responsible for withholding a favor even though the customary procedures were performed.

2. *The Belief in Spirits, Demons, and the Soul*

A process of abstraction, which only appears to be simple, has usually already been carried out in the most primitive instances of religious behavior which we examine. Already crystallized is the notion that certain beings are concealed "behind" and responsible for the activity of the charismatically endowed natural objects, artifacts, animals, or persons. This is the belief in spirits. At the outset, "spirit" is neither soul, demon, nor god, but something indeterminate, material yet invisible, nonpersonal and yet somehow endowed with volition. By entering into a concrete object, spirit endows the latter with its distinctive power. The spirit may depart from its host or vessel, leaving the latter inoperative and causing the magician's charisma to fail. In other cases, the spirit may diminish into nothingness, or it may enter into another person or thing.

That any particular economic conditions are prerequisites for the emergence of a belief in spirits does not appear to be demonstrable. But belief in spirits, like all abstraction, is most advanced in those societies within which certain persons possess charismatic magical powers that inhere only in those with special qualifications. Indeed it is this circumstance that lays the foundation for the oldest of all "vocations," that of the professional necromancer. In contrast to the ordinary person, the "layman" in the magical sense, the magician is permanently endowed with charisma. Furthermore, he has turned into an "enterprise" the distinctive subjective condition that notably represents or mediates charisma, namely ecstasy. For the layman, this psychological state is accessible only in occasional actions. Unlike the merely rational practice of wizardry, ecstasy occurs in a social form, the *orgy*, which is the primordial form of religious association. But the orgy is an occasional activity, whereas the enterprise of the magician is continuous and he is indispensable for its operation.

Because of the routine demands of living, the layman can experience ecstasy only occasionally, as intoxication. To induce ecstasy, he may employ any type of alcoholic beverage, tobacco, or similar narcotics—and

especially music—all of which originally served orgiastic purposes. In addition to the rational manipulation of spirits in accordance with economic interests, the manner in which ecstasy was employed constituted another important, but historically secondary, concern of the magician's art, which, naturally enough, developed almost everywhere into a secret lore. On the basis of the experience with the conditions of orgies, and in all likelihood under the influence of his professional practice, there evolved the concept of "soul" as a separate entity present in, behind or near natural objects, even as the human body contains something that leaves it in dream, syncope, ecstasy, or death.

This is not the place to treat extensively the diversity of possible relationships between spiritual beings and the objects behind which they lurk and with which they are somehow connected. These spirits or souls may "dwell" more or less continuously and exclusively near or within a concrete object or process. But on the other hand, they may somehow "possess" types of events, things, or categories thereof, the behavior and efficacy of which they will decisively determine. These and similar views are properly called animistic. The spirits may temporarily "incorporate" themselves into things, plants, animals, or people; this is a further stage of abstraction, achieved only gradually. At the highest stage of abstraction, which is scarcely ever maintained consistently, spirits may be regarded as invisible essences that follow their own laws, and are merely "symbolized by" concrete objects. In between these extremes of naturalism and abstraction there are many transitions and combinations. Yet even at the first stage of the simpler forms of abstraction, there is present in principle the notion of "supersensual" forces that may intervene in the destiny of people in the same way that a man may influence the course of the world about him.

At these earlier stages, not even the gods or demons are yet personal or enduring, and sometimes they do not even have names of their own. A god may be thought of as a power controlling the course of one particular event (Usener's *Augenblicksgötter*),[2] to whom no one gives a second thought until the event in question is repeated. On the other hand, a god may be the power which somehow emanates from a great hero after his death. Either personification or depersonalization may be a later development. Then, too, we find gods without any personal name, who are designated only by the name of the process they control. At a later time, when the semantics of this designation is no longer understood, the designation of this process may take on the character of a proper name for the god. Conversely, the proper names of powerful chieftains or prophets have become the designations of divine powers, a procedure employed in reverse by myth to derive the right to transform

purely divine appellations into personal names of deified heroes. Whether a given conception of a deity becomes enduring and therefore is always approached by magical or symbolic means, depends upon many different circumstances. The most important of these is whether and in what manner the magician or the secular chieftain accepts the god in question on the basis of their own personal experiences.

Here we may simply note that the result of this process is the rise on one hand of the idea of the "soul," and on the other of ideas of "gods," "demons," hence of "supernatural" powers, the ordering of whose relations to men constitutes the realm of religious behavior. At the outset, the soul is neither a personal nor yet an impersonal entity. It is frequently identified—in a naturalistic fashion—with something that disappears after death, e.g., with the breath or with the beat of the heart in which it resides and by the ingestion of which one may acquire the courage of his dead adversary. Far more important is the fact that the soul is frequently viewed as a heterogeneous entity. Thus, the soul that leaves man during dreams is distinguished from the soul that leaves him in ecstasy —when his heart beats in his throat and his breath fails, and from the soul that inhabits his shadow. Different yet is the soul that, after death, clings to the corpse or stays near it as long as something is left of it, and the soul that continues to exert influence at the site of the person's former residence, observing with envy and anger how the heirs are relishing what had belonged to it in its life. Still another soul is that which appears to the descendants in dreams or visions, threatening or counseling, or that which enters into some animal or into another person—especially a newborn baby—bringing blessing or curse, as the case may be. The conception of the "soul" as an independent entity set over against the "body" is by no means universally accepted, even in the religions of salvation. Indeed, some of these religions, such as Buddhism, specifically reject this notion.

3. *Naturalism and Symbolism*

What is primarily distinctive in this whole development is not the personality, impersonality or superpersonality of these supernatural powers, but the fact that new experiences now play a role in life. Before, only the things or events that actually exist or take place played a role in life; now certain experiences, of a different order in that they only signify something, also play a role. Thus magic is transformed from a direct manipulation of forces into a *symbolic activity*.

A notion that the soul of the dead must be rendered innocuous developed, beyond the direct fear of the corpse (a fear manifested even by animals), which direct fear often determined burial postures and procedures, e.g., the squatting posture, cremation, etc. After the development of ideas of the soul, the body had to be removed or restrained in the grave, provided with a tolerable existence, and prevented from becoming envious of the possessions enjoyed by the living; or its good will had to be secured in other ways, if the survivors were to live in peace. Of the various magical practices relating to the disposal of the dead, the notion with the most enduring economic consequences is that the corpse must be accompanied to the grave by all its personal belongings. This notion was gradually attenuated to the requirement that the goods of the deceased must not be touched for at least a brief period after his death, and frequently the requirement that the survivors must not even enjoy their own possessions lest they arouse the envy of the dead. The funerary prescriptions of the Chinese still fully retain this view, with consequences that are equally irrational in both the economic and the political spheres. (One of the interdictions during the mourning period related to the occupancy of a benefice; since the usufruct thereof constituted a possession, it had to be avoided.)

The development of a realm of souls, demons, and gods in turn affected the meaning of the magical arts. For these beings cannot be grasped or perceived in any concrete sense but possess a kind of transcendental existence which is normally accessible only through the mediation of symbols and meanings and which consequently appears to be shadowy and sometimes outright unreal. Since it is assumed that behind real things and events there is something else, distinctive and spiritual, of which real events are only the symptoms or indeed the symbols, an effort must be made to influence the spiritual power that expresses itself in concrete things. This is done through actions that address themselves to a spirit or soul, hence by instrumentalities that "mean" something, i.e., symbols. Thereafter, naturalism may be swept away by a flood of symbolic actions. The occurrence of this displacement of naturalism depends upon the pressure which the professional masters of such symbolism can put behind their belief and its intellectual elaboration, hence, on the power which they manage to gain within the community. The displacement of naturalism will depend upon the importance of magic for the economy and upon the power of the organization the necromancers succeed in creating.

The proliferation of symbolic acts and their supplanting of the original naturalism will have far-reaching consequences. Thus, if the dead person is accessible only through symbolic actions, and indeed if the

god expresses himself only through symbols, then the corpse may be satisfied with symbols instead of real things. As a result, actual sacrifices may be replaced by shewbreads and puppet-like representations of the surviving wives and servants of the deceased. It is of interest that the oldest paper money was used to pay, not the living, but the dead. A similar substitution occurred in the relationships of men to gods and demons. More and more, things and events assumed meanings beyond the potencies that actually or presumably inhered in them, and efforts were made to achieve real effects by means of symbolically significant action.

Every purely magical act that had proved successful in a naturalistic sense was, of course, repeated in the form once established as effective. Subsequently, this principle extended to the entire domain of symbolic significances, since the slightest deviation from the ostensibly successful method might render the procedure inefficacious. Thus, all areas of human activity were drawn into this circle of magical symbolism. For this reason the greatest contrasts of purely dogmatic views, even within religions that have undergone rationalization, may be tolerated more easily than innovations in symbolism, which threaten the magical efficacy of action or even—and this is the new concept supervening upon symbolism—arouse the anger of a god or an ancestral spirit. Thus, the question whether the sign of the cross should be made with two or three fingers was a basic reason for the schism of the Russian church as late as the seventeenth century. Again, the fear of giving serious affront to two dozen saints by omitting the days sacred to them from the calendar year has hindered the reception of the Gregorian calendar in Russia until today. Among the magicians of the American Indians, faulty singing during ritual dances was immediately punished by the death of the guilty singer, to remove the evil magic or to avert the anger of the god.

The religious stereotyping of the products of pictorial art, the oldest form of stylization, was directly determined by magical conceptions and indirectly determined by the fact that these artifacts came to be produced professionally for their magical significance; professional production tended automatically to favor the creation of art objects based upon design rather than upon representational reproduction of the natural object. The full extent of the influence exerted by the religious factor in art is exemplified in Egypt, where the devaluation of the traditional religion by the monotheistic campaign of Amenhotep IV (Ikhnaton) immediately stimulated naturalism. Other examples of the religious stylization of art may be found in the magical uses of alphabetical symbols; the development of mimicry and dance as homeopathic, apotropaic, exorcistic, or magically coercive symbolism; and the stereotyping of admissible

musical scales, or at least admissible musical keynotes (*râga* in India), in contrast to the chromatic scale. Another manifestation of such religious influence is found in the widespread substitutions of therapy based upon exorcism or upon symbolic homeopathy for the earlier empirical methods of medical treatment, which frequently were considerably developed but seemed only a cure of the symptoms, from the point of view of symbolism and the animistic doctrine of possession by spirits. From the standpoint of animistic symbolism's own basic assumptions its therapeutic methods might be regarded as rational, but they bear the same relation to empirical therapy as astrology, which grew from the same roots, bears to empirical computation of the calendar.

All these related phenomena had incalculable importance for the substantive evolution of culture, but we cannot pursue this here. The first and fundamental effect of religious views upon the conduct of life and therefore upon economic activity was generally stereotyping. The alteration of any practice which is somehow executed under the protection of supernatural forces may affect the interests of spirits and gods. To the natural uncertainties and resistances facing every innovator, religion thus adds powerful impediments of its own. The sacred is the uniquely unalterable.

The details of the transitions from pre-animistic naturalism to symbolism are altogether variable. When the primitive tears out the heart of a slain foe, or wrenches the sexual organs from the body of his victim, or extracts the brain from the skull and then mounts the skull in his home or esteems it as the most precious of bridal presents, or eats parts of the bodies of slain foes or the bodies of especially fast and powerful animals—he really believes that he is coming into possession, in a naturalistic fashion, of the various powers attributed to these physical organs. The war dance is in the first instance the product of a mixture of fury and fear before the battle, and it directly produces the heroic frenzy; to this extent it too is naturalistic rather than symbolic. The transition to symbolism is at hand insofar as the war dance (somewhat in the manner of our manipulations by "sympathetic" magic) mimetically anticipates victory and thereby endeavors to insure it by magical means, insofar as animals and men are slaughtered in fixed rites, insofar as the spirits and gods of the tribe are summoned to participate in the ceremonial repast, and insofar as the consumers of a sacrificial animal regard themselves as having a distinctively close kin relationship to one another because the "soul" of this animal has entered into them.

The term "mythological thinking" has been applied to the pattern of thought that is the basis of the fully developed realm of symbolic concepts, and considerable attention has been given to the detailed elu-

cidation of its character. We cannot occupy ourselves with these problems here. Only one generally important aspect of this way of thinking is of concern to us: the significance of analogy, especially in its most effective form, the parable. Analogy has exerted a lasting influence upon, indeed has dominated not only forms of religious expression but also juristic thinking, even the treatment of precedents in purely empirical forms of law. The syllogistic constructions of concepts through rational subsumption only gradually replaced analogical thinking, which originated in symbolistically rationalized magic, whose structure is wholly analogical.

Gods, too, were not originally represented in human forms. To be sure they came to possess the form of enduring beings, which is essential for them, only after the suppression of the purely naturalistic view still evident in the Vedas (e.g., that a fire is the god, or is at least the body of a concrete god of fire) in favor of the view that a god, forever identical with himself, possesses all fires, produces or controls them, or somehow is incorporated in each of them. This abstract conception becomes really secure only through the continuing activity of a "cult" dedicated to one and the same god—through the god's connection with an enduring association of men, for which he has special significance as the enduring god. We shall presently consider this process further. Once this perseveration of the forms of the gods has been secured, the intellectual activity of those concerned in a professional way with such problems may be devoted to the systematization of these ideas.

4. *Pantheon and Functional Gods*

The gods frequently constituted an unordered miscellany of accidental entities, held together fortuitously by the cult, and this condition was by no means confined to periods of low social differentiation. Thus, even the gods of the Vedas did not form an orderly commonwealth. But as a rule there is a tendency for a pantheon to evolve once systematic thinking concerning religious practice and the rationalization of life generally, with its increasing demands upon the gods, have reached a certain level, the details of which may differ greatly from case to case. The emergence of a pantheon entails the specialization and characterization of the various gods as well as the allocation of constant attributes and the differentiation of their jurisdictions. Yet the increasing anthropomorphic personification of the gods is in no way identical with or parallel to the increasing delimitation of jurisdictions. Frequently the opposite is true. Thus, the scope of the Roman ***numina*** is incomparably

more fixed and unequivocal than that of the Hellenic gods. On the other hand, the anthropomorphization and plastic representation of the latter as real personalities went very much further than in the authentic Roman religion.

Sociologically, the most important basis for this development is to be found in the fact that the genuine Roman view concerning the general nature of the supernatural tended to retain the pattern of a national religion appropriate to a peasantry and a landed gentry. On the other hand, Greek religion inclined to reflect the general structure of an interlocal regional knightly culture, such as that of the Homeric age with its heroic gods. The partial reception of these conceptions and their indirect influence on Roman soil changed nothing of the national religion, many of these conceptions attaining only an esthetic existence there. The primary characteristics of the Roman tradition were conserved virtually unchanged in ritual practices. In contrast to the Greek way, the Roman attitude also remained permanently adverse to religions of the orgiastic or mystery type (for reasons to be discussed later). Quite naturally, the capacity of magical powers to develop differentiated forms is much less elastic than the "jurisdiction" of a god conceived as a person. Roman religion remained *religio* (whether the word be derived etymologically from *religare* [to tie] or from *relegere* [to reconsider]); it denoted a tie with tested cultic formulae and a "consideration" for spirits (*numina*) of all types which are active everywhere.

The authentic Roman religion contained, besides the trend toward formalism which resulted from the factors just mentioned, another important characteristic trait that stands in contrast with Greek culture, namely a conception of the impersonal as having an inner relationship to the objectively rational. The *religio* of the Roman surrounded his entire daily life and his every act with the casuistry of a sacred law, a casuistry which temporally and quantitatively occupied his attention quite as much as the attention of the Jews and Hindus was occupied by their ritual laws, quite as much as the attention of the Chinese was occupied by the sacred laws of Taoism. The Roman priestly lists (*indigitamenta*)[a] contained an almost infinite number of gods, particularized and specialized. Every act and indeed every specific element of an act stood under the influence of special *numina*. It was therefore a precaution for one engaged in an important activity to invoke and honor, besides the *dii certi* to whom tradition had already assigned a fixed responsibility and influence, various ambiguous gods (*incerti*) whose jurisdiction was uncertain and indeed whose sex, effectiveness, and possibly even existence were dubious. As many as a dozen of the *dii certi*[a] might be involved in certain farming activities. While the Romans

tended to regard the *ekstasis* (Latin: *superstitio*) of the Greeks as a mental alienation (*abalienatio mentis*) that was socially reprehensible, the casuistry of Roman *religio* (and of the Etruscan, which went even further) appeared to the Greek as slavish fear (*deisidaimonia*). The Roman interest in keeping the *numina* satisfied had the effect of producing a conceptual analysis of all individual actions into their components, each being assigned to the jurisdiction of a particular *numen* whose special protection it enjoyed.

Although analogous phenomena occurred in India and elsewhere, the listed number of spirits (*numina*) to be derived and formally listed (*indigitieren*) on the basis of purely conceptual analysis, and hence intellectual abstraction, was nowhere as large as among the Romans, for whom ritual practice was thoroughly concentrated upon this procedure. The characteristic distinction of the Roman way of life which resulted from this abstraction (and this provides an obvious contrast to the influence of Jewish and Asiatic rituals upon their respective cultures) was its ceaseless cultivation of a practical, rational casuistry of sacred law, the development of a sort of cautelary sacred jurisprudence[8] and the tendency to treat these matters to a certain extent as lawyers' problems. In this way, sacred law became the mother of rational juristic thinking. This essentially religious characteristic of Roman culture is still evident in the histories of Livy. In contrast to the practical orientation of the Jewish tradition, the Roman emphasis was always on the demonstration of the "correctness" of any given institutional innovation, from the point of view of sacred and national law. In Roman thought questions of juristic etiquette were central, not sin, punishment, penitence and salvation.

For the ideas of deity, however, to which we must here first devote our attention, it was relevant that both of those processes, anthropomorphization and the delimitation of jurisdictions, which ran partly parallel and partly in opposition to each other, contained the tendency to propel ever further the rationalization of the worship of the gods as well as of the very idea of god, even though the starting point was the given variety of deities. For our purposes here, the examination of the various kinds of gods and demons would be of only slight interest, although or rather because it is naturally true that they, like the vocabulary of a language, have been shaped directly by the economic situation and the historical destinies of different peoples. Since these developments are concealed from us by the mists of time, it is frequently no longer possible to determine the reasons for the predominance of one over another kind of deity. These may lie in objects of nature that are important to the economy, such as stellar bodies, or in organic processes that the gods

and demons possess or influence, evoke or impede: disease, death, birth, fire, drought, rainstorm, and harvest failure. The outstanding economic importance of certain events may enable a particular god to achieve primacy within the pantheon, as for example the primacy of the god of heaven. He may be conceived of primarily as the master of light and warmth, but among groups that raise cattle he is most frequently conceived of as the lord of reproduction.

That the worship of chthonic deities such as Mother Earth generally presupposes a relative importance of agriculture is fairly obvious, but such parallelism is not always direct. Nor can it be maintained that the heavenly gods, as representatives of a heroes' paradise beyond the earth, have everywhere been noble gods rather than chthonic deities of the peasantry. Even less can it be maintained that the development of Mother Earth as a goddess parallels the development of matriarchal organization. Nevertheless, the chthonic deities who controlled the harvest have customarily borne a more local and popular character than the other gods. In any case, the inferiority of earth divinities to celestial personal gods who reside in the clouds or on the mountains is frequently determined by the development of a knightly culture, and there is a tendency to permit originally tellurian deities to take their place among the gods who are resident in the skies. Conversely, the chthonic deities frequently combine two functions in primarily agrarian cultures: they control the harvest, thus granting wealth, and they are also the masters of the dead who have been laid to rest in the earth. This explains why frequently, as in the Eleusinian mysteries, these two most important practical interests, namely earthly riches and fate in the hereafter, depend upon them. On the other hand, the heavenly gods are the lords of the stars in their courses. The fixed laws by which the celestial bodies are obviously regulated favor a development whereby the rulers of the celestial bodies become masters of everything that has or ought to have fixed laws, particularly of judicial decisions and morality.

Both the increasing objective significance of typical components and types of conduct, and subjective reflection about them, lead to functional specialization among the gods. This may be of a rather abstract type, as in the case of the gods of "incitation" (*Antreibens*) and many similar gods in India.[8] Or it may lead to qualitative specialization according to particular lines of activity, e.g., praying, fishing, or plowing. The classic paradigm of this fairly abstract form of deity-formation is the highest conception of the ancient Hindu pantheon, Brahma, as the lord of prayer. Just as the Brahmin priests monopolized the power of effective prayer, i.e., of the effective magical coercion of the gods, so did a god in

turn now monopolize the disposition of this capacity, thereby controlling what is of primary importance in all religious behavior; as a result, he finally came to be the supreme god, if not the only one. In Rome, Janus, as the god of the correct "beginning" [of an action] who thus decides everything, achieved more unpretentiously a position of relatively universal importance.

Yet there is no concerted action, as there is no individual action, without its special god. Indeed, if an association is to be permanently guaranteed, it must have such a god. Whenever an organization is not the personal power base of an individual ruler, but genuinely an association of men, it has need of a god of its own.

5. *Ancestor Cult and the Priesthood of the Family Head*

To begin with, household and kin group need a god of their own, and they naturally turn to the spirits of the ancestors, actual or imaginary. To these are later added the *numina* and the gods of the hearth and the hearth fire. The importance attributed by the group to its cult, which is performed by the head of the house or *gens*, is quite variable and depends on the structure and practical importance of the family. A high degree of development in the domestic cult of ancestors generally runs parallel to a patriarchal structure of the household, since only in a patriarchal structure is the home of central importance for the men. But as the example of Israel demonstrates, the connection between these factors is not a simple one, for the gods of other social groups, especially those of a religious or political type, may by reason of their priests' power effectively suppress or entirely destroy the domestic cult and the priestly functioning of the family head.

But where the power and significance of the domestic cult and priesthood remain unimpaired, they naturally form an extremely strong personal bond, which exercises a profound influence on the family and the *gens*, unifying the members firmly into a strongly cohesive group. This cohesive force also exerts a strong influence on the internal economic relationships of the households. It effectively determines and stamps all the legal relationships of the family, the legitimacy of the wife and heirs, and the relation of sons to their father and of brothers to one another. From the viewpoint of the family and kin group, the religious reprehensibility of marital infidelity is that it may bring about a situation where a stranger, i.e., one not related by blood, might offer sacrifice to the ancestors of the kin group, which would tend to arouse their indigna-

tion against the blood relatives. For the gods and *numina* of a strictly personal association will spurn sacrifices brought by one lacking authorization. Strict observance of the principle of agnate relationship, wherever it is found, certainly is closely connected with this, as are all questions relating to the legitimation of the head of the household for his functioning as priest.

Similar sacral motivations have influenced the testamentary rights of succession of the eldest son, either as sole or preferred heir, though military and economic factors have also been involved in this matter. Furthermore, it is largely to this religious motivation that the Asiatic (Chinese and Japanese) family and clan, and that of Rome in the Occident, owe the maintenance of the patriarchal structure throughout all changes in economic conditions. Wherever such a religious bond of household and kin group exists, only two possible types of more inclusive associations, especially of the political variety, may emerge. One of these is the religiously dedicated confederation of actual or imaginary kin groups. The other is the patrimonial rule of a royal household over comparable households of the subjects, in the manner of an attenuated patriarchalism. Wherever the patrimonial rule of the royal household developed, the ancestors, the *numina*, *genii* or personal gods of that most powerful household took place beside the domestic gods belonging to subject households and thus lent a religious sanction to the position of the ruler. This was the case in the Far East, as in China, where the emperor as high priest monopolized the cult of the supreme spirits of nature. The sacred role of the *genius* of the Roman ruler (*princeps*), which resulted in the universal reception of the person of the emperor into the lay cult, was calculated to produce similar results.

6. *Political and Local Gods*

Where the development was in the direction of a religiously buttressed confederation, there developed a special god of the political organzation as such, as was the case with Yahweh. That he was a God of the federation—which according to tradition was an alliance between the Jews and the Midianites—led to a fateful consequence. His relation to the people of Israel, who had accepted him under oath, together with the political confederation and the sacred order of their social relationships, took the form of a covenant (*berith*), a contractual relationship imposed by Yahweh and accepted submissively by Israel. From this, various ritual, canonical, and ethical obligations which were binding

upon the human partner were presumed to flow. But this contractual relationship also involved very definite promises by the Divine partner; it was deemed appropriate for the human partner to remind him of their inviolability, within the limits enjoined as proper vis-à-vis an omnipotent god. This is the primary root of the promissory character of Israelite religion, a character that despite numerous analogues is found nowhere else in such intensity.

On the other hand, it is a universal phenomenon that the formation of a political association entails subordination to its corresponding god. The Mediterranean *synoikism* as was always a reorganization, if not necessarily a new creation, of a cultic community under a *polis* deity. The classical bearer of the important phenomenon of a political local god was of course the *polis*, yet it was by no means the only one. On the contrary, every permanent political association had a special god who guaranteed the success of the political action of the group. When fully developed, this god was altogether exclusive with respect to outsiders, and in principle he accepted offerings and prayers only from the members of his group, or at least he was expected to act in this fashion. But since one could not be certain of this, disclosure of the method of effectively influencing the god was usually prohibited strictly. The stranger was thus not only a political, but also a religious alien. Even when the god of another group had the same name and attributes as that of one's own polity, he was still considered to be different. Thus the Juno of the Veientines is not that of the Romans, just as for the Neapolitan the Madonna of each chapel is different from the others; he may adore the one and berate or dishonor the other if she helps his competitors. An effort may be made to render the god disloyal to one's adversaries by promising him, for example, welcome and adoration in the new territory if only he will abandon the foes of the group in question (*evocare deos*). This invocation to the gods of a rival tribe to reject their group in behalf of another was practiced by Camillus before Veii.[7] The gods of one group might be stolen or otherwise acquired by another group, but this does not always accrue to the benefit of the latter, as in the case of the ark of the Israelites which brought plagues upon the Philistine conquerors.

In general, political and military conquest also entailed the victory of the stronger god over the weaker god of the vanquished group. Of course not every god of a political group was a local god, spatially anchored to the group's administrative center. The *lares* of the Roman family changed their venue as the family moved; the God of Israel was represented, in the narrative of the wandering in the wilderness, as journeying with and at the head of his people. Yet, in contradiction to this account, Yahweh

was also represented—and this is his decisive hallmark—as a God from afar, a God of the nations who resided on Sinai, and who approached in the storm with his heavenly hosts (*zebaoth*) only when the military need of his people required his presence and participation. It probably has been assumed correctly that this particular quality of "effective influence from afar," which resulted from the reception of a foreign god by Israel, was a factor in the evolution of the concept of Yahweh as the universal and omnipotent God. For, as a rule, the fact that a god was regarded as a local deity, or that he sometimes demanded of his followers exclusive "monolatry" did not lead to monotheism, but rather tended to strengthen religious particularism. Conversely, the development of local gods resulted in an uncommon strengthening of political particularism.

This was true even of the *polis*, which was as exclusive of other communities as one church is toward another, and which was absolutely opposed to the formation of a unified priesthood overarching the various groupings. In marked contrast to our state, which is conceived as a compulsory territorial institution, the *polis*, as a result of this particularism, remained essentially a *personal* association of cultic adherents of the civic god. The *polis* was further organized internally into personal cultic associations of tribal, clan, and domestic gods, which were exclusive with respect to their individual cults. Moreover, the *polis* was also exclusive internally, with regard to those who stood apart from the particular cults of kin groups and households. Thus in Athens, a man who had no household god (*Zeus herkeios*) could not hold office, as was the case in Rome with anyone who did not belong to the association of the *patres*. The special plebeian official (*tribunus plebis*) was covered only by a human oath (*sacro sanctus*); he had no auspices, and hence no legitimate *imperium*, but only a *potestas*.[8]

The local geographical connection of the association's god reached its maximum development where the very site of a particular association came to be regarded as specifically sacred to the god. This was increasingly the case of Palestine in relation to Yahweh, with the result that the tradition depicted him as a god who, living far off but desiring to participate in his cultic association and to honor it, required cartloads of Palestinian soil to be brought to him.

The rise of genuinely local gods is associated not only with permanent settlement, but also with certain other conditions that mark the local association as an agency of political significance. Normally, the god of a locality and his cultic association reach fullest development on the foundation of the city as a separate political association with corporate

rights, independent of the court and the person of the ruler. Consequently, such a full development of the local god is not found in India, the Far East, or Iran, and occurred only in limited measure in northern Europe, in the form of the tribal god. On the other hand, outside the sphere of autonomous cities this development occurred in Egypt, as early as the stage of zoolatric religion, in the interest of apportioning districts. From the city-states, local deities spread to confederacies such as those of the Israelites, Aetolians, etc., which were oriented to this model. From the viewpoint of the history of ideas, this concept of the association as the local carrier of the cult is an intermediate link between the strict patrimonial view of political action and the notion of the purely instrumental association and compulsory organization, such as the [Gierke and Preuss] view of the modern "territorial corporate organization" (*Gebietskörperschaft*).

Not only political associations but also occupational and vocational associations have their special deities or saints. These were still entirely absent in the Vedic pantheon, which was a reflection of that particular level of economic development. On the other hand, the ancient Egyptian god of scribes indicates bureaucratization, just as the presence all over the globe of special gods and saints for merchants and all sorts of crafts reflects increasing occupational differentiation. As late as the 19th century, the Chinese army carried through the canonization of its war god, signifying that the military was regarded as a special vocation among others. This is in contrast to the conception of the war gods of the ancient Mediterranean littoral and of the Medes, who were always great national gods.

7. *Universalism and Monotheism in Relation to Everyday Religious Needs and Political Organization*

Just as the forms of the gods vary, depending on natural and social conditions, so too there are variations in the potential of a god to achieve primacy in the pantheon, or to monopolize divinity. Only Judaism and Islam are strictly monotheistic in their essence. The Hindu and Christian forms of the sole or supreme deity are theological concealments of the fact that an important and unique religious interest, namely in salvation through the incarnation of a divinity, stands in the way of strict monotheism. The path to monotheism has been traversed with varying degrees of consistency, but nowhere—not even during the Reformation—was the

existence of spirits and demons permanently eliminated; rather, they were simply subordinated unconditionally to the one god, at least in theory.

The decisive consideration was and remains: who is deemed to exert the stronger influence on the interests of the individual in his everyday life, the theoretically supreme god or the lower spirits and demons? If the spirits, then the religion of everyday life is decisively determined by them, regardless of the official god-concept of the ostensibly rationalized religion. Where a political god of a locality developed, it was natural enough that he frequently achieved primacy. Whenever a plurality of settled communities with established local gods expanded the area of the political association through conquest, the usual result was that various local gods of the newly amalgamated communities were thereupon associated into a religious totality. Within this amalgam, the empirical and functional specializations of the gods, whether original or subsequently determined by new experiences concerning the special spheres of the gods' influences, would reappear in a division of labor, with varying degrees of clarity.

The local deities of the most important political and religious centers (and hence of the rulers and priests in these centers), e.g., Marduk of Babel or Amon of Thebes, thus advanced to the rank of the highest gods, only to disappear again with the eventual destruction or removal of the residence, as happened in the case of Assur after the fall of the Assyrian empire. Once a political association came under the tutelage of a particular deity, its protection appeared inadequate until the gods of the individual members were also incorporated, "associated," and adopted locally in a sort of "synoikism." This practice, so common in Antiquity, was re-enacted when the great sacred relics of the provincial cathedrals were transferred to the capital of the unified Russian empire.[9]

The possible combinations of the various principles involved in the construction of a pantheon or in the achievement of a position of primacy by one or another god are almost infinite in number. Indeed, the jurisdictions of the divine figures are as fluid as those of the officials of patrimonial regimes. Moreover, the differentiation among jurisdictions of the various gods is intersected by the practice of religious attachment to a particularly reliable god, or courtesy to a particular god who happens to be invoked. He is then treated as functionally universal; thus all kinds of functions are attributed to him, even functions which have been assigned previously to other deities. This is the "henotheism" which Max Müller erroneously assumed to constitute a special stage of evolution.[10] In the attainment of primacy by a particular god, purely rational factors have often played an important role. Wherever a considerable measure of

constancy in regard to certain prescriptions became clearly evident—most often in the case of stereotyped and fixed religious rites—and where this was recognized by rationalized religious thought, then those deities that evinced the greatest regularity in their behavior, namely the gods of heaven and the stars, had a chance to achieve primacy.

Yet in the religion of everyday life, only a comparatively minor role was played by those gods who, because they exerted a major influence upon universal natural phenomena, were interpreted by metaphysical speculation as very important and occasionally even as world creators. The reason for this is that these natural phenomena vary but little in their course, and hence it is not necessary to resort in everyday religious practice to the devices of sorcerers and priests in order to influence them. A particular god might be of decisive importance for the entire religion of a people (e.g., Osiris in Egypt) if he met a pressing religious need, in this case a soteriological one, yet he might not achieve primacy in the pantheon. Reason favored the primacy of universal gods; and every consistent crystallization of a pantheon followed systematic rational principles to some degree, since it was always influenced by professional sacerdotal rationalism or by the rational striving for order on the part of secular individuals. Above all, it is the aforementioned similarity of the rational regularity of the stars in their heavenly courses, as regulated by divine order, to the inviolable sacred social order in terrestrial affairs, that makes the universal gods the responsible guardians of both these phenomena. Upon these gods depend both rational economic practice and the secure, regulated hegemony (*Herrschaft*) of sacred norms in the community. The priests are the primary protagonists and representatives of these sacred norms. Hence the competition of the stellar deities Varuna and Mitra, the guardians of the sacred order, with the storm god Indra,[11] a formidable warrior and the slayer of the dragon, was a reflection of the conflict between the priesthood, striving for a firm regulation and control of life, and the powerful warlike nobility. Among this warrior class, the appropriate reaction to supernatural powers was to believe in a heroic god avid for martial exploits as well as in the disorderly irrationality of fate and adventuresomeness. We shall find this same contrast significant in many other contexts.

The ascension of celestial or astral gods in the pantheon is advanced by a priesthood's propagation of systematized sacred ordinances, as in India, Iran, or Babylonia, and is assisted by a rationalized system of regulated subordination of subjects to their overlords, such as we find in the bureaucratic states of China and Babylonia. In Babylonia, religion plainly evolved toward a belief in the dominion of the stars, particularly the planets, over

all things, from the days of the week to the fate of the individual in the afterworld. Development in this direction culminates in astrological fatalism. But this development is actually a product of later sacerdotal lore, and it is still unknown to the national religion of the politically independent state. A god may dominate a pantheon without being an international or "universal" deity. But his dominance of a pantheon usually suggests that he is on his way to becoming that.

As reflection concerning the gods deepened, it was increasingly felt that the existence and nature of the deity must be established unequivocally and that the god should be "universal" in this sense. Among the Greeks, philosophers interpreted whatever gods were found elsewhere as equivalent to and so identical with the deities of the moderately organized Greek pantheon. This tendency toward universalization grew with the increasing predominance of the primary god of the pantheon, that is, as he assumed more of a "monotheistic" character. The growth of empire in China, the extension of the power of the Brahmin caste throughout all the varied political formations in India, and the development of the Persian and Roman empires favored the rise of both universalism and monotheism, though not always in the same measure and with quite different degrees of success.

The growth of empire (or comparable adjustment processes that tend in the same direction) has by no means been the sole or indispensable lever for the accomplishment of this development. In the Yahweh cult, the most important instance in the history of religion, there evolved at least a first approach to universalistic monotheism, namely monolatry, as a result of a concrete historic event—the formation of a confederacy. In this case, universalism was a product of international politics, of which the pragmatic interpreters were the prophetic protagonists of the cult of Yahweh and the ethics enjoined by him. As a consequence of their preaching, the deeds of other nations that were profoundly affecting Israel's vital interests also came to be regarded as wrought by Yahweh. At this point one can see clearly the distinctively and eminently *historical* character of the theorizing of the Hebrew prophets, which stands in sharp contrast to the speculations concerning nature characteristic of the priesthoods of India and Babylonia. Equally striking is the ineluctable obligation resulting from Yahweh's promises: the necessity of interpreting the entire history of the Hebrew nation as consisting of the deeds of Yahweh, and hence as constituting a pattern of "world history" in view of the many dire threats to the people's survival, the historical contradictions to the divine promises, as well as the inextricable linkage with the destinies of other nations. Thus, the ancient warrior god of the con-

federacy, who had become the local god of the city of Jerusalem, took on the prophetic and universalistic traits of transcendently sacred omnipotence and inscrutability.

In Egypt, the monotheistic, and hence necessarily universalistic, transition of Amenhotep IV (Ikhnaton) to the solar cult resulted from an entirely different situation. One factor was again the extensive rationalism of the priesthood, and in all likelihood of the laity as well, which was of a purely naturalistic character, in marked contrast to Israelite prophecy. Another factor was the practical need of a monarch at the head of a bureaucratic unified state to break the power of the priests by eliminating the multiplicity of their gods, and to restore the ancient power of the deified Pharaoh by elevating the monarch to the position of supreme solar priest. On the other hand, the universalistic monotheism of Christianity and Islam must be regarded as derivative of Judaism, while the relative monotheism of Zoroastrianism was in all likelihood determined at least in part by Near Eastern rather than intra-Iranian influences. All of these monotheisms were critically influenced by the distinctive character of "ethical" prophecy, rather than by the "exemplary" type—a distinction to be expounded later [*iii:* 5]. All other relatively monotheistic and universalistic developments are the products of the philosophical speculations of priests and laymen. They achieved practical religious importance only when they became associated with the quest for salvation. (We shall return to this matter later.)

Almost everywhere a beginning was made toward some form of consistent monotheism, but practical impediments thwarted this development in the workaday mass religion (*Alltagsreligion*), with the exceptions of Judaism, Islam, and Protestant Christianity. There are different reasons for the failure of a consistent monotheism to develop in different cultures, but the main reason was generally the pressure of the powerful material and ideological interests vested in the priests, who resided in the cultic centers and regulated the cults of the particular gods. Still another impediment to the development of monotheism was the religious need of the laity for an accessible and tangible familiar religious object which could be brought into relationship with concrete life situations or with definite groups of people to the exclusion of outsiders, an object which would above all be accessible to magical influences. The security provided by a tested magical manipulation is far more reassuring than the experience of worshipping a god who—precisely because he is omnipotent—is not subject to magical influence. The crystallization of developed conceptions of supernatural forces as gods, even as a single transcendent god, by no means automatically eliminated the ancient magical notions, not

even in Christianity. It did produce, however, the possibility of a dual relationship between men and the supernatural. This must now be discussed.

NOTES

1. Since the Fischoff translation did not contain a footnote apparatus, an attempt had to be made to identify at least Weber's major references. Unless otherwise indicated, all notes are by Roth.

In this unfinished "chapter" on religious groupings, Weber provides a setting for his earlier writings on the "Protestant Ethic and the Spirit of Capitalism" and the 1906 version of "The Protestant Sects and the Spirit of Capitalism" (see Gerth and Mills, eds., *op. cit.*, 302–22). The proper place of the present study within his other studies in the sociology of religion is indicated in the introduction to the three-volume *Collected Essays in the Sociology of Religion* (see *The Protestant Ethic*, transl. T. Parsons, 13–31, esp. 29ff.), where Weber writes: "Some justification is needed for the fact that ethnographic material has not been utilized to anything like the extent which the value of its contributions naturally demands in any really thorough investigation, especially in Asiatic religions. This limitation has not only been imposed because human powers of work are restricted. This omission has also seemed to be permissible because we are here necessarily dealing with the religious ethics of the classes which were the culture-bearers of their respective countries. We are concerned with the influence which *their* conduct has had. Now it is quite true that this can only be completely known in all its details when the facts of ethnography and folklore have been compared with it. Hence we must expressly admit and emphasize that this is a gap to which the ethnographer will legitimately object. I hope to contribute something to the closing of this gap in a systematic study of the Sociology of Religion."

The present book-length chapter is part of this systematic study. However, the ethnographic treatment in the first three subchapters remains sketchy since Weber wants to press on to the core of his analysis. After working on the present chapter, Weber's next writing in this field was his essay on Confucianism (begun in 1913).

2. See Hermann Usener, *Götternamen*. Versuch einer Lehre von der religiösen Begriffsbildung (Bonn: Cohen, 1896), 279ff. (W)

3. Indigamenta: See Chantepie-Bertholet-Lehmann (abbr. Chant.), *Lehrbuch der Religionsgeschichte* (Tübingen: Mohr, 1925), 4th ed., vol. I, 69. (W) Weber used the earlier editions as one of his sources.

4. Cf. Chant., *op. cit.*, vol. II, 455f. (W)

5. On cautelary jurisprudence, see below, ch. VIII:*iii*:1.—Ludwig Deubner (in Chant., *loc. cit.*) emphasizes the magical nature of the Roman insistence on ritual correctness and rejects the interpretation of this practice as a "specifically juristic approach." However, this does not necessarily conflict with Weber's presentation which derives Roman legal rationalism from these magical sources.

6. Cf. Helmuth von Glasenapp, *Der Hinduismus* (Munich: Wolff, 1922), 25. (W)

7. According to legend, M. Furius Camillus was appointed dictator at a critical juncture in the long war with Veii ca. 400 B.C. The legend has certain parallels with the siege and capture of Troy. Camillus is alleged to have used a

secret passage to the altar of Juno in Veii in order to offer a sacrifice to her. The goddess changed her allegiance and was taken in triumph to Rome where she resided forever after on the Aventine Hill.

8. For a fuller discussion, see *The City*, ch. XVI:*iv*:4.

9. See also *infra*, 1174. Weber may have had in mind the transfer of important cult objects—such as the icon of the Madonna of Kazan (from Moscow) and the remains of Alexander Nevskii (from Vladimir)—to his newly founded capital city on the Neva by Peter the Great; cf. Anatole Leroy-Beaulieu, *The Empire of the Tsars and the Russians* (transl. Z. A. Ragozin, London 1898), III, 100f., 197f. In earlier centuries, similar moves played a role in the gradual ascendance of Moscow over the other *udel* principalities or reenforced it. Thus in 1395 the Madonna of Vladimir, the former seat of the Metropolitan, was transferred to Moscow, and at various times subjugated competing cities had to hand over their main church bells (Tver in 1340; Great Novgorod in 1478, Pskov in 1510—in the latter two cases, however, this was probably of more directly political significance, since these were the bells for the citizen assembly, the *veche*). At a later date, in the 1640s, the remains of several Russian Patriarchs were transferred for reburial in Moscow. Cf. Karl Stählin, *Geschichte Russlands* (Stuttgart 1923), I, 142, 164, 213, 238; Albert M. Ammann S.J., *Ostslawische Kirchengeschichte* (Vienna 1950), 42, 282.

10. See Max Müller, *Anthropological Religion* (London: Longmans, Green, 1892), 76. Müller's three stages are Henotheism (each god supreme in his own domain), Polytheism (one god supreme among many), Monotheism (the supremacy of the one and only god); see also *id.*, *Contributions to the Science of Mythology* (London: Longmans, Green, 1897), 138ff.

11. On Varuṇa, Mitra and Indra, cf. Weber, "Hinduismus und Buddhismus," in *GAzRS*, II, 29, 475 (*Religion of India*, 27, 170).

ii

Magic and Religion

1. *Magical Coercion Versus Supplication, Prayer and Sacrifice*[1]

A power conceived by analogy to man endowed with a soul may be coerced into the service of man, just as the naturalistic power of a spirit could be coerced. Whoever possesses the requisite charisma for employing the proper means is stronger even than the god, whom he can compel to do his will. In these cases, religious behavior is not worship of the god but rather coercion of the god,[2] and invocation is not prayer but rather the exercise of magical formulae. Such is one ineradicable basis of popular religion, particularly in India. Indeed, such magical coercion is universally diffused, and even the Catholic priest continues to practice something of this magical power in executing the miracle of the mass and in exercising the power of the keys. By and large this is the original, though not exclusive, origin of the orgiastic and mimetic components of the religious cult—especially of song, dance, drama, and the typical fixed formulae of prayer.

The process of anthropomorphization may also take the form of attributing to the gods the human behavior patterns appropriate to a mighty terrestrial potentate, whose discretionary favor can be obtained by entreaty, gifts, service, tributes, cajolery, and bribes. On the other hand, his favor may be earned as a consequence of the devotee's own faithfulness and good conduct in conformity with his will. In these ways, the gods are conceived by analogy to earthly rulers: mighty beings whose power differs only in degree, at least at first. As gods of this type evolve, worship of divinity comes to be regarded as a necessity.

Of course, the two characteristic elements of divine worship, prayer and sacrifice, have their origin in magic. In prayer, the boundary between magical formula and supplication remains fluid. The technically rationalized enterprise of prayer (in the form of prayer wheels and similar devices, or of prayer strips hung in the wind or attached to icons of gods

or saints, or of carefully measured rosary bead counting—virtually all which are products of the methodical compulsion of the gods by th Hindus) everywhere stands farcloser to magic than to entreaty. Individu prayer as real supplication is found in religions that are otherwise un differentiated, but in most cases such prayer has a purely business-like rationalized form that sets forth the achievements of the supplicant i behalf of the god and then claims adequate recompense therefor.

Sacrifice, at its first appearance, is a magical instrumentality that ir part stands at the immediate service of the coercion of the gods. For the gods also need the soma juice[3] of the sorcerer-priests, the substance which engenders their ecstasy and enables them to perform their deeds. This is the ancient notion of the Aryans as to why it is possible to coerce the gods by sacrifice. It may even be held that a pact can be concluded with the gods which imposes obligations on both parties; this was the fateful conception of the Israelites in particular. Still another view of sacrifice holds that it is a means of deflecting, through magical media, the wrath of the god upon another object, a scapegoat or above all a human sacrifice.

But another motive for sacrifice is of greater importance, and it is probably older too: the sacrifice, especially of animals, is intended as a *communio*, a ceremony of eating together which serves to produce a fraternal community between the sacrificers and the god. This represents a transformation in the significance of the even older notion that to rend and consume a strong (and later a sacred) animal enables the eaters to absorb its potencies. Some such older magical meaning—and there are various other possibilities—may still provide the act of sacrifice with its essential form, even after genuine cultic views have come to exert considerable influence. Indeed, such a magical significance may even regain dominance over the cultic meaning. The sacrificial rituals of the Brahmanas, and even of the Atharva Veda, were almost purely sorcery, in contrast to the ancient Nordic ones. On the other hand, there are many departures from magic, as when sacrifices are interpreted as tribute. First fruits may be sacrificed in order that the god may not deprive man of the enjoyment of the remaining fruits; and sacrifice is often interpreted as a self-imposed punishment or atonement that averts the wrath of the gods before it falls upon the sacrificer. To be sure, this does not yet involve any awareness of sin, and it initially takes place in a mood of cool and calculated trading, as for example in India.

An increasing predominance of non-magical motives is later brought about by the growing recognition of the power of a god and of his

character as a personal overlord. The god becomes a great lord who may fail on occasion, and whom one cannot approach with devices of magical compulsion, but only with entreaties and gifts. But if these motives add anything new to mere wizardry, it is initially something as sober and rational as the motivation of magic itself. The pervasive and central theme is: *do ut des*. This aspect clings to the routine and the mass religious behavior of all peoples at all times and in all religions. The normal situation is that the burden of all prayers, even in the most other-worldly religions, is the aversion of the external evils of this world and the inducement of the external advantages of this world.

Every aspect of religious phenomena that points beyond evils and advantages in this world is the work of a special evolutionary process, one characterized by distinctively dual aspects. On the one hand, there is an ever-broadening rational systematization of the god concept and of the thinking concerning the possible relationships of man to the divine. On the other hand, there ensues a characteristic recession of the original, practical and calculating rationalism. As such primitive rationalism recedes, the significance of distinctively religious behavior is sought less and less in the purely external advantages of everyday economic success. Thus, the goal of religious behavior is successively "irrationalized" until finally otherworldly non-economic goals come to represent what is distinctive in religious behavior. But for this very reason the extra-economic evolution just described requires as one of its prerequisites the existence of specific personal carriers.

The relationships of men to supernatural forces which take the forms of prayer, sacrifice and worship may be termed "*cult*" (*Kultus*) and "*religion*," as distinguished from "*sorcery*," which is magical coercion. Correspondingly, those beings that are worshipped and entreated religiously may be termed "*gods*," in contrast to "*demons*," which are magically coerced and charmed. There may be no instance in which it is possible to apply this differentiation absolutely, since the cults we have just called "religious" practically everywhere contain numerous magical components. The historical development of the aforementioned differentiation frequently came about in a very simple fashion when a secular or priestly power suppressed a cult in favor of a new religion, with the older gods continuing to live on as demons.

2. *The Differentiation of Priests from Magicians*

The sociological aspect of this differentiation [into gods and demons] is the rise of the "priesthood" as something distinct from "practitioners of

magic." Applied to reality, this contrast is fluid, as are almost all sociological phenomena. Even the theoretical differentiae of these types are not unequivocally determinable. Following the distinction between "cult" and "sorcery," one may contrast those professional functionaries who influence the gods by means of worship with those magicians who coerce demons by magical means; but in many great religions, including Christianity, the concept of the priest includes such a magical qualification.

Or the term "priest" may be applied to the functionaries of a regularly organized and permanent enterprise concerned with influencing the gods, in contrast with the individual and occasional efforts of magicians. Even this contrast is bridged over by a sliding scale of transitions, but as a pure type the priesthood is unequivocal and can be said to be characterized by the presence of certain fixed cultic centers associated with some actual cultic apparatus.

Or it may be thought that what is decisive for the concept of priesthood is that the functionaries, regardless of whether their office is hereditary or personal, be actively associated with some type of social organization, of which they are employees or organs operating in the interests of the organization's members, in contrast with magicians, who are self-employed. Yet even this distinction, which is clear enough conceptually, is fluid in actuality. The sorcerer is not infrequently a member of an organized guild, and is occasionally the member of a hereditary caste which may hold a monopoly of magic within the particular community. Even the Catholic priest is not always the occupant of an official post. In Rome he is occasionally a poor mendicant who lives a hand-to-mouth existence from the proceeds of single masses which he performs.

Yet another distinguishing quality of the priest, it is asserted, is his professional equipment of special knowledge, fixed doctrine, and vocational qualifications, which brings him into contrast with either sorcerers or prophets, who exert their influence by virtue of personal gifts (charisma) made manifest in miracle and revelation. But this again is no simple and absolute distinction, since the sorcerer may sometimes be very learned, while deep learning need not always characterize priests. Rather, the distinction between priest and magician must be established qualitatively with reference to the different nature of the learning in the two cases. As a matter of fact we must later, in our exposition of the forms of domination [see ch. XIV:9, and also ch. XV:4], distinguish the rational training and discipline of priests from the different preparation of charismatic magicians. The latter preparation proceeds in part as an "awakening" using irrational means and aiming at rebirth, and proceeds in part as a training in purely empirical lore. But in this case also, the two contrasted types flow into one another.

"Doctrine" has already been advanced as one of the fundamental traits of the priesthood. We may assume that the outstanding marks of doctrine are the development of a rational system of religious concepts and (what is of the utmost importance for us here) the development of a systematic and distinctively religious ethic based upon a consistent and stable doctrine which purports to be a "revelation." An example is found in Islam, which contrasted scriptural religion with simple paganism. But this description of priesthood and this assumption about the nature of doctrine would exclude from the concept of priesthood the Japanese Shinto priests and such functionaries as the mighty hierocrats of the Phoenicians. The adoption of such an assumption would have the effect of making the decisive characteristic of the priesthood a function which, while admittedly important, is not universal.

It is more correct for our purpose, in order to do justice to the diverse and mixed manifestations of this phenomenon, to set up as the crucial feature of the priesthood the specialization of a particular group of persons in the continuous operation of a cultic enterprise, permanently associated with particular norms, places and times, and related to specific social groups. There can be no priesthood without a cult, although there may well be a cult without a specialized priesthood. The latter was the case in China, where state officials and the heads of households exclusively conducted the services of the official gods and the ancestral spirits. On the other hand, both novitiate and doctrine are to be found among typical, pure magicians, as in the brotherhood of the Hametze among the Indians, and elsewhere in the world. These magicians may wield considerable power, and their essentially magical celebrations may play a central role in the life of their people. Yet they lack a continuously operative cult, and so the term "priests" cannot be applied to them.

A rationalization of metaphysical views and a specifically religious ethic are usually missing in the case of a cult without priests, as in the case of a magician without a cult. The full development of both a metaphysical rationalization and a religious ethic requires an independent and professionally trained priesthood, permanently occupied with the cult and with the practical problems involved in the cure of souls. Consequently, ethics developed into something quite different from a metaphysically rationalized religion in classic Chinese thought, by reason of the absence of an independent priesthood; and this also happened with the ethics of ancient Buddhism, which lacked both cult and priesthood.

Moreover, as we shall later explicate, the rationalization of religious life was fragmentary or entirely missing wherever the priesthood failed to achieve independent status and power, as in classical Antiquity.

Wherever a status group of primitive magicians and sacred musicians did rationalize magic, but failed to develop a genuinely priestly office (as was the case with the Brahmins in India), the priesthood developed in a peculiar way. However, not every priesthood developed what is distinctively new as against magic: a rational metaphysic and a religious ethic. Such developments generally presupposed the operation of one or both of two forces outside the priesthood: *prophets*, the bearers of metaphysical or religious-ethical revelation, and the *laity*, the non-priestly devotees of the cult.

Before we examine the manner in which these factors outside the priesthood influenced religion sufficiently to enable it to transcend the stages of magic, which are rather similar the world over, we must discuss some typical trends of religious evolution which are set in motion by the existence of vested interests of a priesthood in a cult.

3. *Reactions to Success and Failure of Gods and Demons*

Whether one should at all try to influence a particular god or demon by coercion or by entreaty is the most basic question, and the answer to it depends only upon proven effect. As the magician must keep up his charisma, so too the god must continually demonstrate his prowess. Should the effort to influence a god prove to be permanently ineffacious, then it is concluded that either the god is impotent or the correct procedure of influencing him is unknown, and he is abandoned. In China, to this day, a few striking successes suffice to enable a god to acquire prestige and power (*shen, ling*), thereby winning a sizeable circle of devotees. The emperor, as the representative of his subjects vis-à-vis the heavens, provides the gods with titles and other distinctions whenever they have proven their capacity. Yet a few striking disappointments subsequently will suffice to empty a temple forever. Conversely, the historical accident that Isaiah's steadfast prophecy actually came to fulfillment—God would not permit Jerusalem to fall into the hands of the Assyrian hordes, if only the Judean king remained firm—provided the subsequently unshakeable foundation for the position of this god and his prophets.

Something of this kind occurred earlier in respect to the pre-animistic fetish and the charisma of those possessing magical endowment. In the event of failure, the magician possibly paid with his life. On the other hand, priests have enjoyed the contrasting advantage of being able to deflect the blame for failure away from themselves and onto their god.

Yet even the priests' prestige is in danger of falling with that of their gods. However, priests may find ways of interpreting failures in such a manner that the responsibility falls, not upon the god, but upon the behavior of the god's worshippers. There might even arise from such interpretation the idea of worshipping the god, as distinct from coercing him. The problem of why the god has not hearkened to his devotees might then be explained by stating that they had not honored their god sufficiently, that they had not satisfied his desires for sacrificial blood or soma juice, or finally that they neglected him in favor of other gods. Even renewed and increased worship of the god is of no avail in some situations, and since the gods of the adversaries remain more powerful, the end of his reputation is at hand. In such cases, there may be a defection to the stronger gods, although there stil remain methods of explaining the wayward conduct of the old god in such a way that his prestige might not dwind e and might even be enhanced. Under certain circumstances priests succeeded even in excogitating such methods. The most striking example is that of the priests of Yahweh, whose attachment to his people became, for reasons to be expounded later, ever stronger as Israel became increasingly enmeshed in the toils of tragedy. But for this to happen, a new series of divine attributes must evolve.

The qualitative superiority of anthropomorphically conceived gods and demons over man himself is at first only relative. Their passions and their avidity for p easure are believed to be unlimited, like those of strong men. But they are neither omniscient nor omnipotent (obviously on y one could possess these attributes), nor necessarily eternal (the gods of Babylon and of the Germans were not). However, they often have the ability to secure their glamorous existence by means of magical food and drink which they have reserved for themselves, much as human lives may be prolonged by the magica potions of the medicine man. The only qualitative differentiation that is made between these anthropomorphic gods and demons is that between powers useful to man and those harmful to man. Naturally, the powers useful to him are usually considered the good and high gods, who are to be worshipped, while the powers harmful to him are usually the lower demons, frequently endowed with incredible guile or limitless spite, who are not to be worshipped but magically exorcised.

Yet the differentiation did not always take place a ong this particular line, and certainly not always in the direction of degrading the masters of the noxious forces into demons. The measure of cultic worship that gods receive does not depend upon their goodness, nor even upon their cosmic importance. Indeed, some very great and good gods of heaven

frequently lack cults, not because they are too remote from man, but because their influence seems equable, and by its very regularity appears to be so secure that no special intervention is required. On the other hand, powers of clearly diabolical character, such as Rudra, the Hindu god of pestilence, are not always weaker than the good gods, but may actually be endowed with a tremendous power potential.

4. *Ethical Deities and Increasing Demands upon Them*

In addition to the important qualitative differentiation between the good and diabolical forces, which assumed considerable importance in certain cases, there might develop within the pantheon gods of a distinctively ethical character—and this is particularly important to us at this point. The possibility that a god may possess ethical qualities is by no means confined to monotheism. Indeed, this possibility exists at various stages in the formation of a pantheon; but it is at the level of monotheism that this development has particularly far-reaching consequences. A specialized functional god of legislation and a god who controls the oracle will naturally be found very frequently among the ethical divinities.

The art of "divining" at first grows out of the magic based on the belief in spirits, who function in accordance with certain principles of order, as do living creatures. Once knowing how the spirits operate, one can predict their behavior from symptoms or omens that make it possible to surmise their intentions, on the basis of previous experience. Where one builds houses, graves and roads, and when one undertakes economic and political activities is decided by reference to that which experience has established as the favorable place or time. Wherever a social group, as for example the so-called priests of Taoism in China, makes its living from the practice of the diviner's art, its craft (*feng shui*) may achieve ineradicable power. When this happens, all efforts at economic rationalization founder against the opposition of the spirits. Thus, no location for a railroad or factory could be suggested without creating some conflict with them. Capitalism was able to cope with this factor only after it had reached its fullest power. As late as the Russo-Japanese War, the Japanese army seems to have missed several favorable opportunities because the diviners had declared them to be of ill omen. On the other hand, [the Spartan regent] Pausanias had already adroitly manipulated the omens, favorable and otherwise, at Plataea

[479 B.C.] to make them fit the requirements of military strategy. Whenever the political power appropriated judicial or legislative functions (e.g., transforming into a mandatory verdict an arbitrator's suggestion in case of a clan feud, or transforming into an orderly procedure the primordial lynch justice practiced by a threatened group in cases of religious or political malfeasance), the particular solution was almost always mediated by a divine revelation (a judgement of the god). Wherever diviners succeeded in appropriating the preparation and interpretation of the oracles or the divine judgements, they frequently achieved a position of enduring dominance.

Quite in keeping with the realities of actual life, the guardian of the legal order was nowhere necessarily the strongest god: neither Varuna in India nor Maat in Egypt, much less Lykos in Attica, Dike, Themis or even Apollo. What alone characterized these deities was their ethical qualification, which corresponded to the notion that the oracle or divine judgment somehow always revealed the truth. It was not because he was a deity that the ethical god was the guardian of morality and the legal order, for the anthropomorphic gods originally had but little to do with ethics, in fact less than human beings. Rather, the reason for such a god's ethical pre-eminence was that he had taken this particular type of behavior under his aegis.

Increased ethical demands were made upon the gods by men, parallel with four developments. First, the increasing power of orderly judicial determination within large and pacified polities, and hence increasing claims upon its quality. Second, the increasing scope of a rational comprehension of an enduring and orderly cosmos. (The cause of this is to be sought in the meteorological orientation of economic activity.) Third, the increasing regulation of ever new types of human relationships by conventional rules, and the increasing dependence of men upon the observance of these rules in their interactions with each other. Fourth, the growth in social and economic importance of the reliability of the given word—whether of friends, vassals, officials, partners in an exchange transaction, debtors, or whomever else; what is basically involved in these four developments is the increased importance of an ethical attachment of individuals to a cosmos of obligations, making it possible to calculate what the conduct of a given person may be.

Even the gods to whom one turns for protection are henceforth regarded as either subject to some moral order or—like the great kings—as the creators of such an order, which they made the specific content of their divine will. In the first case, a superordinate and impersonal power makes its appearance behind the gods, controlling them from within and measuring the value of their deeds. Of course, this supra-

divine power may take many different forms. It appears first as "fate." Among the Greeks fate (*moira*) is an irrational and, above all, ethically neutral predestination of the fundamental aspects of every man's destiny. Such predetermination is elastic within certain limits, but flagrant interferences with predestined fate may be very dangerous (ὑπέρμορον) even to the greatest of the gods. This provides one explanation for the failure of so many prayers. This kind of predestinarian view is very congenial to the normal psychological attitude of a military caste, which is particularly unreceptive to the rationalistic belief in an ethically concerned, yet impartial, wise and kindly "providence." In this we glimpse once again the deep sociological distance separating a warrior class from every kind of religious or purely ethical rationalism. We have already made brief reference to this cleavage, and we shall have occasion to observe it in many contexts.

Quite different is the impersonal power contemplated by bureaucratic or theocratic strata, e.g., the Chinese bureaucracy or the Hindu Brahmins. Theirs is the providential power of the harmonious and rational order of the world, which may in any given case incline to either a cosmic or an ethical and social format, although as a rule both aspects are involved. In Confucianism as in Taoism, this order has both a cosmic and a characteristic ethical-rational character; it is an impersonal, providential force that guarantees the regularity and felicitous order of world history. This is the view of a rationalistic bureaucracy. Even more strongly ethical is the Hindu *rita*, the impersonal power of the fixed order of religious ceremonial and the fixed order of the cosmos, and hence of human activity in general. This is the conception held by the Vedic priesthood, which practiced an essentially empirical art of influencing the god, more by coercion than by worship. Also to be included here is the later Hindu notion of a supradivine and cosmic all-unity, superordinate to the gods and alone independent of the senseless change and transitoriness of the entire phenomenal world—a conception entertained by speculative intellectuals who were indifferent to worldly concerns.

Even when the order of nature and of the social conditions which are normally considered parallel to it, especially law, are not regarded as superordinate to the gods, but rather as their creations (later we shall inquire under what circumstances this occurs), it is naturally postulated that god will protect against injury the order he has created. The intellectual implementation of this postulate has far-reaching consequences for religious behavior and for the general attitude toward the god. It stimulated the development of a religious ethic, as well as the differentiation of demands made upon man by god from demands made upon man by nature, which latter so often proved to be inadequate. Hitherto,

there had been two primordial methods of influencing supernatural powers. One was to subject them to human purposes by means of magic. The other was to win them over by making oneself agreeable to them, not by the exercise of any ethical virtue, but by gratifying their egotistic wishes. To these methods was now added obedience to the religious law as the distinctive way to win the god's favor.

5. *Magical Origins of Religious Ethics and the Rationalization of Taboo*

To be sure, religious ethics do not really begin with this view. On the contrary, there was already another and highly influential system of religious ethics deriving from purely magical norms of conduct, the infraction of which was regarded as a religious abomination. Wherever there exists a developed belief in spirits, it is held that extraordinary occurrences in life, and sometimes even routine life processes, are generated by the entrance into a person of a particular spirit, e.g., in sickness, at birth, at puberty, or at menstruation. This spirit may be regarded as either sacred or unclean; this is variable and often the product of accident, but the practical effect is the same. In either case one must avoid irritating the spirit, lest it enter into the officious intruder himself, or by some magical means harm him or any other persons whom it might possess. As a result, the individual in question will be shunned physically and socially and must avoid contact with others and sometimes even with his body. In some instances, e.g., Polynesian charismatic princes, such a person must be carefully fed lest he magically contaminate his own food.

Naturally, once this set of notions has developed, various objects or persons may be endowed with the quality of taboo by means of magical manipulations invoked by persons possessing magical charisma; thereupon, contact with the new possessor of taboo will work evil magic, for his taboo may be transmitted. This charismatic power to transfer taboo underwent considerable systematic development, especially in Indonesia and the South Sea area. Numerous economic and social interests stood under the sanctions of taboos. Among them were the following: the conservation of forests and wild life (after the pattern of the prohibited forests of early medieval kings); the protection of scarce commodities against uneconomic consumption during periods of economic difficulty; the provision of protection for private property, especially for the property of privileged priests or aristocrats; the safeguarding of common war

booty against individual plundering (as by Joshua in the case of Achan); and the sexual and personal separation of status groups in the interest of maintaining purity of blood or prestige. This first and most general instance of the direct harnessing of religion to extra-religious purposes also reveals the idiosyncratic autonomy of the religious domain, in the somewhat incredible irrationality of its painfully onerous norms, which applied even to the beneficiaries of the taboos.

The rationalization of taboos leads ultimately to a system of norms according to which certain actions are permanently construed as religious abominations subject to sanctions, and occasionally even entailing the death of the malefactor in order to prevent evil sorcery from overtaking the entire group because of the transgression of the guilty individual. In this manner there arises an ethical system, the ultimate warrant of which is taboo. This system comprises dietary restrictions, the proscription of work on taboo or "unlucky" days (the Sabbath was originally a taboo day of this type), and certain prohibitions against marriage to specified individuals, especially within the circle of one's blood relations. The usual process here is that something which has become customary, whether on rational grounds or otherwise, e.g., experiences relative to illness and other effects of evil sorcery, comes to be regarded as sacred.

In some fashion not clearly understood, there developed for certain groups a characteristic association between specific norms having the quality of taboo and various important in-dwelling spirits inhabiting particular objects or animals. Egypt provides the most striking example of how the incarnation of spirits as sacred animals may give rise to cultic centers of local political associations. Such sacred animals, as well as other objects and artifacts, may also become the foci of other social groupings, which in any particular case may be more natural or artificial in their generation.

6. *Taboo Norms: Totemism and Commensalism*

The most widespread of the social institutions which developed in this fashion is that known as *totemism*, which is a specific relationship of an object, usually a natural object and in the purest manifestations of totemism an animal, with a particular social group. For the latter, the totemic animal is a symbol of brotherhood; and originally the animal symbolized the common possession by the group of the spirit of the animal, after it had been consumed by the entire group. There are, of course, variations in the scope of this fraternalism, just as there are

variations in the nature of the relationship of the members to the totemic object. In the fully developed type of totemism, the brotherliness of the group comprises all the fraternal responsibilities of an exogamous kin group, while the totemic relation involves a prohibition of slaying and consuming the totemic animal, except at the cultic meals of the group. These developments culminate in a series of quasi-cultic obligations following from the common, though not universal, belief that the group is descended from the totem animal.

The controversy concerning the development of these widely diffused totemic brotherhoods is still unresolved. For us it will suffice to say that the totems functionally are the animistic counterparts of the gods found in cultic associations which, as previously mentioned, are associated with the most diverse social groups, since non-empirical thinking can not do without a functional organization (*Zweckverband*) based on personal and religiously guaranteed fraternization, even if the organization is purely artificial. For this reason the regulation of sexual behavior, which the kin groups undertook to effect, especially attracted religious sanctions having the nature of taboo, which are best provided by totemism. But this system was not limited to the purposes of sexual regulation, nor was it confined to the kin group, and it certainly did not necessarily arise first in this context. Rather, it is a widely diffused method of placing fraternal groupings under magical sanctions. The belief in the universality of totemism, and certainly the belief in the derivation of virtually all social groups and all religions from totemism, constitutes a tremendous exaggeration that has been rejected completely by now. Yet totemism has frequently been very influential in producing a division of labor between the sexes which is guaranteed and enforced by magical motivations. Then too, totemism has frequently played a very important role in the development and regulation of barter as a regular intra-group phenomenon (as contrasted with trade outside the limits of the group).

Taboos, especially the dietary restrictions based on magic, show us a new source of the institution of commensality which has such far-reaching importance. We have already noted one source of this institution, namely the household. Another aspect is the restriction of commensality to comrades having equal magical qualifications, which is a consequence of the doctrine of impurity by taboo. These two facets of commensality may enter into competition or even conflict. For example, when a woman is descended from another kin group than that of her husband, there are frequently restrictions upon her sitting at the same table with him, and in some cases she is even prohibited from seeing him eat. Nor is commensality permitted to the king who is hedged in

by taboos, or to members of privileged status groups such as castes, or religious communities, both of which are also under taboo. Furthermore, highly privileged castes must be shielded from the glances of "unclean" strangers during cultic repasts or even everyday meals. Conversely, the provision of commensality is frequently a method of producing religious fellowship, which may on occasion lead to political and ethnic alliances. Thus, the first great turning point in the history of Christianity was the communal feast arranged at Antioch between Peter and the uncircumcised proselytes, to which Paul, in his polemic against Peter, attributed such decisive importance.

7. *Caste Taboo, Vocational Caste Ethics, and Capitalism*

On the other hand, norms of taboo may give rise to extraordinarily severe impediments to the development of trade and of the market, and other types of social intercourse. The absolute impurity of those outside one's own religion, as taught by the Shiite sect of Islam, has created in its adherents crucial impediments to intercourse with others, even in recent times, though recourse has been made to fictions of all sorts to ease the situation. The caste taboos of the Hindus restricted intercourse among people far more forcefully than the *feng shui* system of spirit beliefs interfered with trade in China.[4] Of course, even in these matters there are natural limits to the power of religion in respect to the elementary needs of life. Thus, according to the Hindu caste taboo, "The hand of the artisan is always clean." Also clean are mines, workshops, and whatever merchandise is available for sale in stores, as well as whatever articles of food have been touched by mendicant students (ascetic disciples of the Brahmins). The only Hindu caste taboo that was apt to be violated in any considerable measure was the taboo on sexual relationships between castes, under the pressure of the wealthy classses' interest in polygamy. To some extent, it was permissible to take girls of lower castes as concubines. The caste system of labor in India, like the *feng shui* system in China, is being slowly but surely rendered illusory wherever railroad transportation develops.

In theory, these taboo restrictions of caste need not have rendered capitalism impossible. Yet it is perfectly obvious that economic rationalization would never have arisen originally where taboo had achieved such massive power. Despite all efforts to reduce caste segregation, certain psychological resistances based on the caste system remained operative, preventing artisans of different crafts from working together

in the same factory. The caste system tends to perpetuate a specialization of labor of the handicraft type, if not by positive prescription, then as a consequence of its general spirit and presuppositions. The net effect of the religious sanction of caste upon the spirit of economic activity is diametrically opposite to that of rationalism. In the caste system particular crafts, insofar as they are the indicia of different castes, are assigned a religious sanction and the character of a sacred vocation. Even the most despised of Hindu castes, not excluding that of thieves, regards its own enterprise as ordained by particular gods or by a specific volition of a god, assigned to its members as their special mission in life; and each caste nourishes its feeling of worth by its technically expert execution of its assigned vocation.

But this vocational ethic of a caste system is—at least as far as the crafts are concerned—notably traditionalistic, rather than rational. It finds its fulfillment and confirmation in the absolutely qualitative perfection of the product fashioned by the craft. Very alien to its mode of thinking is the possibility of rationalizing the method of production, which is basic to all modern rational technology, or the possibility of systematically organizing a commercial enterprise along the lines of a rational business economy, which is the foundation of modern capitalism. One must go to the ethics of ascetic Protestantism to find any ethical sanction for economic rationalism and for the entrepreneur. Caste ethics glorifies the spirit of craftsmanship and enjoins pride, not in economic earnings measured by money, nor in the wonders of rational technology as applied in the rational use of labor, but rather in the personal virtuosity of the producer as manifested in the beauty and worth of the product appropriate to his particular caste.

Finally, we should note—in anticipation of our general argument about these relationships—that what was decisive for the Hindu caste system in particular was its connection with a belief in transmigration, and especially its connection with the tenet that any possible improvement in one's chances in subsequent incarnations depended on the faithful execution in the present lifetime of the vocation assigned one by virtue of his caste status. Any effort to emerge from one's caste, and especially to intrude into the sphere of activities appropriate to other and higher castes, was expected to result in evil magic and entailed the likelihood of unfavorable incarnation hereafter. This explains why, according to numerous observations on affairs in India, it is precisely the lowest classes, who would naturally be most desirous of improving their status in subsequent incarnations, that cling most steadfastly to their caste obligations, never thinking of toppling the caste system through social revolutions or reforms. Among the Hindus, the Biblical

emphasis echoed in Luther's injunction, "Remain steadfast in your vocation," was elevated into a cardinal religious obligation and was fortified by powerful religious sanctions.

8. *From Magical Ethics to Conscience, Sin and Salvation*

Whenever the belief in spirits became rationalized into belief in gods, that is, whenever the coercion of spirits gave way to the worship of the gods who are served by a cult, the magical ethic of the spirit belief underwent a transformation too. This reorientation developed through the notion that whoever flouted divinely appointed norms would be overtaken by the ethical displeasure of the god who had these norms under his special care. This made possible the assumption that when enemies conquered or other calamities befell one's group, the cause was not the weakness of the god but rather his anger against his followers, caused by his displeasure at their transgression against the laws under his guardianship. Hence, the sins of the group were to blame if some unfavorable development overtook it; the god might well be using the misfortune to express his desire to chastise and educate his favorite people. Thus, the prophets of Israel were always able to point out to their people misdeeds in their own generation or in their ancestors', to which God had reacted with almost inexhaustible wrath, as evidenced by the fact that he permitted his own people to become subject to another people that did not worship him at all.

This idea, diffused in all conceivable manifestations wherever the god concept has taken on universalistic lines, forms a religious ethic out of the magical prescriptions which operate only with the notion of evil magic. Henceforth, transgression against the will of god is an ethical sin which burdens the conscience, quite apart from its direct results. Evils befalling the individual are divinely appointed inflictions and the consequences of sin, from which the individual hopes to be freed by "piety" (behavior acceptable to god) which will bring the individual salvation. In the Old Testament, the idea of "salvation," pregnant with consequences, still has the elementary rational meaning of liberation from concrete ills.

In its early stages, the religious ethic consistently shares another characteristic with magic worship in that it is frequently composed of a complex of heterogeneous prescriptions and prohibitions derived from the most diverse motives and occasions. Within this complex there is, from our modern point of view, little differentiation between important

and unimportant requirements; any infraction of the ethic constitutes sin. Later, a systematization of these ethical concepts may ensue, which leads from the rational wish to insure personal external pleasures for oneself by performing acts pleasing to the god, to a view of sin as the unified power of the anti-divine (diabolical) into whose grasp man may fall. Goodness is then envisaged as an integral capacity for an attitude of holiness, and for consistent behavior derived from such an attitude. During this process of transformation, there also develops a hope for salvation as an irrational yearning to be able to be good for its own sake, in order to gain the beneficent awareness of such virtuousness.

An almost infinite series of the most diverse conceptions, crossed again and again by purely magical notions, leads to the sublimation of piety as the enduring basis of a specific conduct of life, by virtue of the continuous motivation it engenders. Of course such a sublimation is extremely rare and is attained in its full purity only intermittently by everyday religion. We are still in the realm of "magic" if *sin* and *piety* are viewed as integral powers, envisaged as rather like material substances; at this stage, the nature of the "good" or "evil" of the acting person is construed after the fashion of a poison, a healing antidote, or a bodily temperature. Thus in India *tapas*, the power of the sacred which a man achieved by asceticism and contained within his body, originally denoted the heat engendered in fowls during their mating season, in the creator of the world at the cosmogony, and in the magician during his sacred hysteria induced by mortifications and leading to supernatural powers.

It is a long way from here to the notion that the person who acts with goodness has received into himself a special soul of divine provenience, and to the various forms of inward possession of the divine to be described later. So too, it is a far cry from the conception of sin as a poison in the body of the malefactor, which must be treated by magical means, to the conception of an evil demon which enters into possession of him, and on to the culminating conception of the diabolical power of the radical evil, with which the evildoer must struggle lest he succumb to its dangerous power.

By no means every ethic traversed the entire length of the road culminating in these conceptions. Thus, the ethics of Confucianism lack the concept of radical evil, and in general lack the concept of any integral diabolical power of sin. Nor was this notion contained in the ethics of Greece or Rome. In both those cases, there was lacking not only an independently organized priesthood, but also prophecy, that historical phenomenon which normally produced a centralization of ethics under the aegis of religious salvation. In India, prophecy was not

absent, but as will be expounded later, it had a very special character and a very highly sublimated ethic of salvation.

Prophets and priests are the twin bearers of the systematization and rationalization of religious ethics. But there is a third significant factor of importance in determining the evolution of religious ethics: the laity, whom prophets and priests seek to influence in an ethical direction. We must now devote a brief examination to the interaction of these three factors.

NOTES

1. The first part of this section belongs to Weber's first section, if indeed the German paragraph division is that of the original manuscript. The section is here combined with the German §2, which has only two pages, and with §3 (seven pages).

2. Weber contrasts the conventional German term for attending "services," "*Gottesdienst*," with the term "*Gotteszwang*."

3. Cf. Weber, *The Religion of India*, 137f.

4. On the *feng shui*, see Weber, *The Religion of China*, 199, 214, 217, 276, 297.

iii

The Prophet

1. *Prophet versus Priest and Magician*

What is a prophet, from the perspective of sociology? We shall forego here any consideration of the general question regarding the "bringer of salvation" (*Heilbringer*) as raised by Breysig.[1] Not every anthropomorphic god is a deified bringer of salvation, whether external or internal salvation. And certainly not every provider of salvation became a god or even a savior, although such phenomena were widespread.

We shall understand "prophet" to mean a purely individual bearer of charisma, who by virtue of his mission proclaims a religious doctrine or divine commandment. No radical distinction will be drawn between a "renewer of religion" who preaches an older revelation, actual or supposititious, and a "founder of religion" who claims to bring com-

pletely new deliverances. The two types merge into one another. In any case, the formation of a new religious community need not be the result of doctrinal preaching by prophets, since it may be produced by the activities of non-prophetic reformers. Nor shall we be concerned in this context with the question whether the followers of a prophet are more attracted to his person, as in the cases of Zoroaster, Jesus, and Muhammad, or to his doctrine, as in the cases of Buddha and the prophets of Israel.

For our purposes here, the personal call is the decisive element distinguishing the prophet from the priest. The latter lays claim to authority by virtue of his service in a sacred tradition, while the prophet's claim is based on personal revelation and charisma. It is no accident that almost no prophets have emerged from the priestly class. As a rule, the Indian teachers of salvation were not Brahmins, nor were the Israelite prophets priests. Zoroaster's case is exceptional in that there exists a possibility that he may have descended from the hieratic nobility. The priest, in clear contrast, dispenses salvation by virtue of his office. Even in cases in which personal charisma may be involved, it is the hierarchical office that confers legitimate authority upon the priest as a member of an organized enterprise of salvation.

But the prophet, like the magician, exerts his power simply by virtue of his personal gifts. Unlike the magician, however, the prophet claims definite revelations, and the core of his mission is doctrine or commandment, not magic. Outwardly, at least, the distinction is fluid, for the magician is frequently a knowledgeable expert in divination, and sometimes in this alone. At this stage, revelation functions continuously as oracle or dream interpretation. Without prior consultation with the magician, no innovations in social relations could be adopted in primitive times. To this day, in certain parts of Australia, it is the dream revelations of magicians that are set before the councils of clan heads for adoption, and it is a mark of secularization that this practice is receding.

On the other hand, it was only under very unusual circumstances that a prophet succeeded in establishing his authority without charismatic authentication, which in practice meant magic. At least the bearers of new doctrine practically always needed such validation. It must not be forgotten for an instant that the entire basis of Jesus' own legitimation, as well as his claim that he and only he knew the Father and that the way to God led through faith in him alone, was the magical charisma he felt within himself. It was doubtless this consciousness of power, more than anything else, that enabled him to traverse the road of the prophets. During the apostolic period of early Christianity and thereafter the figure of the wandering prophet was a constant phenome-

non. There was always required of such prophets a proof of their possession of particular gifts of the spirit, of special magical or ecstatic abilities.

Prophets very often practiced divination as well as magical healing and counseling. This was true, for example, of the prophets (*nabi, nebiim*)[2] so frequently mentioned in the Old Testament, especially in the prophetic books and Chronicles. But what distinguishes the prophet, in the sense that we are employing the term, from the types just described is an economic factor, i.e., that his *prophecy is unremunerated*. Thus, Amos indignantly rejected the appellation of *nabi*. This criterion of gratuitous service also distinguishes the prophet from the priest. The typical prophet propagates ideas for their own sake and not for fees, at least not in any obvious or regulated form. The provisions enjoining the non-remunerative character of prophetic propaganda have taken various forms. Thus developed the carefully cultivated postulate that the apostle, prophet, or teacher of ancient Christianity must not "trade on" his religious proclamations. Also, limitations were set upon the length of the time he could enjoy the hospitality of his friends. The Christian prophet was enjoined to live by the labor of his own hands or, as among the Buddhists, only from alms which he had not specifically solicited. These injunctions were repeatedly emphasized in the Pauline epistles, and in another form in the Buddhist monastic regulations. The dictum "whosoever will not work, shall not eat" applied to missionaries; however, the prophesying free of charge is, of course, one of the chief reasons for the success of prophetic propaganda itself.

The period of the older Israelitic prophecy at about the time of Elijah was an epoch of strong prophetic propaganda throughout the Near East and Greece. Perhaps prophecy in all its forms arose, especially in the Near East, in connection with the reconstitution of the great world empires in Asia, and the resumption and intensification of international commerce after a long interruption. At that time Greece was exposed to the invasion of the Thracian cult of Dionysos, as well as to the most diverse types of prophecies. In addition to the semiprophetic social reformers, certain purely religious movements now broke into the simple magical and cultic lore of the Homeric priests. Emotional cults, emotional prophecy based on "speaking with tongues," and highly valued intoxicating ecstasy interrupted the unfolding of theological rationalism (Hesiod), the beginnings of cosmogonic and philosophic speculation, of philosophical mystery doctrines and salvation religions. The growth of these emotional cults paralleled both overseas colonization and, above all, the formation of cities and the transformation of the *polis* which resulted from the development of a citizen army.

It is not necessary to detail here these developments of the eighth and seventh centuries, so brilliantly analyzed by Rohde,[3] some of which reached into the sixth and even the fifth century. They were contemporary with Jewish, Persian, and Hindu prophetic movements, and probably also with the achievements of Chinese ethics in the pre-Confucian period, although we have only scant knowledge of the latter. These Greek "prophets" differed widely among themselves in regard to the economic criterion of professionalism, and in regard to the possession of a "doctrine." The Greeks also made a distinction between professional teaching and unremunerated propagandizing of ideas, as we see from the example of Socrates. In Greece, furthermore, there existed a clear differentiation between the only real congregational type of religion, namely Orphism with its doctrine of salvation, and every other type of prophecy and technique of salvation, especially those of the mysteries. The basis of this distinction was the presence in Orphism of a genuine doctrine of salvation.

2. *Prophet and Lawgiver*

Our primary task is to differentiate the various types of prophets from the sundry purveyors of salvation, religious or otherwise. Even in historical times the transition from the prophet to the law-giver is fluid, if one understands the latter to mean a personage who in a concrete case has been assigned the responsibility of codifying a law systematically or of reconstituting it, as was the case notably with the Greek *aisymnetai* (e.g., Solon, Charondas, etc.). In no case did such a lawgiver or his labor fail to receive divine approval, if only subsequently.

A lawgiver is quite different from the Italian *podestà*, who is summoned from outside the group, not for the purpose of creating a new social order, but to provide a detached, impartial arbitrator, especially when families of the same social rank feud with one another. On the other hand, lawgivers were generally, though not always, called to their office when social tensions were in evidence. This was apt to occur with special frequency in the one situation which commonly provided the earliest stimulus to a reform policy: the economic differentiation of the warrior class as a result of growing monetary wealth of one part and the debt enslavement of another; an additional factor was the dissatisfaction arising from the unrealized political aspirations of a rising commercial class which, having acquired wealth through economic activity, was now challenging the old warrior nobility. It was the function of the

aisymnetes to resolve the conflicts between status groups and to produce a new sacred law of eternal validity, for which he had to secure divine approbation.

It is very likely that Moses was a historical figure, in which case he would be classified functionally as an *aisymnetes*. For the prescriptions of the oldest sacred legislation of the Hebrews presuppose a money economy and hence sharp conflicts of interests, whether impending or already existing, within the confederacy. It was Moses' great achievement to find a compromise solution of, or prophylactic for, these conflicts (e.g., the *seisachtheia* of the Year of Release)[4] and to organize the Israelite confederacy with an integral national god. In essence, his work stands midway between the functioning of an ancient *aisymnetes* and that of Muhammad. The reception of the law formulated by Moses stimulated a period of expansion of the newly unified people in much the same way that the compromise among status groups stimulated expansion in so many other cases, particularly in Athens and Rome. The scriptural dictum that "after Moses there arose not in Israel any prophet like unto him" means that the Jews never had another *aisymnetes*.

Not only were none of the prophets *aisymnetai* in this sense, but in general what normally passes for prophecy does not belong to this category. To be sure, even the later prophets of Israel were concerned with social reform. They hurled their "woe be unto you" against those who oppressed and enslaved the poor, those who joined field to field, and those who deflected justice by bribes. These were the typical actions leading to class stratification everywhere in the ancient world, and were everywhere intensified by the development of the city-state (*polis*). Jerusalem too had been organized into a city-state by the time of these later prophets. A distinctive concern with social reform is characteristic of Israelite prophets. This concern is all the more notable because such a trait is lacking in Hindu prophecy of the same period, although the conditions in India at the time of the Buddha have been described as relatively similar to those in Greece during the sixth century.

An explanation for Hebrew prophecy's concern for social reform is to be sought in religious grounds, which we shall set forth subsequently. But it must not be forgotten that in the motivation of the Israelite prophets these social reforms were only means to an end. Their primary concern was with foreign politics, chiefly because it constituted the theater of their god's activity. The Israelite prophets were concerned with social and other types of injustice as a violation of the Mosaic code primarily in order to explain god's wrath, and not in order to institute a program of social reform. It is noteworthy that the sole theoretician of social reform, Ezekiel, was a priestly theorist who can scarcely be cate-

gorized as a prophet at all. Finally, Jesus was not at all interested in social reform as such.

Zoroaster shared with his cattle-raising people a hatred of the despoiling nomads, but the heart of his message was essentially religious. His central concern was his struggle against the magical cult of ecstasy and for his own divine mission, which of course had incidental economic consequences. A similar primary focus upon religion appeared very clearly in the case of Muhammad, whose program of social reform, which Umar carried through consistently, was oriented almost entirely to the unification of the faithful for the sake of fighting the infidels and of maintaining the largest possible number of warriors.

It is characteristic of the prophets that they do not receive their mission from any human agency, but seize it, as it were. To be sure, usurpation also characterized the assumption of power by tyrants in the Greek *polis*. These Greek tyrants remind one of the legal *aisymnetai* in their general functioning, and they frequently pursued their own characteristic religious policies, e.g., supporting the emotional cult of Dionysos, which was popular with the masses rather than with the nobility. But the aforementioned assumption of power by the prophets came about as a consequence of divine revelation, essentially for religious purposes. Furthermore, their characteristic religious message and their struggle against ecstatic cults tended to move in an opposite direction from that taken by the typical religious policy of the Greek tyrants. The religion of Muhammad, which is fundamentally political in its orientation, and his position in Medina, which was in between that of an Italian *podestà* and that of Calvin at Geneva, grew primarily out of his purely prophetic mission. A merchant, he was first a leader of pietistic bourgeois conventicles in Mecca, until he realized more and more clearly that the ideal external basis for his missionizing would be provided by the organization of the interests of the warrior clans in the acquisition of booty.

3. *Prophet and Teacher of Ethics*

On the other hand, there are various transitional phases linking the prophet to the teacher of ethics, especially the teacher of social ethics. Such a teacher, full of new or recovered ancient wisdom, gathers disciples about him, counsels private persons, and advises princes in public affairs and possibly tries to make them establish a new ethical order. The bond between the teacher of religious or philosophical wisdom and his disciple is uncommonly strong and regulated in an authoritarian fashion, particularly in the sacred laws of Asia. Everywhere this bond is one of the firmest relationships of loyalty. Generally, training in magic and

heroism is so regulated that the novice is assigned to a particularly experienced master or is permitted to seek out a master, as the young "fox" can choose the senior member (*Leibbursche*) in German fraternities. All the Greek poetry of pederasty derives from such a relationship of respect, and similar phenomena are to be found among Buddhists and Confucianists, indeed in all monastic education.

The most complete expression of this disciple–master relationship is to be found in the position of the *guru* in Hindu sacred law. Every young man belonging to polite society was unconditionally required to devote himself for many years to the instruction and direction of life provided by such a Brahminic teacher. The obligation of obedience to the *guru*, who had absolute power over his charges, a relationship comparable to that of the occidental *famulus* to his *magister*, took precedence over loyalty to family, just as the position of the court Brahmin (*purohita*) was officially regulated so as to raise his position far above that of the most powerful father confessor in the Occident. Yet the *guru* is, after all, only a teacher who transmits acquired, not only revealed, knowledge, and this by virtue of a commission and not on his own authority.

The philosophical ethicist and the social reformer are not prophets in our sense of the word, no matter how closely they may seem to resemble prophets. Actually, the oldest Greek sages, who like Empedocles and Pythagoras are wreathed in legend, stand closest to the prophets. Some of them left behind groups with a distinctive doctrine of salvation and conduct of life, and they laid some claim to the status of savior. Such intellectual teachers of salvation have parallels in India, but the Greek teachers fell far short of the Hindu teachers in consistently focusing both life and doctrine on salvation.

Even less can the founders and heads of the actual "schools of philosophy" be regarded as prophets in our sense, no matter how closely they may approach this category in some respects. From Confucius, in whose temple even the emperor makes his obeisance, graded transitions lead to Plato. But both of them were simply academic teaching philosophers, who differed chiefly in that Confucius was centrally concerned with influencing princes in the direction of particular social reforms, and Plato only occasionally.

What primarily differentiates such figures from the prophets is their lack of that vital emotional *preaching* which is distinctive of prophecy, regardless of whether this is disseminated by the spoken word, the pamphlet, or any other type of literary composition (e.g., the *suras* of Muhammad). The enterprise of the prophet is closer to that of the popular leader (*demagogos*) or political publicist than to that of the teacher. On the other hand, the activity of a Socrates, who also felt

himself opposed to the professional teaching enterprise of the Sophists, must be distinguished conceptually from the activities of a prophet by the absence of a directly revealed religious mission. Socrates' "genius" (*daimonion*) reacted only to concrete situations, and then only to dissuade and admonish. For Socrates, this was the outer limit of his ethical and strongly utilitarian rationalism, which occupied for him the position that magical divination assumed for Confucius. For this reason, Socrates' *daimonion* cannot be compared at all to the conscience of a genuine religious ethic; much less can it be regarded as the instrument of prophecy.

Such a divergence from the characteristic traits of the Hebrew prophets holds true of all philosophers and their schools as they were known in China, India, ancient Hellas, and in the medieval period among Jews, Arabs, and Christians alike. All such philosophical schools were rather similar from a sociological point of view. In their mode of life, they may be nearer to the mystagogic-ritual prophecy of salvation, as in the case of the Pythagoreans, or to the exemplary prophecy of salvation (in the sense soon to be explained), as in the case of the Cynics, who protested against the sacramental grace of the mysteries as well as against wordly civilization, and who in this regard show certain affinities to Hindu and Oriental ascetic sects. But the prophet, in our special sense, is never to be found where the proclamation of a religious truth of salvation through personal revelation is lacking. In our view, this qualification must be regarded as the decisive hallmark of prophecy.

Finally, the Hindu reformers of religion such as Shankara and Ramanuja and their Occidental counterparts like Luther, Zwingli, Calvin, and Wesley are to be distinguished from the category of prophets by virtue of the fact that they do not claim to be offering a substantively new revelation or to be speaking in the name of a special divine injunction. This is what characterized the founder of the Mormon church, who resembled, even in matters of detail, Muhammad; above all, it characterized the Jewish prophets. The prophetic type is also manifest in Montanus and Novatianus, and in such figures as Mani and Marcion whose message had a more rational doctrinal content than did that of George Fox, a prophet type with emotional tendencies.[5]

4. *Mystagogue and Teacher*

When we have separated out from the category of prophet all the aforementioned types, which sometimes abut very closely, various others still remain. The first is that of the *mystagogue*. He performs sacra-

ments, i.e., magical actions that contain the boons of salvation. Throughout the entire world there have been saviors of this type whose difference from the average magician is only one of degree, the extent of which is determined by the formation of a special *congregation* around him. Very frequently dynasties of mystagogues developed on the basis of a sacramental charisma which was regarded as hereditary. These dynasties maintained their prestige for centuries, investing their disciples with great authority and thus developing a kind of hierarchical position. This was especially true in India, where the title of *guru* was also used to designate distributors of salvation and their plenipotentiaries. It was likewise the case in China, where the hierarch of the Taoists and the heads of certain secret sects played just such hereditary roles. Finally, one type of exemplary prophet to be discussed presently was also generally transformed into a mystagogue in the second generation.

The mystagogues were also very widely distributed throughout the Near East, and they entered Greece in the prophetic age to which reference was made earlier. Yet the far more ancient noble families who were the hereditary incumbents of the Eleusinian mysteries also represented at least another marginal manifestation of the simple hereditary priestly families. Ethical doctrine was lacking in the mystagogue, who distributed magical salvation, or at least doctrine played only a very subordinate role in his work. Instead, his primary gift was hereditarily transmitted magical art. Moreover, he normally made a living from his art, for which there was a great demand. Consequently we must exclude him too from the conception of prophet, even though he sometimes revealed new ways of salvation.

5. *Ethical and Exemplary Prophecy*

Thus, there remain only two kinds of prophets in our sense, one represented most clearly by the Buddha, the other with especial clarity by Zoroaster and Muhammad. The prophet may be primarily, as in the last cases, an instrument for the proclamation of a god and his will, be this a concrete command or an abstract norm. Preaching as one who has received a commission from god, he demands obedience as an ethical duty. This type we shall term the "*ethical prophet*." On the other hand, the prophet may be an exemplary man who, by his personal example, demonstrates to others the way to religious salvation, as in the case of the Buddha. The preaching of this type of prophet says nothing about a divine mission or an ethical duty of obedience, but rather directs itself to the self-interest of those who crave salvation, recommending to them

the same path as he himself traversed. Our designation for this second type is that of the *"exemplary prophet."*

The exemplary type is particularly characteristic of prophecy in India, although there have been a few manifestations of it in China (e.g., Lao Tzu) and the Near East. On the other hand, the ethical type is confined to the Near East, regardless of racial differences there. For neither the Vedas nor the classical books of the Chinese—the oldest portions of which in both cases consist of songs of praise and thanksgiving by sacred singers, and of magical rites and ceremonies—makes it appear at all probable that prophecy of the ethical type, such as developed in the Near East or Iran, could ever have arisen in India or China. The decisive reason for this is the absence of a personal, transcendental, and ethical god. In India this concept was found only in a sacramental and magical form, and then only in the later and popular faiths. But in the religions of those social strata within which the decisive prophetic conceptions of Mahavira and Buddha were developed, ethical prophecy appeared only intermittently and was constantly subjected to reinterpretations in the direction of pantheism. In China the notion of ethical prophecy was altogether lacking in the ethics of the stratum that exercised the greatest influence in the society. To what degree this may presumably be associated with the intellectual distinctiveness of such strata, which was of course determined by various social factors, will be discussed later.

As far as purely religious factors are concerned, it was decisive for both India and China that the conception of a rationally regulated world had its point of origin in the ceremonial order of sacrifices, on the unalterable sequence of which everything depended: especially the indispensable regularity of meteorological processes; in animistic terms, what was involved here was the normal activity or inactivity of the spirits and demons. According to both classical and heterodox Chinese views, these processes were held to be insured by the ethically proper conduct of government that followed the correct path of virtue, the Tao; without this everything would fail, even according to Vedic doctrine. Thus, in India and China, Rita and Tao respectively represented similar superdivine, impersonal forces.

On the other hand, the personal, transcendental and ethical god is a Near-Eastern concept. It corresponds so closely to that of an all-powerful mundane king with his rational bureaucratic regime that a causal connection can scarcely be denied. Throughout the world the magician is in the first instance a rainmaker, for the harvest depends on timely and sufficient rain, though not in excessive quantity. Until the present time the pontifical Chinese emperor has remained a rainmaker,

for in northern China, at least, the uncertainty of the weather renders dubious the operation of irrigation procedures, no matter how extensive they are. Of greater significance was the construction of defense walls, and internal canals, which became the real source of the imperial bureaucracy. The emperor sought to avert meteorological disturbances through sacrifices, public atonement, and various virtuous practices, e.g., the termination of abuses in the administration, or the organization of a raid on unpunished malefactors. For it was always assumed that the reason for the excitation of the spirits and the disturbances of the cosmic order had to be sought either in the personal derelictions of the monarch or in some manifestation of social disorganization. Again, rain was one of the rewards promised by Yahweh to his devotees, who were at that time primarily agriculturalists, as is clearly apparent in the older portions of the tradition. God promised neither too scanty rain nor yet excessive precipitation or deluge.

But throughout Mesopotamia and Arabia it was not rain that was the creator of the harvest, but artificial irrigation alone. In Mesopotamia, irrigation was the sole source of the absolute power of the monarch, who derived his income by compelling his conquered subjects to build canals and cities adjoining them, just as the regulation of the Nile was the source of the Egyptian monarch's strength. In the desert and semiarid regions of the Near East this control of irrigation waters was probably one source of the conception of a god who had created the earth and man out of nothing and not procreated them, as was believed elsewhere. A riparian economy of this kind actually did produce a harvest out of nothing, from the desert sands. The monarch even created law by legislation and rational codification, a development the world experienced for the first time in Mesopotamia. It seems quite reasonable, therefore, that as a result of such experiences the ordering of the world should be conceived as the law of a freely acting, transcendental and personal god.

Another, and negative, factor accounting for the development in the Near East of a world order that reflected the operation of a personal god was the relative absence of those distinctive strata who were the bearers of the Hindu and Chinese ethics, and who created the "godless" religious ethics found in those countries. But even in Egypt, where originally Pharaoh himself was a god, the attempt of Ikhnaton to produce an astral monotheism foundered because of the power of the priesthood, which had by then systematized popular animism and become invincible. In Mesopotamia the development of monotheism and demagogic prophecy was opposed by the ancient pantheon, which was politically organized and had been systematized by the priests; such a development was, furthermore, limited by the finn order of the state.

The kingdom of the Pharaohs and of Mesopotamia made an even more powerful impression upon the Israelites than the great Persian monarch, the *basileus kat exochen*, made upon the Greeks (the strong impact of Cyrus upon the Greeks is mirrored, for instance, in the fact that a pedagogical treatise [by Xenophon] was formulated as a *Cyropaedia*, despite the defeat of this monarch). The Israelites had gained their freedom from the "house of bondage" of the earthly Pharaoh only because a divine king had come to their assistance. Indeed, their subsequent establishment of a worldly monarchy was expressly declared to be a defection from Yahweh, the real ruler of the people. Hebrew prophecy was completely oriented to a relationship with the great political powers of the time, the Great Kings, who as the rods of God's wrath first destroy Israel and then, as a consequence of divine intervention, permit Israelites to return from the Exile to their own land. In the case of Zoroaster too it seems that the range of his vision was oriented to the views of the civilized lands of the West.

Thus, the distinctive character of the earliest prophecy, in both its dualistic and monotheistic forms, seems to have been determined decisively—aside from the operation of certain other concrete historical influences—by the pressure of relatively contiguous great centers of highly controlled social organization upon less developed neighboring peoples. The latter tended to see in their own continuous peril from the pitiless bellicosity of terrible nations the anger and grace of a heavenly king.

6. *The Nature of Prophetic Revelation: The World As a Meaningful Totality*

Regardless of whether a particular religious prophet is predominantly of the ethical or predominantly of the exemplary type, prophetic revelation involves for both the prophet himself and for his followers—and this is the element common to both varieties—a unified view of the world derived from a consciously integrated meaningful attitude toward life. To the prophet, both the life of man and the world, both social and cosmic events, have a certain systematic and coherent meaning, to which man's conduct must be oriented if it is to bring salvation, and after which it must be patterned in an integrally meaningful manner. Now the structure of this meaning may take varied forms, and it may weld together into a unity motives that are logically quite heterogeneous. The whole conception is dominated, not by logical consistency, but by practical valuations. Yet it always denotes, regardless of any variations

in scope and in measure of success, an effort to systematize all the manifestations of life; that is, to organize practical behavior into a direction of life, regardless of the form it may assume in any individual case. Moreover, this meaning always contains the important religious conception of the world as a cosmos which is challenged to produce somehow a "meaningful," ordered totality, the particular manifestations of which are to be measured and evaluated according to this postulate.

The conflict between empirical reality and this conception of the world as a meaningful totality, which is based on the religious postulate, produces the strongest tensions in man's inner life as well as in his external relationship to the world. To be sure, this problem is by no means dealt with by prophecy alone. Both priestly wisdom and secular philosophy, the intellectualist as well as the popular varieties, are somehow concerned with it. The ultimate question of all metaphysics has always been something like this: if the world as a whole and life in particular were to have a meaning, what might it be, and how would the world have to look in order to correspond to it? The religious problem of prophets and priests is the womb from which non-sacerdotal philosophy emanated, where it developed at all. Subsequently, priests and prophets had to cope with secular philosophy as a very important component of religious evolution. Hence, we must now examine more closely the mutual relationships of priests, prophets, and non-priests.

NOTES

1. See Kurt Breysig, *Die Entstehung des Gottesgedankens und der Heilbringer* (Berlin: Bondi, 1905). Breysig, who early used the term "sociology of religion," dealt with the Jewish prophets and Jesus in *Alterthum und Mittelalter als Vorstufen der Neuzeit*, vol. II of *Kulturgeschichte der Neuzeit* (Berlin: Bondi, 1901), chs. I and II. Breysig's ambitious effort can serve as a contemporary comparison to Weber's work; by its very descriptiveness and diffuseness it demonstrates the analytical strength of Weber's approach.

2. On the *nebiim*, see Weber, *Ancient Judaism*, IV:2.

3. See Erwin Rohde, *Psyche*. The Cult of Souls and Belief in Immortality Among the Greeks (London: Paul, Trench, Trubner, 1925).

4. "*Seisachtheia* of the Year of Release": i.e., the debt release of the sabbatical year enjoined by Moses; cf. Deut. 15:1–3. The Greek term *seisachtheia*, "shaking off" (a burden), designated the debt cancellation of the Solonic reform in sixth century Athens.

5. Montanus and Novatianus were Christian sect founders of the early church (late 2nd, early 3d cent.), Mani (A.D. 215–273) the Babylonian founder of Manichaeism. The fourth figure is given as Manus in the German text, but the context suggests a misreading of Marcion, the 2nd-century Bible critic and sect founder whose movement later merged with Manichaeism.

iv

The Congregation Between Prophet and Priest

1. *The Congregation: The Permanent Association of Laymen*

If his prophecy is successful, the prophet succeeds in winning permanent helpers. These may be *Sodalen* (as Bartholomae translates the term of the Gathas),[1] disciples (Old Testament and Hindu), comrades (Hindu and Islamic) or followers (Isaiah and the New Testament). In all cases they are personal devotees of the prophet, in contrast to priests and soothsayers who are organized into guilds or office hierarchies. We shall devote additional consideration to this relationship in our analysis of the forms of domination [below, ch. XV]. Moreover, in addition to these permanent helpers, who are active co-workers with the prophet in his mission and who generally also possess some special charismatic qualifications, there is a circle of followers comprising those who support him with lodging, money, and services and who expect to obtain their salvation through his mission. These may engage in intermittent social action (*Gelegenheitshandeln*) or associate themselves continuously in a *congregation* (*Gemeinde*).

A congregation in the specifically religious sense (for this term is [in German] also employed to denote the neighborhood that has been associated for economic or for fiscal or other political purposes) does not arise *solely* in connection with prophecy in the particular sense used here. Nor does it arise in connection with *every* type of prophecy. Primarily, a religious community arises in connection with a prophetic movement as a result of routinization (*Veralltäglichung*), i.e., as a result of the process whereby either the prophet himself or his disciples secure the permanence of his preaching and the congregation's distribution of grace, hence insuring also the economic existence of the enterprise and those who man it, and thereby monopolizing as well the privileges reserved for those charged with religious functions.

It follows from this primacy of routinization in the formation of religious congregations that they may also be formed around mystagogues and priests of nonprophetic religions. For the mystagogue, indeed, the presence of a congregation is a normal phenomenon. The magician, in contrast, exercises his craft independently or, if a member of a guild,

serves a particular neighborhood or political group, not a specific religious congregation. The congregations of the mystagogues, like those of the Eleusinian practitioners of mysteries, generally remained an open group with changing membership. Whoever was desirous of salvation would enter into a relationship, generally temporary, with the mystagogue and his assistants. However, the Eleusinian mysteries were something like a regional community, independent of particular localities.

The situation was quite different in the case of exemplary prophets who unconditionally demonstrated the way of salvation by their personal example, as did, for example, the mendicant monks of Mahavira and the Buddha, who belonged to a narrower exemplary community. Within this narrower community the disciples, who might still have been personally associated with the prophet, would exert particular authority. Outside of the exemplary community, however, there were pious devotees (e.g., the *Upasakas* of India) who did not go the whole way of salvation for themselves, but sought to achieve a relative optimum of salvation by demonstrating their devotion to the exemplary saint. These devotees either lacked altogether any fixed status in the religious community, as was originally the case with the Buddhist *Upasakas*, or they were organized into some special group with fixed rules and obligations. This regularly happened when priests, priest-like counselors, or mystagogues like the Buddhist *bonzes* were separated out from the exemplary community and entrusted with cultic responsibilities (which did not exist in the earliest stages of Buddhism). But the prevailing Buddhist practice was the voluntary temporary association, which the majority of mystagogues and exemplary prophets shared with the temple priesthoods of particular deities from the organized pantheon. The economic existence of these congregations was secured by endowments and maintained by sacrificial offerings and other gifts provided by persons with religious needs.

At this stage there was still no trace of a permanent congregation of laymen. Our present conceptions of membership in a religious denomination are not applicable to the situation of that period. As yet the individual was a devotee of a god, approximately in the sense that an Italian is a devotee of a particular saint. Yet there is an almost ineradicable vulgar error that the majority or even all of the Chinese are to be regarded as Buddhists in religion. The source of this misconception is the fact that many Chinese, brought up in the Confucian ethic (which alone enjoys official approbation), consult Taoist divining priests before building a house and mourn deceased relatives according to the Confucian rule while also arranging for Buddhist masses to be performed in their memory. Apart from those who continuously participate in the cult of a god and possibly a narrow circle having a permanent interest in it,

all that we have at this stage are drifting laymen, or if one is permitted to use metaphorically a modern political designation, "floating voters."

Naturally, this condition does not satisfy the interests of those who man the cult, if only because of purely economic considerations. Consequently, in this kind of situation they endeavor to create a congregation whereby the personal following of the cult will assume the form of a permanent organization and become a community with fixed rights and duties. Such a transformation of a personal following into a permanent congregation is the normal process by which the doctrine of the prophets enters into everyday life, as the function of a permanent institution. The disciples or apostles of the prophets thereupon become mystagogues, teachers, priests or pastors (or a combination of them all), serving an association dedicated to exclusively religious purposes, namely the *congregation of laymen.*

But the same result can be reached from other starting points. We have seen that the priests, whose function evolved from that of magicians to that of generic priesthood, were either scions of landed priestly families, domestic and court priests of landed magnates and princes, or trained priests of a sacrificial cult who organized into a status group. Individuals or groups applied to these priests for assistance as the need arose, but for the rest the priests could be engaged in any occupation not deemed dishonorable to their status group. One other possibility is that priests might become attached to particular organizations, vocational or otherwise, and especially to a political association. But in all these cases there is no actual congregation which is separate from all other associations.

Such a congregation may arise when a clan of sacrificing priests succeeds in organizing the particular followers of their god into an exclusive association. Another and more usual way for a religious community to arise is as a consequence of the destruction of a political association, wherever the religious adherents of the association's god and his priests continue as a religious congregation. The first of these types is to be found in India and the Near East, where it is connected, in numerous intermediate gradations, with the transition of mystagogic and exemplary prophecy or of religious reform movements into a permanent organization of congregations. Many small Hindu denominations developed as a result of such processes.

By contrast, the transition from a priesthood serving a polity into a religious congregation was associated primarily with the rise of the great world empires of the Near East, especially Persia. Political associations were annihilated and the population disarmed; their priesthoods, however, were assigned certain political powers and were rendered

secure in their positions. This was done because the religious congregation was regarded as a valuable instrument for pacifying the conquered, just as the neighborhood association turned into a compulsory community was found to be useful for the protection of financial interests. Thus, by virtue of decrees promulgated by the Persian kings from Cyrus to Artaxerxes, Judaism evolved into a religious community under royal protection, with a theocratic center in Jerusalem. A Persian victory would have brought similar chances and opportunities to the Delphic Apollo and to the priestly families servicing other gods, and possibly also to the Orphic prophets. In Egypt, after the decline of political independence, the national priesthood built a sort of "church" organization, apparently the first of its kind, with synods. On the other hand, religious congregations in India arose in the more limited sense as exemplary congregations. There, the status unity of the Brahmins, as well as the unity of ascetic regulations, survived the multiplicity of ephemeral political structures, and as a consequence, the various systems of ethical salvation transcended all political boundaries. In Iran, the Zoroastrian priests succeeded during the course of the centuries in propagandizing a closed religious organization which under the Sassanids became a political "denomination" (*Konfession*). (The Achaemenids, as their documents demonstrate, were not Zoroastrians, but rather, followers of Mazda.)

The relationships between political authority and religious community, from which the concept of religious denomination derived, belong in the analysis of domination [cf. below, ch. XV]. At this point it suffices to note that *congregational religion* is a phenomenon of diverse manifestations and great fluidity. We want to use the term only when the laity has been organized permanently in such a manner that they can actively participate. A mere administrative unit which delimits the jurisdiction of priests is a *parish*, but not yet a congregational community. But even the concept of a parish, as a grouping different from the secular, political, or economic community, is missing in the religions of China and ancient India. Again, the Greek and other ancient phratries and similar cultic communities were not parishes, but political or other types of associations whose collective actions stood under the guardianship of some god. As for the parish of ancient Buddhism, moreover, this was only a district in which temporarily resident mendicant monks were required to participate in the semimonthly convocations.

In medieval Christianity in the Occident, in post-Reformation Lutheranism and Anglicanism, and in both Christianity and Islam in the Near East, the parish was essentially a passive ecclesiastical tax unit and the jurisdictional district of a priest. In these religions the laymen generally lacked completely the character of a congregation. To be sure,

small vestiges of congregational rights have been retained in certain Oriental churches and have also been found in Occidental Catholicism and Lutheranism. On the other hand, ancient Buddhist monasticism, like the warriors of ancient Islam, and like Judaism and ancient Christianity, had religious congregations with varying degrees of organizational elaboration (which will not yet be discussed in detail). Furthermore, a certain actual influence of the laity may be combined with the absence of a regular local congregational organization. An example of this would be Islam, where the laity wields considerable power, particularly in the Shiite sect, even though this is not legally secure; the Shah usually would not appoint priests without being certain of the consent of the local laity.

On the other hand, it is the distinctive characteristic of every sect, in the technical sense of the term (a subject we shall consider later [see below, ch. XV: 14]), that it is based on a restricted association of individual local congregations. From this principle, which is represented in Protestantism by the Baptists and Independents, and later by the Congregationalists, a gradual transition leads to the typical organization of the Reformed Church. Even where the latter has become a universal organization, it nevertheless makes membership conditional upon a contractual entry into some particular congregation. We shall return later to some of the problems which arise from these diversities. At the moment, we are particularly interested in just one consequence of the generally so very important development of genuine *congregational* religions: That the relationship between priesthood and laity within the community becomes of crucial significance for the practical effect of the religion. As the organization assumes the specific character of a congregation, the very powerful position of the priest is increasingly confronted with the necessity of keeping in mind the needs of the laity, in the interest of maintaining and enlarging the membership of the community. Actually, every type of priesthood is to some extent in a similar position. In order to maintain its own power, the priesthood must frequently meet the needs of the laity in a very considerable measure. The three forces operative within the laity with which the priesthood must come to grips are: (a) prophecy, (b) the traditionalism of the laity, and (c) lay intellectualism. In contrast to these forces, another decisive factor at work here derives from the necessities and tendencies of the priestly enterprise as such. A few words need to be said about this last factor in its relation to the first one.

As a rule, the ethical and exemplary prophet is himself a layman, and his power position depends on his lay followers. Every prophecy by its very nature devalues the magical elements of the priestly enterprise,

but in very different degrees. The Buddha and others like him, as well as the prophets of Israel, rejected and denounced adherence to knowledgeable magicians and soothsayers (who are also called "prophets" in the Israelite sources), and indeed they scorned all magic as inherently useless. Salvation could be achieved only by a distinctively religious and meaningful relationship to the eternal. Among the Buddhists it was regarded as a mortal sin to boast vainly of magical capacities; yet the existence of the latter among the unfaithful was never denied by the prophets of either India or Israel, nor denied by the Christian apostles or the ancient Christian tradition. All prophets, by virtue of their rejection of magic, were necessarily skeptical of the priestly enterprise, though in varying degrees and fashions. The god of the Israelite prophets desired not burnt offerings, but obedience to his commandments. The Buddhist will get nowhere in his quest for salvation merely with Vedic knowledge and ritual; and the ancient sacrifice of *soma* was represented in the oldest *Gathas* as an abomination to Ahura-mazda.

Thus, tensions between the prophets, their lay followers and the representatives of the priestly tradition existed everywhere. To what degree the prophet would succeed in fulfilling his mission, or would become a martyr, depended on the outcome of the struggle for power, which in some instances, e.g., in Israel, was determined by the international situation. Apart from his own family, Zoroaster depended on the clans of the nobles and princes for support in his struggle against the nameless counter-prophet; this was also the case in India and with Muhammad. On the other hand, the Israelite prophets depended on the support of the urban and rural middle class. All of them, however, made use of the prestige which their prophetic charisma, as opposed to the technicians of the routine cults, had gained for them among the laity. The sacredness of a new revelation opposed that of tradition; and depending on the success of the propaganda by each side, the priesthood might compromise with the new prophecy, outbid its doctrine, or eliminate it, unless it were subjugated itself.

2. *Canonical Writings, Dogmas and Scriptural Religion*

In any case, the priesthood had to assume the obligation of codifying either the victorious new doctrine or the old doctrine which had maintained itself despite an attack by the prophets. The priesthood had to delimit what must and must not be regarded as sacred and had to infuse its views into the religion of the laity, if it was to secure its own position. Such a development might have causes other than an effort by hostile

prophets to imperil the position of the priesthood, as for example in India, where this took place very early. The simple interest of the priesthood in securing its own position against possible attack, and the necessity of insuring the traditional practice against the scepticism of the laity might produce similar results. Wherever this development took place it produced two phenomena, viz., canonical writings and dogmas, both of which might be of very different scope, particularly the latter. *Canonical scriptures* contain the revelations and traditions themselves, whereas *dogmas* are priestly interpretations of their meaning.

The collection of the prophetic religious revelations or, in the other case, of the traditionally transmitted sacred lore, may take place in the form of oral tradition. Throughout many centuries the sacred knowledge of the Brahmins was transmitted orally, and setting it down in writing was actually prohibited. This of course left a permanent mark on the literary form of this knowledge and also accounts for the not inconsiderable discrepancies in the texts of individual schools (*Shakhas*), the reason being that this knowledge was meant to be possessed only by qualified persons, namely the twice-born. To transmit such knowledge to anyone who had not experienced the second birth and was excluded by virtue of his caste position (*Shudra*)[2] was a heinous sin. Understandably, all magical lore originally has this character of secret knowledge, to protect the professional interest of the guild. But there are also aspects of this magical knowledge which everywhere become the material for the systematic instruction of other members of the group-at-large. At the root of the oldest and most universally diffused magical system of education is the animistic assumption that just as the magician himself requires rebirth and the possession of a new soul for his art, so heroism rests on a charisma which must be aroused, tested, and instilled into the hero by magical manipulations. In this way, therefore, the warrior is reborn into heroism. Charismatic education in this sense, with its novitiates, trials of courage, tortures, gradations of holiness and honor, initiation of youths, and preparation for battle, is an almost universal institution of all societies which have experienced warfare.

When the guild of magicians finally develops into the priesthood, this extremely important function of educating the laity does not cease, and the priesthood always concerns itself with maintaining this function. More and more, secret lore recedes and the priestly doctrine becomes a scripturally established tradition which the priesthood interprets by means of dogmas. Such a scriptural religion subsequently becomes the basis of a system of education, not only for the professional members of the priestly class, but also for the laity, indeed especially for the laity.

Most, though not all, canonical sacred collections became officially

closed against secular or religiously undesirable additions as a consequence of a struggle between various competing groups and prophecies for the control of the community. Wherever such a struggle failed to occur or wherever it did not threaten the content of the tradition, the formal canonization of the scriptures took place very slowly. The canon of the Jewish scriptures was not fixed until the year 90 A.D., shortly after the destruction of the theocratic state, when it was fixed by the synod of Jamnia perhaps as a dam against apostolic prophecies, and even then the canon was established only in principle. In the case of the Vedas the scriptural canon was established in opposition to intellectual heterodoxy. The Christian canon was formalized because of the threat to the piety of the petty-bourgeois masses from the intellectual salvation doctrine of the Gnostics. On the other hand, the soteriology of the intellectual classes of ancient Buddhism was crystallized in the Pali canon as a result of the danger posed by the missionizing popular salvation religion of the *Mahayana*. The classical writings of Confucianism, like the priestly code of Ezra, were imposed by political force. For this reason, the former never became sacred, and only at a late stage did the latter take on the quality of authentic sacredness, which is always the result of priestly activity. Only the Koran underwent immediate editing, by command of the Caliph, and became sacred at once, because the semiliterate Muhammad held that the existence of a holy book automatically carries with it the mark of prestige for a religion. This view of prestige was related to widely diffused notions concerning the taboo quality and the magical significance of scriptural documents. Long before the establishment of the biblical canon, it was held that to touch the Pentateuch and the authentic prophetic writings "rendered the hands unclean."

The details of this process and the scope of the writings that were taken into the canonical sacred scriptures do not concern us here. It was due to the magical status of sacred bards that there were admitted into the Vedas not only the heroic epics but also sarcastic poems about the intoxicated Indra, as well as other poetry of every conceivable content. Similarly, a love poem and various personal details involved with the prophetic utterances were received into the Old Testament canon. Finally, the New Testament included a purely personal letter of Paul, and the Koran found room in a number of *suras* for records of all-too-human family vexations in the life of its prophet.

The closing of the canon was generally accounted for by the theory that only a certain epoch in the past history of the religion had been blessed with prophetic charisma. According to the theory of the rabbis this was the period from Moses to Alexander, while from the Roman Catholic point of view the period was the Apostolic Age. On the whole,

these theories correctly express recognition of the contrast between prophetic and priestly systematization. Prophets systematized religion with a view to unifying the relationship of man to the world, by reference to an ultimate and integrated value position. On the other hand, priests systematized the content of prophecy or of the sacred traditions by supplying them with a casuistical, rationalistic framework of analysis, and by adapting them to the customs of life and thought of their own stratum and of the laity whom they controlled.

The development of priestly education from the most ancient charismatic stage to the period of literary education has considerable practical importance in the evolution of a faith into a scriptural religion, either in the complete sense of an attachment to a canon regarded as sacred or in the more moderate sense of the authoritativeness of a scripturally fixed sacred norm, as in the case of the Egyptian Book of the Dead. As literacy becomes more important for the conduct of purely secular affairs, which therefore assume the character of bureaucratic administration and proceed according to regulations and documents, the education of even secular officials and educated laymen passes into the hands of literate priests, who may also directly occupy offices the functions of which involve the use of writing, as in the chancelleries of the Middle Ages. To what degree one or the other of these processes takes place depends also, apart from the degree to which the administration has become bureaucratized, on the degree to which other strata, principally the warrior nobles, have developed their own system of education and have taken it into their own hands. Later on we must discuss the bifurcation of educational systems which may result from this process. We must also consider the total suppression or nondevelopment of a purely priestly system of education, which may result from the weakness of the priests or from the absence of either prophecy or scriptural religion.

The establishment of a religious congregation provides the strongest stimulus, though not the only one, for the development of the substantive content of the priestly doctrine, and it creates the specific importance of dogmas. Once a religious community has become established it feels a need to set itself apart from alien competing doctrines and to maintain its superiority in propaganda, all of which tends to place the emphasis upon differential doctrines. To be sure, this process of differentiation may be considerably strengthened by nonreligious motivations. For example, Charlemagne insisted, for the Frankish church, on the doctrine of *filioque*, which created one of the differences between the oriental and occidental Christian churches. This, and his rejection of the canon favorable to the icons, had political grounds, being directed against the supremacy of the Byzantine church.[8] Adherence to completely incom-

prehensible dogmas, like the espousal of the Monophysite doctrine by great masses of people in the Orient and in Egypt, was the expression of an anti-imperial and anti-Hellenic separatist nationalism. Similarly, the monophysitic Coptic church later preferred the Arabs to the [East] Romans as overlords. Such trends occurred frequently.

But the struggles of priests against indifference, which they profoundly hate, and against the danger that the zeal of the membership would stagnate generally played the greatest role in pushing distinctive criteria and differential doctrines to the foreground. Another factor was emphasis on the importance of membership in a particular denomination and the priests' desire to make difficult the transference of membership to another denomination. The historical precedent was provided by the tattoo markings of fellow members of a totemistic or warrior clan, which had a magical basis. Closest to totemic tattoo, at least externally, was the differential body painting of the Hindu sects. The Jewish retention of circumcision and of the Sabbath taboo was also intended, as is repeatedly indicated in the Old Testament, to effect separation from other nations, and it indeed produced such an effect to an extraordinary degree. A sharp differentiation of Christianity from Judaism was produced by the Christian choice of the day of the sun god as a day of rest, although this choice might possibly be accounted for by the Christian reception of the soteriological mythos of mystagogic Near Eastern salvation doctrines of solar religion. Muhammad's choice of Friday for weekly religious services was probably motivated primarily by his desire to segregate his followers from the Jews, after his missionary effort among them had failed. But his absolute prohibition of wine had too many analogies with comparable ancient and contemporary phenomena, e.g., among the Rechabites and Nazirites, to have been determined necessarily by his desire to erect a dam against Christian priests, who are under the obligation to take wine (at Holy Communion).

In India differential dogmas corresponding to exemplary prophecy had generally a more practical ethical character, while those having an affinity to mystagogy were more ritualistic. The notorious ten points which produced the great schism of Buddhism at the Council of Vesali involved mere questions of monastic regulations, including many public details which were emphasized only for the purpose of establishing the separation of the *Mahayana* organization.

Asiatic religions, on the other hand, knew practically nothing of dogma as an instrumentality of differentiation. To be sure, the Buddha enunciated his fourfold truth concerning the great illusions as the basis for the practical salvation doctrine of the noble eightfold path. But the comprehension of those truths for the sake of their practical conse-

quences, and not as dogma in the Occidental sense, is the goal of the work of salvation. This is also the case with the majority of ancient Hindu prophecies.

In the Christian congregation one of the very first binding dogmas, characteristically, was God's creation of the world out of nothing, and consequently the establishment of a transcendental god in contradistinction to the gnostic speculation of the intellectuals. In India, on the other hand, cosmological and other metaphysical speculations remained the concern of philosophical schools, which were always permitted a very wide range of latitude in regard to orthodoxy, though not without some limitations. In China the Confucian ethic completely rejected all ties to metaphysical dogma, if only for the reason that magic and belief in spirits had to remain untouched in the interest of maintaining the cult of ancestors, which was the foundation of patrimonial-bureaucratic obedience (as expressly stated in the tradition).

Even within ethical prophecy and the congregational religion it produced, there was a wide diversity in the scope of proliferation of genuine dogmas. Ancient Islam contented itself with confessions of loyalty to god and to the prophet, together with a few practical and ritual primary commandments, as the basis of membership. But dogmatic distinctions, both practical and theoretical, became more comprehensive as priests, congregational teachers, and even the community itself became bearers of the religion. This holds for the later Zoroastrians, Jews, and Christians. But genuinely dogmatic controversy could arise in ancient Israel or Islam only in exceptional cases, since both these religions were characterized by a simplicity of doctrinal theology. In both religions the main area of dispute centered about the doctrine of grace, though there were subsidiary disputes about ethical practice and about ritual and legal questions. This is even truer of Zoroastrianism.

Only among the Christians did there develop a comprehensive, binding and systematically rationalized dogmatics of a theoretical type concerning cosmological matters, the soteriological *mythos* (Christology), and priestly authority (the sacraments). This Christian dogmatics developed first in the Hellenistic portion of the Roman empire, but in the Middle Ages the major elaborations occurred in the Occident. In general, theological development was far stronger in the Western than in the Eastern churches, but in both regions the maximum development of theology occurred wherever a powerful organization of priests possessed the greatest measure of independence from political authorities.

This Christian preoccupation with the formulation of dogmas was in Antiquity particularly influenced by the distinctive character of the intelligentsia which was a product of Greek education; by the special metaphysical presuppositions and tensions produced by the cult of

Christ; by the necessity of taking issue with the educated stratum which at first remained outside the Christian community; and by the ancient Christian church's hostility to pure intellectualism (which stands in such contrast to the position taken by the Asiatic religions). Socially, Christianity was a *congregational* religion comprising primarily petty-bourgeois laymen, who looked with considerable suspicion upon pure intellectualism, a phenomenon which had to be given considerable attention by the bishops. In the Orient, non-Hellenic petty-bourgeois circles increasingly supplied Christianity with its monks; this destroyed Hellenic culture in the Orient and brought to an end the rational construction of dogma there.

In addition, the mode of organization of the religious congregations was an important determinant. In ancient Buddhism, the complete and purposeful absence of all hierarchical organization would have handicapped any consensus concerning rational dogmatics, such as was produced in Christianity, even assuming that the salvation doctrine would have needed any such dogmatic consensus. Christianity found it necessary to postulate some power able to make decisions concerning the orthodoxy of doctrines, in order to protect the unity of the community against the intellectual activity of priests and against the competing lay rationalism which had been aroused by ecclesiastical education. The result of a long process of evolution, the details of which cannot be expounded here, was that the Roman church produced the infallible doctrinal office of its bishop, in the hope that God would not permit the congregation of the world capital to fall into error. Only in this case do we find a consistent doctrinal solution, which assumes the inspiration of the incumbent of the doctrinal office whenever a decision has to be rendered concerning doctrine.

On the other hand, Islam and the Eastern church, for various reasons to be explained below, retained as their basis for determining the validity of dogmatic truths the practice of depending on the consensus of the official bearers of the ecclesiastical teaching organization, who were primarily theologians or priests, as the case might be. Islam arrived at this position by holding fast to the assurance of its prophet that God would never permit the congregation of the faithful to fall into error. The Eastern church followed in this regard the model of the earliest practice of the Christian church. The net effect of this was to slow down the proliferation of dogma in these religious traditions. By contrast, the Dalai Lama has political powers and control over the church, but he has no doctrinal powers proper in view of the magical-ritualist character of Lamaism. Among the Hindus the power of excommunication entrusted to the *gurus* was largely employed for political reasons and only rarely for the punishment of dogmatic deviations.

3. *Preaching and Pastoral Care as Results of Prophetic Religion*

The work of the priests in systematizing the sacred doctrines was constantly nourished by the new material that was turned up in their professional practice, so different from the practice of magicians. In the ethical type of congregational religion something altogether new evolved, namely preaching, and something very different in kind from magical assistance, namely rational pastoral care.

Preaching, which in the true sense of the word is collective instruction concerning religious and ethical matters, is normally specific to prophecy and prophetic religion. Indeed, wherever it arises apart from these, it is an imitation of them. But as a rule, preaching declines in importance whenever a revealed religion has been transformed into a priestly enterprise by routinization, and the importance of preaching stands in inverse proportion to the magical components of a religion. Buddhism originally consisted entirely of preaching, so far as the laity was concerned. In Christianity the importance of preaching has been proportional to the elimination of the more magical and sacramental components of the religion. Consequently, preaching achieves the greatest significance in Protestantism, in which the concept of the priest has been supplanted altogether by that of the preacher.

Pastoral care, the religious cultivation of the individual, is also in its rationalized and systematized form a product of prophetically revealed religion; and it has its source in the oracle and in consultations with the diviner or necromancer. The diviner is consulted when sickness or other blows of fate have led to the suspicion that some magical transgression is responsible, making it necessary to ascertain the means by which the aggrieved spirit, demon, or god may be pacified. This is also the source of the confessional, which originally had no connection with ethical influences on life. The connection between confession and ethical conduct was first effected by ethical religion, particularly by prophecy. Pastoral care may later assume diverse forms. To the extent that it is a charismatic distribution of grace it stands in a close inner relationship to magical manipulations. But the care of souls may also involve the instruction of individuals regarding concrete religious obligations whenever certain doubts have arisen. Finally, pastoral care may in some sense stand midway between charismatic distribution of grace and instruction, entailing the distribution of personal religious consolation in times of inner or external distress.

Preaching and pastoral care differ widely in the strength of their practical influence on the conduct of life. Preaching unfolds its power

most strongly in periods of prophetic excitation. In the treadmill of daily living it declines sharply to an almost complete lack of influence upon the conduct of life, for the very reason that the charisma of speech is an individual matter.

Pastoral care in all its forms is the priests' real instrument of power, particularly over the workaday world, and it influences the conduct of life most powerfully when religion has achieved an ethical character. In fact, the power of ethical religion over the masses parallels the development of pastoral care. Wherever the power of an ethical religion is intact, the pastor will be consulted in all the situations of life by both private individuals and the functionaries of groups, just as the professional divining priest would be consulted in the magical religions, e.g., the religion of China. Among these religious functionaries whose pastoral care has influenced the everyday life of the laity and the attitude of the power-holders in an enduring and often decisive manner have been the counseling rabbis of Judaism, the father confessors of Catholicism, the pietistic pastors of souls in Protestantism, the directors of souls in Counter-Reformation Catholicism, the Brahminic *purohitas* at the court, the *gurus* and *gosains* in Hinduism, and the *muftis* and dervish sheiks in Islam.

As for the conduct of the individual's private life, the greatest influence of pastoral care was exerted when the priesthood combined ethical casuistry with a rationalized system of ecclesiastical penances. This was accomplished in a remarkably skillful way by the occidental church, which was schooled in the casuistry of Roman law. It is primarily these practical responsibilities of preaching and pastoral care which stimulated the labors of the priesthood in systematizing the casuistical treatment of ethical commandments and religious truths, and indeed first compelled them to take an attitude toward the numerous problems which had not been settled in the revelation itself. Consequently, it is these same practical responsibilities of preaching and pastoral care which brought in their wake the substantive routinization of prophetic demands into specific prescriptions of a casuistical, and hence more rational, character, in contrast to the prophetic ethics. But at the same time this development resulted in the loss of that unity which the prophet had introduced into the ethics—the derivation of a standard of life out of a distinctive "meaningful" relationship to one's god, such as he himself had possessed and by means of which he assayed not the external appearance of a single act, but rather its meaningful significance for the total relationship to the god. As for priestly practice, it required both positive injunctions and a casuistry for the laity. For this reason the preoccupation

of religion with an ethics of ultimate ends had necessarily to undergo a recession.

It is evident that the positive, substantive injunctions of the prophetic ethic and the casuistical transformation thereof by the priests ultimately derived their material from problems which the folkways, conventions, and factual needs of the laity brought to the priests for disposition in their pastoral office. Hence, the more a priesthood aimed to regulate the behavior pattern of the laity in accordance with the will of the god, and especially to aggrandize its status and income by so doing, the more it had to compromise with the traditional views of the laity in formulating patterns of doctrine and behavior. This was particularly the case when no great prophetic preaching had developed which might have wrenched the faith of the masses from its bondage to traditions based upon magic.

As the masses increasingly became the object of the priests' influence and the foundation of their power, the priestly labors of systematization concerned themselves more and more with the most traditional, and hence magical, forms of religious notions and practices. Thus, as the Egyptian priesthood pressed towards greater power, the animistic cult of animals was increasingly pushed into the center of religious interest, even though it is most likely that the systematic intellectual training of the priests had grown by comparison with earlier times. And so too in India, there was an increased systematization of the cult after the displacement by the Brahmins of the *hotar*, the sacred charismatic singer, from first place in the sacrificial ceremonial. The Atharva Veda is much younger than the Rig Veda as a literary product, and the Brahmanas are much younger still. Yet the systematized religious material in the Atharva Veda is of much older provenience than the rituals of the noble Vedic cults and the other components of the older Vedas; indeed, the Atharva Veda is a purely magical ritual to a far greater degree than the older Vedas. The process of popularization and transformation into magic of religion which had been systematized by the priests continued even further in the Brahmanas. The older Vedic cults are indeed, as Oldenberg[4] has emphasized, cults of the propertied strata, whereas the magical ritual had been the possession of the masses since ancient times.

A similar process appears to have taken place in regard to prophecy. In comparison with the intellectual contemplativeness of ancient Buddhism, which had achieved the highest peaks of sublimity, the *Mahayana* religion was essentially a popularization that increasingly tended to approach pure wizardry or sacramental ritualism. A similar fate overtook the doctrines of Zoroaster, Lao Tzu, and the Hindu religious reformers, and to some extent the doctrines of Muhammad as well, when the respective faiths of these founders became religions of laymen. Thus, the

Zend Avesta sanctioned the cult of *Haoma*, although it had been expressly and strongly combated by Zoroaster, perhaps eliminating merely a few of the bacchantic elements which he had denounced with special fervor. Hinduism constantly betrayed a growing tendency to slide over into magic, or in any case into a semi-magical sacramental soteriology. The propaganda of Islam in Africa rested primarily on a massive foundation of magic, by means of which it has continued to outbid other competing faiths despite the rejection of magic by earliest Islam.

This process, which is usually interpreted as a decline or petrifaction of prophecy, is practically unavoidable. The prophet himself is normally a righteous lay preacher of sovereign independence whose aim is to supplant the traditional ritualistic religious grace of the ecclesiastical type by organizing life on the basis of ultimate ethical principles. The laity's acceptance of the prophet, however, is generally based on the fact that he possesses a certain charisma. This usually means that he is a magician, in fact much greater and more powerful than other magicians, and indeed that he possesses unsurpassed power over demons and even over death itself. It usually means that he has the power to raise the dead, and possibly that he himself may rise from the grave. In short, he is able to do things which other magicians are unable to accomplish. It does not matter that the prophet attempts to deny such imputed powers, for after his death this development proceeds without and beyond him. If he is to continue to live on in some manner among large numbers of the laity, he must himself become the object of a cult, which means he must become the incarnation of a god. If this does not happen, the needs of the laity will at least insure that the form of the prophet's teaching which is most appropriate for them will survive by a process of selection.

Thus, these two types of influences, viz., the power of prophetic charisma and the enduring habits of the masses, influence the work of the priests in their systematization, though they tend to oppose one another at many points. But even apart from the fact that prophets practically always come out of lay groups or find their support in them, the laity is not composed of exclusively traditionalistic forces. The *rationalism of lay circles* is another social force with which the priesthood must take issue. Different social strata may be the bearers of this lay rationalism.

NOTES

1. See Christian Bartholomae, trans. and ed., *Die Gatha's des Awesta. Zarathushtra's Verspredigten* (Strassburg: Trübner, 1905), 130; *Sodalen* were the members of the first rank in Zoroastrianism; the second rank was constituted by the knights, the third by the peasants.

2. On the Shudras, cf. Weber, *The Religion of India*, 55ff.

3. In the Western church, the Nicene Creed was modified in the 9th century by the phrase "qui ex Patre *Filioque* procedit." Thus, belief was professed in the Father, the Son and the Holy Ghost proceeding from *both* of them. This addition became the subject of a long controversy between the Orthodox and the Western church.

4. Hermann Oldenberg, *Die Religion der Veda*, 1894, 4th ed. 1923. (W)

V

The Religious Propensities of Peasantry, Nobility and Bourgeoisie[1]

1. *Peasant Religion and Its Ideological Glorification*

The lot of peasants is so strongly tied to nature, so dependent on organic processes and natural events, and economically so little oriented to rational systematization that in general the peasantry will become a carrier of religion only when it is threatened by enslavement or proletarianization, either by domestic forces (financial or seigneurial) or by some external political power.

Ancient Israelite religious history already manifested both major threats to the peasant class: first, pressures from foreign powers that threatened enslavement, and second, conflicts between peasants and landed magnates (who in Antiquity resided in the cities). The oldest documents, particularly the *Song of Deborah*, reveal the typical elements of the struggle of a peasant confederacy, comparable to that of the Aetolians, Samnites, and Swiss. Another point of similarity with the Swiss situation is that Palestine possessed the geographical character of a land bridge, being situated on a great trade route which spanned the terrain from Egypt to the Euphrates. This facilitated early a money economy and culture contacts. The Israelite confederacy directed its efforts against both the Philistines and the Canaanite land magnates who dwelt in the cities. These latter were knights who fought with iron chariots, "warriors trained from their very youth," as Goliath was described, who sought to enslave and render tributary the peasantry of the mountain slopes where milk and honey flowed.

It was a most significant constellation of historical factors that this struggle, as well as the social unification and the expansion of the

Mosaic period, was constantly renewed under the leadership of the Yahweh religion's saviors ("messiahs," from *mashiah*, "the anointed one," as Gideon and others, the so-called "Judges," were termed). Because of this distinctive leadership, a religious concern that far transcended the level of the usual agrarian cults entered very early into the ancient religion of the Palestinian peasantry. But not until the city of Jerusalem had been conquered did the cult of Yahweh, with its Mosaic social legislation, become a genuinely ethical religion. Indeed, as the social admonitions of the prophets demonstrate, even here this took place partly under the influence of agrarian social reform movements directed against the urban landed magnates and financial nabobs, and by reference to the social prescriptions of the Mosaic law regarding the equalization of status groups.

But prophetic religion has by no means been the product of specifically agrarian influences. A typical plebeian fate was one of the dynamic factors in the moralism of the first and only theologian of official Greek literature, Hesiod. But he was certainly not a typical "peasant." The more agrarian the essential social pattern of a culture, e.g., Rome, India, or Egypt, the more likely it is that the agrarian element of the population will fall into a pattern of traditionalism and that at least the religion of the masses will lack ethical rationalization. Thus, in the later development of Judaism and Christianity, the peasants never appeared as the carriers of rational ethical movements. This statement is completely true of Judaism, while in Christianity the participation of the peasantry in rational ethical movements took place only in exceptional cases and then in a communist, revolutionary form. The puritanical sect of the Donatists in Roman Africa, the Roman province of greatest land accumulation, appears to have been very popular among the peasantry, but this was the sole example of peasant concern for a rational ethical movement in Antiquity. The Taborites, insofar as they were derived from peasant groups, the peasant protagonists of "divine right" in the German peasant war [of 1524/5], the English radical communist smallholders, and above all the Russian peasant sectarians—all these have origins in agrarian communism by virtue of the pre-existing, more or less developed communal ownership of land.[2] All these groups felt themselves threatened by proletarization, and they turned against the official church in the first instance because it was the recipient of tithes and served as a bulwark of the financial and landed magnates. The association of the aforementioned peasant groups with religious demands was possible only on the basis of an already existing ethical religion which contained specific promises that might suggest and justify a revolutionary natural law. More will be said about this in another context.

Hence, manifestations of a close relationship between peasant religion and agrarian reform movements did not occur in Asia, where the combination of religious prophecy with revolutionary currents, e.g., as in China, took a different direction altogether, and did not assume the form of a real peasant movement. Only rarely does the peasantry serve as the carrier of any other sort of religion than their original magic.

Yet the prophecy of Zoroaster apparently appealed to the (relative) rationalism of peasants who, having learned to work in an orderly fashion and to raise cattle, were struggling against the orgiastic religion of the false prophets, which entailed the torture of animals. This, like the cult of intoxication which Moses combated, was presumably associated with the bacchantic rending of live animals. In the religion of the Parsees, only the cultivated soil was regarded as pure from the magical point of view, and therefore only agriculture was absolutely pleasing to god. Consequently, even after the pattern of the religion established by the original prophecy had undergone considerable transformation as a result of its adaptation to the needs of everyday life, it retained a distinctive agrarian pattern, and consequently a characteristically anti-urban tendency in its doctrines of social ethics. But to the degree that the Zoroastrian prophecy set in motion certain economic interests, these were probably in the beginning the interests of princes and lords in the peasants' ability to pay taxes, rather than peasant interests. As a general rule, the peasantry remained primarily involved with weather magic and animistic magic or ritualism; insofar as it developed any ethical religion, the focus was on a purely formalistic ethic of *do ut des* in relation to both god and priests.

That the peasant has become the distinctive prototype of the pious man who is pleasing to god is a thoroughly modern phenomenon, with the exception of Zoroastrianism and a few scattered examples of opposition to urban culture and its consequences on the part of literati representing patriarchal and feudalistic elements, or conversely, of intellectuals imbued with *Weltschmerz*. None of the more important religions of Eastern Asia had any such notion about the religious merit of the peasant. Indeed, in the religions of India, and most consistently in the salvation religion of Buddhism, the peasant is religiously suspect or actually proscribed because of *ahimsâ*, the absolute prohibition against taking the life of any living thing.

The Israelite religion of preprophetic times was still very much a religion of peasants. On the other hand, in exilic times the glorification of agriculture as pleasing to God was largely the expression of opposition to urban development felt by literary or patriarchal groups. The actual religion had rather a different appearance, even at that time; and later

on in the period of the Pharisees it was completely different in this regard. To the congregational piety of the *chaberim* the "rustic" was virtually identical with the "godless," the rural dweller being politically and religiously a Jew of the second class. For it was virtually impossible for a peasant to live a pious life according to the Jewish ritual law, just as in Buddhism and Hinduism. The practical consequences of postexilic theology, and even more so of the Talmudic theology, made it extremely difficult for a Jew to practice agriculture. Even now, the Zionist colonization of Palestine has met with an absolute impediment in the form of the sabbatical year, a product of the theologians of later Judaism. To overcome this difficulty, the eastern European rabbis, in contrast to the more doctrinaire leaders of German Jewish orthodoxy, have had to construe a special dispensation based on the notion that such colonizing is especially pleasing to God.

In early Christianity, it will be recalled, the rustic was simply regarded as the heathen (*paganus*). Even the official doctrine of the medieval churches, as formulated by Thomas Aquinas, treated the peasant essentially as a Christian of lower rank, at any rate accorded him very little esteem. The religious glorification of the peasant and the belief in the special worth of his piety is the result of a very modern development. It was characteristic of Lutheranism in particular—in rather strongly marked contrast to Calvinism, and also to most of the Protestant sects—as well as of modern Russian religiosity manifesting Slavophile influences. These are ecclesiastical communities which, by virtue of their type of organization, are very closely tied to the authoritarian interests of princes and noblemen upon whom they are dependent. In modern Lutheranism (for this was not the position of Luther himself) the dominant interest is the struggle against intellectualist rationalism and against political liberalism. In the Slavophile religious peasant ideology, the primary concern was the struggle against capitalism and modern socialism. Finally, the glorification of the Russian sectarians by the *narodniki* [populists] tries to link the anti-rationalist protest of intellectuals with the revolt of a proletarized class of farmers against a bureaucratic church serving the interests of the ruling classes, thereby surrounding both intellectual and agrarian protest with a religious aura. Thus, what was involved in all cases was very largely a reaction against the development of modern rationalism, of which the cities were regarded as the carriers.

In striking contrast to all this is the fact that in the past it was the city which was regarded as the site of piety. As late as the seventeenth century, Baxter saw in the relationships of the weavers of Kidderminster to the metropolis of London (made possible by the development of

domestic industry) a definite enhancement of the weavers' piety. Actually, early Christianity was an urban religion, and, as Harnack decisively demonstrated, its importance in any particular city was in direct proportion to the size of the urban community.[8] In the Middle Ages too, fidelity to the church, as well as sectarian movements in religion, characteristically developed in the cities. It is highly unlikely that an organized congregational religion, such as early Christianity became, could have developed as it did apart from the community life of a city (notably in the sense found in the Occident). For early Christianity presupposed as already extant certain conceptions, viz., the destruction of all taboo barriers between kin groups, the concept of office, and the concept of the community as a compulsory organization (*Anstalt*) with specific functions. To be sure, Christianity, on its part, strengthened these conceptions and greatly facilitated the renewed reception of them by the growing European cities during the Middle Ages. But actually these notions fully developed nowhere else in the world but within the Mediterranean culture, particularly in Hellenistic and definitely in Roman urban law. What is more, the specific qualities of Christianity as an ethical religion of salvation and as personal piety found their real nurture in the urban environment, and it is there that they created new movements time and again, in contrast to the ritualistic, magical or formalistic re-interpretation favored by the dominant feudal powers.

2. *Aristocratic Irreligion versus Warring for the Faith*

As a rule, the warrior nobles, and indeed feudal powers generally, have not readily become the carriers of a rational religious ethic. The life pattern of a warrior has very little affinity with the notion of a beneficent providence, or with the systematic ethical demands of a transcendental god. Concepts like sin, salvation, and religious humility have not only seemed remote from all ruling strata, particularly the warrior nobles, but have indeed appeared reprehensible to its sense of honor. To accept a religion that works with such conceptions and to genuflect before the prophet or priest would appear plebeian and dishonorable to any martial hero or noble person, e.g., the Roman nobility of the age of Tacitus, or the Confucian mandarins. It is an everyday psychological event for the warrior to face death and the irrationalities of human destiny. Indeed, the chances and adventures of mundane existence fill his life to such an extent that he does not require of his religion (and accepts only reluctantly) anything beyond protection against evil magic or ceremonial rites congruent with his sense of status, such as priestly

prayers for victory or for a blissful death leading directly into the hero's heaven.

As has already been mentioned in another connection, the educated Greek always remained a warrior, at least in theory. The simple animistic belief in the soul which left vague the qualities of existence after death and the entire question of the hereafter (though remaining certain that the most miserable status here on earth was preferable to ruling over Hades), remained the normal faith of the Greeks until the time of the complete destruction of their political autonomy. The only developments beyond this were the mystery religions, which provided means for ritualistic improvement of the human condition in this world and in the next; the only radical departure was the Orphic congregational religion, with its doctrine of the transmigration of souls.

Periods of strong prophetic or reformist religious agitation have frequently pulled the nobility in particular into the path of prophetic ethical religion, because this type of religion breaks through all classes and status groups, and because the nobility has generally been the first carrier of lay education. But presently the routinization of prophetic religion had the effect of eliminating the nobility from the circle of groups characterized by religious enthusiasm. This is already evident at the time of the religious wars in France in the conflicts of the Huguenot synods with a leader like Condé over ethical questions. Ultimately, the Scottish nobility, like the British and the French, was completely extruded from the Calvinist religion in which it, or at least some of its groups, had originally played a considerable role.

As a rule, prophetic religion is naturally compatible with the status feeling of the nobility when it directs its promises to the warrior in the cause of religion. This conception assumes the exclusiveness of a universal god and the moral depravity of unbelievers who are his adversaries and whose untroubled existence arouses his righteous indignation. Hence, such a notion is absent in the Occident of ancient times, as well as in all Asiatic religion until Zoroaster. Indeed, even in Parsism a direct connection between religious promises and war against religious infidelity is still lacking. It was Islam that first produced this conjunction of ideas.

The precursor and probable model for this was the promise of the Hebrew god to his people, as understood and reinterpreted by Muhammad after he had changed from a pietistic leader of a conventicle in Mecca to the *podestà* of Yathrib-Medina, and after he had finally been rejected as a prophet by the Jews. The ancient wars of the Israelite confederacy, waged under the leadership of various saviors operating under the authority of Yahweh, were regarded by the tradition as holy wars. This concept of a holy war, i.e., a war in the name of a god, for

the special purpose of avenging a sacrilege, which entailed putting the enemy under the ban and destroying him and all his belongings completely, is not unknown in Antiquity, particularly among the Greeks. But what was distinctive of the Hebraic concept is that the people of Yahweh, as his special community, demonstrated and exemplified their god's prestige against their foes. Consequently, when Yahweh became a universal god, Hebrew prophecy and the religion of the Psalmists created a new religious interpretation. The possession of the Promised Land, previously foretold, was supplanted by the farther reaching promise of the elevation of Israel, as the people of Yahweh, above other nations. In the future all nations would be compelled to serve Yahweh and to lie at the feet of Israel.

On this model Muhammad constructed the commandment of the holy war involving the subjugation of the unbelievers to political authority and economic domination of the faithful. If the infidels were members of "religions with a sacred book," their extermination was not enjoined; indeed, their survival was considered desirable because of the financial contribution they could make. It was a Christian war of religion that first was waged under the Augustinian formula *coge intrare,* by the terms of which unbelievers or heretics had only the choice between conversion and extirpation. It will be recalled that Pope Urban lost no time in emphasizing to the crusaders the necessity for territorial expansion in order to acquire new benefices for their descendants. To an even greater degree than the Crusades, religious war for the Muslims was essentially an enterprise directed towards the acquisition of large holdings of real estate, because it was primarily oriented to securing feudal revenue. As late as the period of Turkish feudal law [participation in] the religious war remained an important qualification for preferential status in the distribution of *sipahi* prebends. Apart from the anticipated master status that results from victory in a religious war, even in Islam the religious promises associated with the propaganda for war—particularly the promise of an Islamic paradise for those killed in such a war—should not be construed as promises of salvation in the genuine sense of this term, just as Valhalla, or the paradise promised to the Hindu *kshatriya,* or to the warrior hero who has become sated with life once he has seen his grandson, or indeed any other hero heaven are not equivalent to salvation. Moreover, those religious elements of ancient Islam which had the character of an ethical religion of salvation largely receded into the background as long as Islam remained essentially a martial religion.

So, too, the religion of the medieval Christian orders of celibate

knights, particular the Templars, which were first called into being during the Crusades against Islam and which corresponded to the Islamic warrior orders, had in general only a formal relation to salvation religion. This was also true of the faith of the Hindu Sikhs, which was at first strongly pacifist. But a combination of Islamic ideas and persecution drove the Sikhs to the ideal of uncompromising religious warfare. Another instance of the relative meagerness of the relationship of a martial faith to salvation religion is that of the warlike Japanese monks of Buddhism, who for a temporary period maintained a position of political importance. Indeed, even the formal orthodoxy of all these warrior religionists was often of dubious genuineness.

Although a knighthood practically always had a thoroughly negative attitude toward salvation and congregational religion, the relationship is somewhat different in "standing" professional armies, i.e., those having an essentially bureaucratic organization and "officers." The Chinese army plainly had a specialized god as did any other occupation, a hero who had undergone canonization by the state. Then, too, the passionate participation of the Byzantine army in behalf of the iconoclasts was not a result of conscious puritanical principles, but that of the attitude adopted by the recruiting districts, which were already under Islamic influence. But in the Roman army of the period of the Principate, from the time of the second century, the congregational religion of Mithra, which was a competitor of Christianity and held forth certain promises concerning the world to come, played a considerable role, together with certain other preferred cults, which do not interest us at this point.

Mithraism was especially important (though not exclusively so) among the centurions, that is the subaltern officers who had a claim upon governmental pensions. The genuinely ethical requirements of the Mithraistic mysteries were, however, very modest and of a general nature only. Mithraism was essentially a ritualistic religion of purity; in sharp contrast to Christianity, it was entirely masculine, excluding women completely. In general, it was a religion of salvation, and, as already noted, one of the most masculine, with a hierarchical gradation of sacred ceremonies and religious ranks. Again in contrast to Christianity, it did not prohibit participation in other cults and mysteries, which was not an infrequent occurrence. Mithraism, therefore, came under the protection of the emperors from the time of Commodus, who first went through the initiation ceremonies (just as the kings of Prussia were members of fraternal orders), until its last enthusiastic protagonist, Julian. Apart from promises of a mundane nature which, to be sure, were in this case as in all other religions linked with predictions regard-

ing the world beyond, the chief attraction of this cult for army officers was undoubtedly the essentially magical and sacramental character of its distribution of grace and the possibility of hierarchical advancement in the mystery ceremonies.

3. *Bureaucratic Irreligion*

It is likely that similar factors recommended Mithraism to civilian *officials*, for it was also very popular among them. Certainly, among government officials there have been found other incipient tendencies towards distinctively salvation type religions. One example of this may be seen in the pietistic German officials, a reflection of the fact that in Germany middle-class ascetic piety, exemplifying a characteristically bourgeois pattern of life, found its representation only among the officials, in the absence of a stratum of entrepreneurs. Another instance of the tendency of some government officials to favor the salvation type of religion appeared occasionally among certain really pious Prussian generals of the eighteenth and nineteenth centuries. But as a rule, this is not the attitude to religion of a dominant bureaucracy, which is always the carrier of a comprehensive sober rationalism and, at the same time, of the ideal of a disciplined "order" and security as absolute standards of value. A bureaucracy is usually characterized by a profound disesteem of all irrational religion, combined, however, with a recognition of its usefulness as a device for controlling the people. In Antiquity this attitude was held by the Roman officials, while today it is shared by both the civilian and military bureaucracy.[5]

The distinctive attitude of a bureaucracy to religious matters has been classically formulated in Confucianism. Its hallmark is an absolute lack of feeling of a need for salvation or for any transcendental anchorage for ethics. In its place resides what is substantively an opportunistic and utilitarian (though aesthetically refined) doctrine of conventions appropriate to a bureaucratic status group. Other factors in the bureaucratic attitude toward religion include the elimination of all those emotional and irrational manifestations of personal religion which go beyond the traditional belief in spirits, and the maintenance of the ancestral cult and of filial piety as the universal basis for social subordination. Still another ingredient of bureaucratic religions is a certain distance from the spirits, the magical manipulation of which is scorned by the enlightened official (but in which the superstitious one may participate, as is the case with spiritualism among us today). Yet both types of bureaucratic officials will,

with contemptuous indifference, permit such spiritualistic activity to flourish as the religion of the masses (*Volksreligiosität*). Insofar as this popular religion comes to expression in recognized state rites, the official continues to respect them, outwardly at least, as a conventional obligation appropriate to his status. The continuous retention of magic, especially of the ancestral cult, as the guarantee of social obedience, enabled the Chinese bureaucracy to completely suppress all independent ecclesiastical development and all congregational religion. As for the European bureaucracy, although it generally shares such subjective disesteem for any serious concern with religion, it finds itself compelled to pay more official respect to the religiosity of the churches in the interest of mass domestication.

4. *Bourgeois Religiosity and Economic Rationalism*

If certain fairly uniform tendencies are normally apparent, in spite of all differences, in the religious attitude of the nobility and bureaucracy, the strata with the maximum social privilege, the real "middle" strata evince striking contrasts. Moreover, this is something quite apart from the rather sharp differences of status which these strata manifest within themselves. Thus, in some instances, merchants may be members of the most highly privileged stratum, as in the case of the ancient urban patriciate, while in others they may be pariahs, like impecunious wandering peddlers. Again, they may be possessed of considerable social privilege, though occupying a lower social status than the nobility or officialdom; or they may be without privilege, or indeed disprivileged, yet actually exerting great social power. Examples of the latter would be the Roman *ordo equester*, the Hellenic *metoikoi*, the medieval cloth merchants and other merchant groups, the financiers and great merchant princes of Babylonia, the Chinese and Hindu traders, and finally the bourgeoisie of the early modern period.

Apart from these differences of social position, the attitude of the commercial patriciate toward religion shows characteristic contrasts in all periods of history. In the nature of the case, the strongly mundane orientation of their life would make it appear unlikely that they have much inclination for prophetic or ethical religion. The activity of the great merchants of ancient and medieval times represented a distinctive kind of specifically occasional and unprofessional acquisition of money, e.g., by providing capital for traveling traders who required it. Originally seigneurial rulers, these merchants became, in historical times, an urban

nobility which had grown rich from such occasional trade. Others started as tradesmen who having acquired landed property were seeking to climb into the families of the nobility. To the category of the commercial patriciate there were added, as the financing of public administration developed, the political capitalists whose primary business was to meet the financial needs of the state as purveyors and by supplying governmental credit, together with the financiers of colonial capitalism, an enterprise that has existed in all periods of history. None of these strata has ever been the primary carrier of an ethical or salvation religion. At any rate, the more privileged the position of the commercial class, the less it has evinced any inclination to develop an other-worldly religion.

The religion of the noble plutocratic class in the Phoenician trading cities was entirely this-worldly in orientation and, so far as is known, entirely non-prophetic. Yet the intensity of their religious mood and their fear of the gods, who were envisaged as possessing very sinister traits, were very impressive. On the other hand, the warlike maritime nobility of ancient Greece, which was partly piratical and partly commercial, has left behind in the *Odyssey* a religious document congruent with its own interests, which betrays a striking lack of respect for the gods. The god of wealth in Chinese Taoism, who is universally respected by merchants, shows no ethical traits; he is of a purely magical character. So, too, the cult of the Greek god of wealth, Pluto—indeed primarily of agrarian character—formed a part of the Eleusinian mysteries, which set up no ethical demands apart from ritual purity and freedom from blood guilt. Augustus, in a characteristic political maneuver, sought to turn the stratum of freedmen, with their strong capital resources, into special carriers of the cult of Caesar by creating the dignity of the *Augustalis*.[6] But this stratum showed no distinctive religious tendencies otherwise.

In India, that section of the commercial stratum which followed the Hindu religion, particularly all the banking groups which derived from the ancient state capitalist financiers and large-scale traders, belonged for the most part to the sect of the *Vallabhâchâris*. These were adherents of the Vishnu priesthood of Gokulastha Gosain, as reformed by Vallabha Svami. They followed a form of erotically tinged worship of Krishna and Radha in which the cultic meal in honor of their savior was transformed into a kind of elegant repast. In medieval Europe, the great business organizations of the Guelph cities, like the *Arte di Calimala*, were of course papist in their politics, but very often they virtually annulled the ecclesiastical prohibition against usury by fairly mechanical devices which not infrequently created an effect of mockery. In Protestant Holland, the great and distinguished lords of trade,

being Arminians in religion, were characteristically oriented to *Realpolitik*, and became the chief foes of Calvinist ethical rigor. Everywhere, skepticism or indifference to religion are and have been the widely diffused attitudes of large-scale traders and financiers.

But as against these easily understandable phenomena, the acquisition of new capital or, more correctly, capital continuously and rationally employed in a productive enterprise for the acquisition of profit, especially in industry (which is the characteristically modern employment of capital), has in the past been combined frequently and in a striking manner with a rational, ethical congregational religion among the classes in question. In the business life of India there was even a (geographical) differentiation between the Parsees and the Jain sect. The former, adherents of the religion of Zoroaster, retained their ethical rigorism, particularly its unconditional injunction regarding truthfulness, even after modernization had caused a reinterpretation of the ritualistic commandments of purity as hygienic prescriptions. The economic morality of the Parsees originally recognized only agriculture as acceptable to God, and abominated all urban acquisitive pursuits. On the other hand, the sect of the Jains, the most ascetic of the religions of India, along with the aforementioned Vallabhacharis represented a salvation doctrine that was constituted as congregational religion, despite the antirational character of the cults. It is difficult to prove that very frequently the Islamic merchants adhered to the dervish religion, but it is not unlikely. As for Judaism, the ethical rational religion of the Jewish community was already in Antiquity largely a religion of traders or financiers.

To a lesser but still notable degree, the religion of the medieval Christian congregation, particularly of the sectarian type or of the heretical circles was, if not a religion appropriate to traders, nonetheless "bourgeois" religion, and that in direct proportion to its ethical rationalism. The closest connection between ethical religion and rational economic development—particularly capitalism—was effected by all the forms of ascetic Protestantism and sectarianism in both Western and Eastern Europe, viz., Zwinglians, Calvinists, Baptists, Mennonites, Quakers, Methodists, and Pietists (both of the Reformed and, to a lesser degree, Lutheran varieties); as well as by Russian schismatic, heretical, and rational pietistic sects, especially the Shtundists and Skoptsy, though in very different forms.[7] Indeed, generally speaking, the inclination to join an ethical, rational, congregational religion becomes more strongly marked the farther away one gets from those strata which have been the carriers of the type of capitalism which is primarily political in orienta-

tion. Since the time of Hammurabi political capitalism has existed wherever there has been tax farming, the profitable provisions of the state's political needs, war, piracy, large-scale usury, and colonization. The tendency toward affiliation with an ethical, rational, congregational religion is more apt to be found the closer one gets to those strata which have been the carriers of the modern rational enterprise, i.e., strata with middle-class economic characteristics in the sense to be expounded later.

Obviously, the mere existence of capitalism of some sort is not sufficient, by any means, to produce a uniform ethic, not to speak of an ethical congregational religion. Indeed, it does not automatically produce any uniform consequences. For the time being, no analysis will be made of the kind of causal relationship subsisting between a rational religious ethic and a particular type of commercial rationalism, where such a connection exists at all. At this point, we desire only to establish the existence of an affinity between economic rationalism and certain types of rigoristic ethical religion, to be discussed later. This affinity comes to light only occasionally outside the Occident, which is the distinctive seat of economic rationalism. In the West, this phenomenon is very clear and its manifestations are the more impressive as we approach the classical bearers of economic rationalism.

NOTES

1. The present and the following two sections constitute a single section in the German edition entitled "Status Groups, Classes and Religion."

2. Cf. Norman Cohn, *The Pursuit of the Millennium* (New York: Oxford University Press, 1957), esp. ch. X.

3. See Adolf Harnack, *Die Mission und Ausbreitung des Christentums* in den ersten drei Jahrhunderten (Leipzig: Hinrich, 1902), Part IV, esp. 539.

4. *Coge intrare* or *compelle intrare*, "to force (them) to join": the principle that justifies the use of force against heretics, or deceitful proselytizing; derived from a misinterpreted passage in Luc. 14:23. Cf. Soc. of Law, ch. VIII:v, n. 26.

5. I could make the o servation that at the first appearance of von Egidy (Lieutenant-Colonel, Ret.) the Officers' Clubs entertained the expectation, inasmuch as the right of such criticism of orthodoxy was obviously open to any comrade, that His Majesty would seize the initiative in demanding that the old fairy tales, which no honest fellow could manage to believe, would not be served up at the military services any longer. But, naturally enough, when no such thing happened it was readily recognized that the church doctrine, just as it was, constituted the best fodder for the recruits. (Weber's note. Lt.-Col. Moritz von Egidy was cashiered in 1890 after publication of an attack on dogmatic Christianity. Cf. also Weber's contemporary observations in *Jugendbriefe*, 334–37.)

6. On the honor of the *seviri Augustales*, see below, ch. XVI:v, n. 29.

7. Cf. Karl Konrad Grass, *Die russischen Sekten* (2 vols., Leipzig: Hinrichs, 1907–14), I, 524ff. (on a Shtundo-Baptist group); II, *passim* (on the Skoptsy). Cf. also A. Leroy-Beaulieu, *The Empire of the Tsars* (London 1898), *passim*.

vi

The Religion of Non-Privileged Strata

1. *The Craftsmen's Inclination Toward Congregational and Salvation Religion*

When we move away from the strata characterized by a high degree of social and economic privilege, we encounter an apparent increase in the diversity of religious attitudes.

Within the petty-bourgeoisie, and particularly among the artisans, the greatest contrasts have existed side by side. These have included caste taboos and magical or mystagogic religions of both the sacramental and orgiastic types in India, animism in China, dervish religion in Islam, and the pneumatic-enthusiastic congregational religion of early Christianity, practiced particularly in the eastern half of the Roman Empire. Still other modes of religious expression among these groups are *deisidaimonia* as well as orgiastic worship of Dionysos in ancient Greece, Pharisaic fidelity to the law in ancient urban Judaism, an essentially idolatrous Christianity as well as all sorts of sectarian faiths in the Middle Ages, and various types of Protestantism in early modern times. These diverse phenomena obviously present the greatest possible contrasts to one another.

From the time of its inception, ancient Christianity was characteristically a religion of artisans. Its savior was a small-town artisan, and his missionaries were wandering journeymen, the greatest of them a wandering tent maker so alien to farmwork that in his epistles he actually employs in a reverse sense a metaphor relating to the process of grafting. The earliest communities of original Christianity were, as we have already seen, strongly urban throughout ancient times, and their adherents were recruited primarily from artisans, both slave and free. Moreover, in the Middle Ages the petty-bourgeoisie remained the most pious, if not always the most orthodox, stratum of society. But in Christianity as in other religions, widely different currents found a warm reception simultaneously within the petty-bourgeoisie. Thus, there were the ancient pneumatic prophecies which cast out demons, the unconditionally orthodox (institutionally ecclesiastical) religiosity of the Middle Ages, and the monasticism of the mendicant type. In addition, there were certain types of medieval sectarian religiosity such as that of the

Humiliati,[1] who were long suspected of heterodoxy, there were Baptist movements of all kinds, and there was the piety of the various Reformed churches, including the Lutheran.

This is indeed a highly checkered diversification, which at least proves that a uniform determinism of religion by economic forces never existed among the artisans. Yet there is apparent, in contrast to the peasantry, a definite tendency towards congregational religion, towards religion of salvation, and finally towards rational ethical religion. But this contrast is far from implying any uniform determinism. The absence of uniform determinism appears very clearly in the fact that the rural flatlands of Friesland provided the first localities for the popular dissemination of the Baptist congregational religion in its fullest form, while it was the city of Münster which became a primary site for the expression of its social revolutionary form.

In the Occident particularly, the congregational type of religion has been intimately connected with the urban middle classes of both the upper and lower levels. This was a natural consequence of the relative recession in the importance of blood groupings, particularly of the clan, within the occidental city. The urban dweller finds a substitute for blood groupings in both occupational organizations, which in the Occident as everywhere had a cultic significance, although no longer associated with taboos, and in freely created religious associations. But these religious relationships were not determined exclusively by the distinctive economic patterns of urban life. On the contrary, the causation might go the other way, as is readily apparent. Thus, in China the great importance of the ancestral cult and clan exogamy resulted in keeping the individual city dweller in a close relationship with his clan and native village. In India the religious caste taboo rendered difficult the rise, or limited the importance, of any soteriological congregational religion in quasi-urban settlements, as well as in the country. We have seen that in both India and China these factors hindered the city from developing in the direction of a community much more than they hindered the village.

Yet it is still true in theory that the petty-bourgeoisie, by virtue of its distinctive pattern of economic life, inclines in the direction of a rational ethical religion, wherever conditions are present for the emergence of a such religion. When one compares the life of a petty-bourgeois, particularly the urban artisan or the small trader, with the life of the peasant, it is clear that the former has far less connection with nature. Consequently, dependence on magic for influencing the irrational forces of nature cannot play the same role for the urban dweller as for the farmer. At the same time, it is clear that the economic

foundation of the urban man's life has a far more rational character, viz., calculability and capacity for purposive manipulation. Furthermore, the artisan and in certain circumstances even the merchant lead economic existences which influence them to entertain the view that honesty is the best policy, that faithful work and the performance of obligations will find their reward and are "deserving" of their just compensation. For these reasons, small traders and artisans are disposed to accept a rational world view incorporating an ethic of compensation. We shall see presently that this is the normal trend of thinking among all non-privileged classes. The peasants, on the other hand, are much more remote from this notion of compensation and do not acquire it until the magic in which they are immersed has been eliminated by other forces. By contrast, the artisan is very frequently active in effecting the elimination of this very process of magic. It follows that the belief in ethical compensation is even more alien to warriors and to financial magnates who have economic interests in war and in the political manifestations of power. These groups are the least accessible to the ethical and rational elements in any religion.

The artisan is deeply immersed in magical encumbrances in the early stages of occupational differentiation. Every specialized "art" that is uncommon and not widely disseminated is regarded as a magical charisma, either personal or, more generally, hereditary, the acquisition and maintenance of which is guaranteed by magical means. Other elements of this early belief are that the bearers of this charisma are set off by taboos, occasionally of a totemic nature, from the community of ordinary people (peasants), and frequently that they are to be excluded from the ownership of land. One final element of this early belief in the magical charisma of every specialized art must be mentioned here. Wherever crafts had remained in the hands of ancient groups possessing raw materials, who had first offered their arts as intruders in the community and later offered their craftsmanship as individual strangers settled within the community, the belief in the magical nature of special arts condemned such groups to pariah status and stereotyped with magic their manipulations and their technology. But wherever this magical frame of reference has once been broken through (this happens most readily in newly settled cities), the effect of the transformation may be that the artisan will learn to think about his labor and the small trader will learn to think about his enterprise much more rationally than any peasant thinks. The craftsman in particular will have time and opportunity for reflection during his work in many instances, especially in occupations which are primarily of the indoor variety in our climate, for example, in the textile trades, which therefore are strongly infused

with sectarian or religious trends. This is true to some extent even for the workers in modern factories with mechanized weaving, but very much more true for the weaver of the past.

Wherever the attachment to purely magical or ritualistic views has been broken by prophets or reformers, there has hence been a tendency for artisans, craftsmen and petty-bourgeois to incline toward a (often primitively) rationalistic ethical and religious view of life. Furthermore, their very occupational specialization makes them the bearers of an integrated pattern of life of a distinctive kind. Yet there is certainly no uniform determination of religion by these general conditions in the life of artisans and petty-bourgeois groups. Thus the small businessmen of China, though thoroughly calculating, are not the carriers of a rational religion, nor, so far as we know, are the Chinese artisans. At best, they follow the Buddhist doctrine of *karma*, in addition to magical notions. What is primary in their case is the absence of an ethically rationalized religion, and indeed this appears to have influenced the limited rationalism of their technology. This strikes us again and again. The mere existence of artisans and petty-bourgeois groups has never sufficed to generate an ethical religiosity, even of the most general type. We have seen an example of this in India, where the caste taboo and the belief in metempsychosis influenced and stereotyped the ethics of the artisan class. Only a congregational religiosity, especially one of the rational and ethical type, could conceivably win followers easily, particularly among the urban petty-bourgeoisie, and then, given certain circumstances, exert a lasting influence on the pattern of life of these groups. This is what actually happened.

2. *The Religious Disinclinations of Slaves, Day Laborers and the Modern Proletariat*

Finally, the classes of the greatest economic disability, such as slaves and free day-laborers, have hitherto never been the bearers of a distinctive type of religion. In the ancient Christian communities the slaves belonged to the petty-bourgeoisie in the cities. The Hellenistic slaves and the retinue of Narcissus mentioned in the Epistle to the Romans (presumably the infamous freedman of Emperor Claudius) were either relatively well-placed and independent domestic officials or service personnel belonging to very wealthy men. But in the majority of instances they were independent craftsmen who paid tribute to their master and hoped to save enough from their earnings to effect their liberation,

which was the case throughout Antiquity and in Russia in the nineteenth century. In other cases they were well-situated slaves of the state.

The religion of Mithra also included among its adherents numerous representatives of this group, according to the inscriptions. The Delphic Apollo (and presumably many another god) apparently functioned as a savings bank for slaves, attractive because of its sacred inviolability, and the slaves bought freedom from their masters by the use of these savings. According to the appealing hypothesis of Deissmann,[2] this was the image in Paul's mind in speaking of the redemption of Christians through the blood of their savior, that they might be freed from enslavement by the law and by sin. If this be true (and of course the Old Testament terms for redemption, *gaal* and *pada,* must also be regarded as a possible source of the Christian concepts), it shows how much the missionizing effort of earliest Christianity counted upon the aspiring unfree petty-bourgeois group which followed an economically rational pattern of life. On the other hand, the "talking inventory" of the ancient plantation, the lowest stratum of the slave class, was not the bearer of any congregational religion, or for that matter a fertile site for any sort of religious mission.

Handicraft journeymen have at all times tended to share the characteristic religion of the petty-bourgeois classes, since they are normally distinguished from them only by the fact that they must wait a certain time before they can set up their own shop. However, they evinced even more of an inclination toward various forms of unofficial religion of the sect type, which found particularly fertile soil among the lower occupational strata of the city, in view of their workaday deprivations, the fluctuations in the price of their daily bread, their job insecurity, and their dependence on fraternal assistance. Furthermore, the small artisans and craft apprentices were generally represented in the numerous secret or half-tolerated communities of "poor folk" that espoused congregational religions, which were by turn revolutionary, pacifistic-communistic and ethical-rational, chiefly for the technical reason that wandering handicraft apprentices are the available missionaries of every mass congregational religion. This process is illustrated in the extraordinarily rapid expansion of Christianity across the tremendous area from the Orient to Rome in just a few decades.

Insofar as the modern proletariat has a distinctive religious position, it is characterized by indifference to or rejection of religion, as are broad strata of the modern bourgeoisie. For the modern proletariat, the sense of dependence on one's own achievements is supplanted by a consciousness of dependence on purely social factors, market conditions, and power relationships guaranteed by law. Any thought of dependence upon the course of natural or meteorological processes, or upon anything

that might be regarded as subject to the influence of magic or providence, has been completely eliminated, as Sombart has already demonstrated in fine fashion.[3] Therefore, the rationalism of the proletariat, like that of the bourgeoisie of developed capitalism when it has come into the full possession of economic power, of which indeed the proletariat's rationalism is a complementary phenomenon, cannot in the nature of the case easily possess a religious character and certainly cannot easily generate a religion. Hence, in the sphere of proletarian rationalism, religion is generally supplanted by other ideological surrogates.

The lowest and the most economically unstable strata of the proletariat, for whom rational conceptions are the least congenial, and also the proletaroid or permanently impoverished petty-bourgeois groups who are in constant danger of sinking into the proletarian class, are nevertheless readily susceptible to being influenced by religious missionary enterprise. But this religious propaganda has in such cases a distinctively magical form or, where real magic has been eliminated, it has certain characteristics which are substitutes for the magical-orgiastic superventtion of grace. Examples of these are the soteriological orgies of the Methodist type, such as are engaged in by the Salvation Army. Undoubtedly, it is far easier for emotional rather than rational elements of a religious ethic to flourish in such circumstances. In any case, ethical religion scarcely ever arises primarily in this group.

Only in a limited sense is there a distinctive class religion of disprivileged social groups. Inasmuch as the *substantive* demands for social and political reform in any religion are based on god's will, we shall have to devote a brief discussion to this problem when we discuss ethics and natural law. But insofar as our concern is with the character of the religion as such, it is immediately evident that a need for salvation in the widest sense of the term has as one of its foci, but not the exclusive or primary one, as we shall see later, disprivileged classes. Turning to the "sated" and privileged strata, the need for salvation is remote and alien to warriors, bureaucrats, and the plutocracy.

3. *The Devolution of Salvation Religion From Privileged to Non-Privileged Strata*

A religion of salvation may very well have its origin within socially privileged groups. For the charisma of the prophet is not confined to membership in any particular class; and furthermore, it is normally associated with a certain minimum of intellectual cultivation. Proof for

both of these assertions is readily available in the various characteristic prophecies of intellectuals. But as a rule, salvation religion changes its character as soon as it has reached lay groups who are not particularly or professionally concerned with the cultivation of intellectualism, and certainly changes its character after it has reached into the disprivileged social strata to whom intellectualism is both economically and socially inaccessible. One characteristic element of this transformation, a product of the inevitable accommodation to the needs of the masses, may be formulated generally as the emergence of a personal, divine or human-divine savior as the bearer of salvation, with the additional consequence that the religious relationship to this personage becomes the precondition of salvation.

We have already seen that one form of the adaptation of religion to the needs of the masses is the transformation of cultic religion into mere wizardry. A second typical form of adaptation is the shift into savior religion, which is naturally related to the aforementioned change into magic by the most numerous transitional stages. The lower the social class, the more radical are the forms assumed by the need for a savior, once this need has emerged. Hinduism provides an example of this in the *Kartabhajas,* a Vishnuite sect that took seriously the breakup of the caste taboo which in theory it shares with many salvation sects. Members of this sect arranged for a limited commensality of their members on private as well as on cultic occasions, but for that reason they were essentially a sect of common people. They carried the anthropolatric veneration of their hereditary *guru* to such a point that the cult became extremely exclusive. Similar phenomena can be found elsewhere among religions which recruited followers from the lower social strata or at least were influenced by them. The transfer of salvation doctrines to the masses practically always results in the emergence of a savior, or at least in an increase of emphasis upon the concept of a savior. One instance of this is the substitution for the Buddha ideal, viz., the ideal of exemplary intellectualist salvation into *Nirvana* by the ideal of a Bodhisattva, i.e., a savior who has descended upon earth and has foregone his own entrance into *Nirvana* for the sake of saving his fellow men. Another example is the rise in Hindu folk religion, particularly in Vishnuism, of salvation grace mediated by an incarnate god, and the victory of this soteriology and its magical sacramental grace over both the noble, atheistic salvation of the Buddhists and the ritualism associated with Vedic eduction. There are other manifestations of this process, somewhat different in form, in various religions.

The religious need of the middle and lower bourgeoisie expresses itself less in the form of heroic myths than in rather more sentimental

legend, which has a tendency toward inwardness and edification. This corresponds to the peaceableness and the greater emphasis upon domestic and family life of the middle classes, in contrast to the ruling strata. This middle-class transformation of religion in the direction of domesticity is illustrated by the emergence of the god-suffused *bhakti* piety[4] in all Hindu cults, both in the creation of the Bodhisattva figure as well as in the cults of Krishna; and by the popularity of the edifying myths of the child Dionysos, Osiris, the Christ child, and their numerous parallels. The emergence of the bourgeoisie as a power which helped shape religion under the influence of mendicant monks resulted in the supplanting of the aristocratic *theotokos* of Nicola Pisano's imperialistic art by his son's genre depiction of the holy family, just as the Krishna child is the darling of popular art in India.[5]

The soteriological myth with its god who has assumed human form or its savior who has been deified is, like magic, a characteristic concept of popular religion, and hence one that has arisen quite spontaneously in very different places. On the other hand, the notion of an impersonal and ethical cosmic order that transcends the deity and the ideal of an exemplary type of salvation are intellectualistic conceptions which are definitely alien to the masses and possible only for a laity that has been educated along ethically rational lines. The same holds true for the development of a concept of an absolutely transcendant god. With the exception of Judaism and Protestantism, all religions and religious ethics have had to reintroduce cults of saints, heroes or functional gods in order to accommodate themselves to the needs of the masses. Thus Confucianism permitted such cults, in the form of the Taoist pantheon, to continue their existence by its side. Similarly, as popularized Buddhism spread to many lands, it allowed the various gods of these lands to live on as recipients of the Buddhist cult, subordinated to the Buddha. Finally, Islam and Catholicism were compelled to accept local, functional, and occupational gods as saints, the veneration of which constituted the real religion of the masses in everyday life.

4. *The Religious Equality of Women Among Disprivileged Strata*

The religion of the disprivileged strata, in contrast to the aristocratic cults of the martial nobles, is characterized by a tendency to allot equality to women. There is a great diversity in the scope of the religious participation permitted to women, but the greater or lesser, active or passive participation (or exclusion) of women from the religious cults is everywhere a function of the degree of the group's relative pacification

or militarization (present or past). But the presence of priestesses, the prestige of female soothsayers or witches, and the most extreme devotion to individual women to whom supernatural powers and charisma may be attributed does not by any means imply that women have equal privileges in the cult. Conversely, equalization of the sexes in principle, i.e., in relationship to god, as it is found in Christianity and Judaism and, less consistently, in Islam and official Buddhism, may coexist with the most complete monopolization by men of the priestly functions and of the right to active participation in community affairs; men only are admitted to special professional training or assumed to possess the necessary qualifications. This is the actual situation in the religions to which reference has just been made.

The great receptivity of women to all religious prophecy except that which is exclusively military or political in orientation comes to very clear expression in the completely unbiased relationships with women maintained by practically all prophets, the Buddha as well as Christ and Pythagoras. But only in very rare cases does this practice continue beyond the first stage of a religious community's formation, when the pneumatic manifestations of charisma are valued as hallmarks of specifically religious exaltation. Thereafter, as routinization and regimentation of community relationships set in, a reaction takes place against pneumatic manifestations among women, which come to be regarded as irregular and morbid. In Christianity this appears already with Paul.

It is certainly true that every political and military type of prophecy —such as Islam—is directed exclusively to men. Indeed, the cult of a warlike spirit is frequently put into the direct service of controlling and lawfully plundering the households of women by the male inhabitants of the warrior house, who are organized into a sort of club. (This happens among the Duk-duk in the Indian archipelago and elsewhere in many similar periodic epiphanies of a heroic *numen*). Wherever an ascetic training of warriors involving the rebirth of the hero is or has been dominant, woman is regarded as lacking a higher heroic soul and is consequently assigned a secondary religious status. This obtains in most aristocratic or distinctively militaristic cultic communities.

Women are completely excluded from the official Chinese cults as well as from those of the Romans and Brahmins; nor is the religion of the Buddhist intellectuals feministic. Indeed, even Christian synods as late as the period of the Merovingians expressed doubts regarding the equality of the souls of women. On the other hand, in the Orient the characteristic cults of Hinduism and one segment of the Buddhist-Taoist sects in China, and in the Occident notably pristine Christianity but also later the pneumatic and pacifist sects of Eastern and Western Europe, derived a great deal of their missionizing power from the cir-

cumstance that they attracted women and gave them equal status. In Greece, too, the cult of Dionysos at its first appearance gave to the women who participated in its orgies an unusual degree of emancipation from conventions. This freedom subsequently became more and more stylized and regulated, both artistically and ceremonially; its scope was thereby limited, particularly to the processions and other festive activities of the various cults. Ultimately, therefore, this freedom lost all practical importance.

What gave Christianity its extraordinary superiority, as it conducted its missionary enterprises among the petty-bourgeois strata, over its most important competitor, the religion of Mithra, was that this extremely masculine cult excluded women. The result during a period of universal peace was that the adherents of Mithra had to seek out for their women a substitute in other mysteries, e.g., those of Cybele. This had the effect of destroying, even within single families, the unity and universality of the religious community, thereby providing a striking contrast to Christianity. A similar result was to be noted in all the genuinely intellectualist cults of the Gnostic, Manichean, and comparable types, though this need not necessarily have been the case in theory.

It is by no means true that all religions teaching brotherly love and love for one's enemy achieved power through the influence of women or through the feminist character of the religion; this has certainly not been true for the Indian *ahimsâ*-religiosity. The influence of women only tended to intensify those aspects of the religion that were emotional or hysterical. Such was the case in India. But it is certainly not a matter of indifference that salvation religions tended to glorify the non-military and even anti-military virtues, which must have been quite close to the interests of disprivileged classes and of women.

5. *The Differential Function of Salvation Religion for Higher and Lower Strata: Legitimation versus Compensation*

The specific importance of salvation religion for politically and economically disprivileged social groups, in contrast to privileged groups, may be viewed from an even more comprehensive perspective. In our discussion of status groups and classes [IX:6] we shall have a good deal to say about the sense of honor or superiority characteristic of the non-priestly classes that claimed the highest social privileges, particularly the nobility. Their sense of self-esteem rests on their awareness that the perfection of their life pattern is an expression of their underived, ultimate,

and qualitatively distinctive *being*; indeed, it is in the very nature of the case that this should be the basis of their feeling of worth. On the other hand, the sense of honor of disprivileged classes rests on some guaranteed promise for the future which implies the assignment of some function, mission, or vocation to them. What they cannot claim to *be*, they replace by the worth of that which they will one day *become*, to which they will be called in some future life here or hereafter; or replace, very often concomitantly with the motivation just discussed, by their sense of what they *signify* and achieve in the world as seen from the point of view of providence. Their hunger for a worthiness that has not fallen to their lot, they and the world being what it is, produces this conception from which is derived the rationalistic idea of a providence, a significance in the eyes of some divine authority possessing a scale of values different from the one operating in the world of man.

This psychological condition, when turned outward toward the other social strata, produces certain characteristic contrasts in what religion must provide for the various social strata. Since every need for salvation is an expression of some distress, social or economic oppression is an effective source of salvation beliefs, though by no means the exclusive source. Other things being equal, strata with high social and economic privilege will scarcely be prone to evolve the idea of salvation. Rather, they assign to religion the primary function of *legitimizing* their own life pattern and situation in the world. This universal phenomenon is rooted in certain basic psychological patterns. When a man who is happy compares his position with that of one who is unhappy, he is not content with the fact of his happiness, but desires something more, namely the right to this happiness, the consciousness that he has earned his good fortune, in contrast to the unfortunate one who must equally have earned his misfortune. Our everyday experience proves that there exists just such a need for psychic comfort about the legitimacy or deservedness of one's happiness, whether this involves political success, superior economic status, bodily health, success in the game of love, or anything else. What the privileged classes require of religion, if anything at all, is this legitimation.

To be sure, not every class with high privilege feels this need in the same degree. It is noteworthy that martial heroes in particular tend to regard the gods as beings to whom envy is not unknown. Solon shared with ancient Jewish wisdom the same belief in the danger of high position. The hero maintains his superior position in spite of the gods and not because of them, and indeed he often does this against their wishes. Such an attitude is evinced in the Homeric and some of the Hindu epics, in contrast to the bureaucratic chronicles of China and the priestly chronicles of Israel, which express a far stronger concern for the legiti-

macy of happiness as the deity's reward for some virtuous human action pleasing to him.

On the other hand, one finds almost universally that unhappiness is brought into relation with the wrath or envy of either demons or gods. Practically every popular religion, including the ancient Hebrew, and particularly the modern Chinese, regards physical infirmity as a sign of magico-ritual or ethical sinfulness on the part of the unfortunate one, or (as in Judaism) of his ancestors. Accordingly, in these traditions a person visited by adversity is prohibited from appearing at the communal sacrifices of the political association because he is freighted with the wrath of the deity and must not enter in the circle of fortunate ones who are pleasing to him. In practically every ethical religion found among privileged classes and the priests who serve them, the privileged or disprivileged social position of the individual is regarded as somehow merited from the religious point of view. What varies is only the form by which good fortune is legitimized.

Correspondingly different is the situation of the disprivileged. Their particular need is for release from suffering. They do not always experience this need for salvation in a religious form, as shown by the example of the modern proletariat. Furthermore, their need for religious salvation, where it exists, may assume diverse forms. Most important, it may be conjoined with a need for just compensation, envisaged in various ways but always involving reward for one's own good deeds and punishment for the unrighteousness of others. This hope for and expectation of just compensation, a fairly calculating attitude, is, next to magic (indeed, not unconnected with it), the most widely diffused form of mass religion all over the world. Even religious prophecies, which rejected the more mechanical forms of this belief, tended as they underwent popularization and routinization to slip back into these expectations of compensation. The type and scope of these hopes for compensation and salvation varied greatly depending on the expectations aroused by the religious promises, especially when these hopes were projected from the earthly existence of the individual into a future life.

6. *Pariah People and* Ressentiment: *Judaism versus Hinduism*

Judaism, in both its exilic and post-exilic forms, provides a particularly important illustration of the significance of the content of religious promises. Since the Exile, as a matter of actual fact, and formally since the destruction of the Temple, the Jews became a pariah people in the

particular sense presently to be defined (The sense in which the Jews are a "pariah" people has as little to do with the particular situation of the pariah caste in India as, for example, the concept of "Kadi-justice" has to do with the actual legal principles whereby the *kadi* renders legal decisions.) In our usage, "pariah people" denotes a distinctive hereditary social group lacking autonomous political organization and characterized by internal prohibitions against commensality and intermarriage originally founded upon magical, tahooistic, and ritual injunctions. Two additional traits of a pariah people are political and social disprivilege and a far-reaching distinctiveness in economic functioning. To be sure, the pariah people of India, the disprivileged and occupationally specialized Hindu castes, resemble the Jews in these respects, since their pariah status also involves segregation from the outer world as a result of taboos, hereditary religious obligations in the conduct of life, and the association of salvation hopes with their pariah status. These Hindu castes and Judaism show the same characteristic effects of a pariah religion: the more depressed the position in which the members of the pariah people found themselves, the more closely did the religion cause them to cling to one another and to their pariah position and the more powerful became the salvation hopes which were connected with the divinely ordained fulfillment of their religious obligations. As we have already mentioned, the lowest Hindu castes in particular clung to their caste duties with the greatest tenacity as a prerequisite for their rebirth into a better position.

The tie between Yahweh and his people became the more indissoluble as murderous humiliation and persecution pressed down upon the Jews. In obvious contrast to the oriental Christians, who under the Umayyads streamed into the privileged religion of Islam in such numbers that the political authorities had to make conversion difficult for them in the interests of the privileged stratum, all the frequent mass conversions of the Jews by force, which might have obtained for them the privileges of the ruling stratum, remained ineffectual. For both the Jews and the Hindu castes, the only means for the attainment of salvation was to fulfill the special religious commandments enjoined upon the pariah people, from which none might withdraw himself without incurring the fear of evil magic or endangering the chances of rebirth for himself or his descendants. The difference between Judaism and Hindu caste religion is based on the type of salvation hopes entertained. From the fulfillment of the religious obligations incumbent upon him the Hindu expected an improvement in his personal chances of rebirth, i.e., the ascent or reincarnation of his soul into a higher caste. On the other hand, the Jew expected the participation of his descendants in a mes-

sianic kingdom which would redeem the entire pariah community from its inferior position and in fact raise it to a position of mastery in the world. For surely Yahweh, by his promise that all the nations of the world would borrow from the Jews but that they would borrow from none, had meant more than that the Jews would become small-time moneylenders in the ghetto. Yahweh instead intended to place them in the typical situation of citizens of a powerful city-state in Antiquity, who held as debtors and debt-slaves the inhabitants of nearby subject villages and towns. The Jew wrought in behalf of his actual descendants, who, on the animistic interpretation, would constitute his earthly immortality. The Hindu also worked for a human being of the future, to whom he was bound by a relationship only if the assumptions of the animistic doctrine of transmigration were accepted, i.e., his future incarnation. The Hindu's conception left unchanged for all time the caste stratification obtaining in this world and the position of his own caste within it; indeed, he sought to fit the future state of his own individual soul into this very gradation of ranks. In striking contrast, the Jew anticipated his own personal salvation through a revolution of the existing social stratification to the advantage of his pariah people; his people had been chosen and called by God, not to a pariah position but to one of prestige.

The factor of resentment (*ressentiment*), first noticed by Nietzsche,[6] thus achieved importance in the Jewish ethical salvation religion, although it had been completely lacking in all magical and caste religions. Resentment is a concomitant of that particular religious ethic of the disprivileged which, in the sense expounded by Nietzsche and in direct inversion of the ancient belief, teaches that the unequal distribution of mundane goods is caused by the sinfulness and the illegality of the privileged, and that sooner or later God's wrath will overtake them. In this theodicy of the disprivileged, the moralistic quest serves as a device for compensating a conscious or unconscious desire for vengeance. This is connected in its origin with the faith in compensation, since once a religious conception of compensation has arisen, suffering may take on the quality of the religiously meritorious, in view of the belief that it brings in its wake great hopes of future compensation.

The development of a religious conception of resentment may be supported by ascetic doctrines on the one hand, or by characteristic neurotic predispositions on the other. However, the religion of suffering acquires the specific character of *ressentiment* only under special circumstances. *Ressentiment* is not found among the Hindus and Buddhists, for whom personal suffering is individually merited. But the situation is quite different among the Jews.

The religion of the Psalms is full of the need for vengeance, and the same motif occurs in the priestly reworkings of ancient Israelite traditions. The majority of the Psalms are quite obviously replete with the moralistic legitimation and satisfaction of an open and hardly concealed need for vengeance on the part of a pariah people. (Some of these passages are admittedly later interpolation into earlier compositions, in which this sentiment was not originally present.) In the Psalms the quest for vengeance may take the form of remonstrating with God because misfortune has overtaken the righteous individual, notwithstanding his obedience to God's commandments, whereas the godless conduct of the heathen, despite their mockery of God's predictions, commandments and authority, has brought them happiness and left them proud. The same quest for vengeance may express itself as a humble confession of one's own sinfulness, accompanied by a prayer to God to desist from his anger at long last and to turn his grace once again toward the people who ultimately are uniquely his own. In both modes of expression, the hope is entertained that ultimately the wrath of God will finally have been appeased and will turn itself to punishing the godless foes in double measure, making of them at some future day the footstool of Israel, just as the priestly historiography had assigned to the Canaanite enemies a similar fate. It was also hoped that this exalted condition would endure so long as Israel did not arouse God's anger by disobedience, thereby meriting subjugation at the hands of the heathen. It may be true, as modern commentators would have it, that some of these Psalms express the personal indignation of pious Pharisees over their persecution at the hands of Alexander Jannaeus. Nevertheless, a distinctive selection and preservation is evident; and in any case, other Psalms are quite obviously reactions to the distinctive pariah status of the Jews as a people.

In no other religion in the world do we find a universal deity possessing the unparalleled desire for vengeance manifested by Yahweh. Indeed, an almost unfailing index of the historical value of the data provided by the priestly reworking of history is that the event in question, as for example the battle of Megiddo, does not fit into this theodicy of compensation and vengeance. Thus, the Jewish religion became notably a religion of retribution. The virtues enjoined by God are practiced for the sake of the hoped for compensation. Moreover, this was originally a collective hope that the people as a whole would live to see that day of restoration, and that only in this way would the individual be able to regain his own worth. There developed concomitantly, intermingled with the aforementioned collective theodicy, an individual theodicy of personal destiny which had previously been taken for granted. The problems of individual destiny are explored in the Book of Job, which was

produced by quite different circles, i.e., the upper strata, and which culminates in a renunciation of any solution of the problem and a submission to the absolute sovereignty of God over his creatures. This submission was the precursor of the doctrine of predestination in Puritanism. The notion of predestination was bound to arise when the emotional dynamics of divinely ordained eternal punishment in hell was added to the complex of ideas just discussed, involving compensation and the absolute sovereignty of God. But the belief in predestination did not arise among the Hebrews of that time. Among them, the conclusion of the Book of Job remained almost completely misunderstood in the sense intended by its author, mainly, as is well known, because of the unshakeable strength of the doctrine of collective compensation in the Jewish religion.

In the mind of the pious Jew the moralism of the law was inevitably combined with the aforementioned hope for revenge, which suffused practically all the exilic and postexilic sacred scriptures. Moreover, through two and a half millennia this hope appeared in virtually every divine service of the Jewish people—a people indissolubly chained to religiously sanctified segregation from the other peoples of the world and divine promises relating to this world. From such a compensatory hope the Jews were bound to derive new strength, consciously or unconsciously. Yet as the Messiah delayed his arrival, this hope receded in the religious thinking of the intellectuals in favor of the value of an inner awareness of God or a mildly emotional trust in God's goodness as such, combined with a readiness for peace with all the world. This happened especially in periods during which the social condition of a community condemned to complete political isolation was tolerable. On the other hand, in epochs characterized by persecutions, like the period of the Crusades, the hope for retribution flamed up anew, either with a penetrating but vain cry to God for revenge, or with a prayer that the soul of the Jew might become as dust before the enemy who had cursed him. In the latter case there was no recourse to evil words or deeds but only a silent waiting for the fulfillment of God's commandments and the cultivation of the heart so that it would remain open to God. To interpret *ressentiment* as the decisive element in Judaism would be an incredible aberration, in view of the many significant historical changes which Judaism has undergone. Nevertheless, we must not underestimate the influence of *ressentiment* upon even the basic characteristics of the Jewish religion. When one compares Judaism with other salvation religions, one finds that in Judaism the doctrine of religious resentment has an idiosyncratic quality and plays a unique role not found among the disprivileged classes of any other religion.

A theodicy of disprivilege, in some form, is a component of every salvation religion which draws its adherents primarily from the disprivileged classes, and the developing priestly ethic accommodated to this theodicy wherever it was a component of congregational religion based on such groups.

The absence of resentment, and also of virtually any kind of social revolutionary ethics among the pious Hindu and the Asiatic Buddhist can be explained by reference to their theodicy of rebirth, according to which the caste system itself is eternal and absolutely just. The virtues or sins of a former life determine birth into a particular caste, and one's behavior in the present life determines one's chances of improvement in the next rebirth. Those living under this theodicy experienced no trace of the conflict experienced by the Jews between the social claims based on God's promises and the actual conditions of dishonor under which they lived. This conflict precluded any possibility of finding ease in this life for the Jews, who lived in continuous tension with their actual social position and in perpetually fruitless expectation and hope. The Jews' theodicy of disprivilege was greeted by the pitiless mockery of the godless heathen, but for the Jews the theodicy had the consequence of transforming religious criticism of the godless heathen into ever-watchful concern over their own fidelity to the law. This preoccupation was frequently tinged with bitterness and threatened by secret self-criticism.

The Jew was naturally prone, as a result of his lifelong schooling, to casuistical meditation upon the religious obligations of his fellow Jews, on whose punctilious observance of religious law the whole people ultimately depended for Yahweh's favor. There appeared that peculiar mixture of elements characteristic of post-exilic times which combined despair at finding any meaning in this world of vanity with submission to the chastisement of God, anxiety lest one sin against God through pride, and finally a fear-ridden punctiliousness in ritual and morals. All these conflicts forced upon the Jew a desperate struggle, no longer for the respect of others, but for self-respect and a sense of personal worth. The struggle for a sense of personal worth must have become precarious again and again, threatening to wreck the whole meaning of the individual's pattern of life, since ultimately the fulfillment of God's promise was the only criterion of one's value before God at any given time.

Success in his occupation actually became one tangible proof of God's personal favor for the Jew living in the ghetto. But the conception of self-fulfillment (*Bewährung*) in a calling (*Beruf*) pleasing to god, in the sense of inner-worldly asceticism (*innerweltliche Askese*), is not applicable to the Jew. God's blessing was far less strongly anchored in a systematic, rational, methodical pattern of life for the Jew than for the

Puritan, for whom this was the only possible source of the *certitudo salutis*. Just as the Jewish sexual ethic remained naturalistic and anti-ascetic, so also did the economic ethic of ancient Judaism remain strongly traditionalistic in its basic tenets. It was characterized by a frank respect for wealth, which is of course missing in any system of asceticism. In addition, the entire system of outward piety had a ritualistic foundation among the Jews, and what is more, it was considerably interfused with the distinctive emotional mood of the religion. We must note that the traditionalistic precepts of the Jewish economic ethics naturally applied in their full scope only to one's fellow religionists, not to outsiders, which was the case in every ancient ethical system. All in all, then, the belief in Yahweh's promises actually produced within the realm of Judaism itself a strong component of the morality of *ressentiment*.

It would be completely erroneous to portray the need for salvation, theodicy, or congregational religion as something that developed only among disprivileged social strata or even only as a product of resentment, hence merely as the outcome of a "slave revolt in morality." This would not even be true of ancient Christianity, although it directed its promises most emphatically to the poor in spirit and in worldly goods. What results had to follow from the downgrading and rending asunder of the fabric of ritual laws (which had been purposefully composed to segregate the Jews from the outer world) and from the consequent *dissolution* of the link between religion and the caste-like position of the faithful as a pariah people, can be readily observed in the contrast between Jesus' prophecy and its immediate consequences. To be sure, the early Christian prophecy contained very definite elements of "retribution" doctrine, in the sense of the future equalization of human fates (most clearly expressed in the legend of Lazarus) and of vengeance (which is shown to be God's responsibility). Moreover, here too the Kingdom of God is interpreted as an earthly kingdom, in the first instance apparently a realm set apart particularly or primarily for the Jews, for they from ancient times had believed in the true God. Yet, it is precisely the characteristic and penetrating *ressentiment* of the pariah people which is neutralized by the implications of the new religious proclamation.

Not even Jesus' own warnings, according to the tradition, of the dangers presented by wealth to the attainment of salvation were motivated by asceticism. Certainly the motivation of his preaching against wealth was not resentment, for the tradition has preserved many evidences of Jesus' intercourse, not only with publicans (who in the Palestine of that period were mostly small-time usurers), but also with other well-to-do people. Furthermore, resentment cannot be regarded as the primary motivation of Jesus' doctrines regarding wealth,—in view of

the Gospels' impressive indifference to mundane affairs, an indifference based upon the power of eschatological expectations. To be sure, the rich young man was bidden unconditionally to take his leave of the world if he desired to be a perfect disciple. But it is stated that for God all things are possible, even the salvation of the wealthy [Matt. 19:21 ff]. The rich man who is unable to decide to part with his wealth may nonetheless achieve salvation, despite the difficulties in the way. There were no "proletarian instincts" in the doctrine and teaching of Jesus, the prophet of acosmistic love who brought to the poor in spirit and to the good people of this world the happy tidings of the immediate coming of the Kingdom of God and of freedom from the domination of evil spirits. Similarly, any proletarian denunciation of wealth would have been equally alien to the Buddha, for whom the absolute precondition of salvation was unconditional withdrawal from the world.

The limited significance of the factor of *ressentiment*, and the dubiousness of applying the conceptual schema of "repression" almost universally, appear most clearly when Nietzsche mistakenly applies his scheme to the altogether inappropriate example of Buddhism. Constituting the most radical antithesis to every type of *ressentiment* morality, Buddhism clearly arose as the salvation doctrine of an intellectual stratum, originally recruited almost entirely from the privileged castes, especially the warrior caste, which proudly and aristocratically rejected the illusions of life, both here and hereafter. Buddhism may be compared in social provenience to the salvation doctrines of the Greeks, particularly the Neo-Platonic, Manichean, and Gnostic manifestations, even though they are radically different in content. The Buddhist *bhikshu* does not begrudge the entire world, not even a rebirth into paradise, to the person who does not desire *Nirvana*.

Precisely this example of Buddhism demonstrates that the need for salvation and ethical religion has yet another source besides the social condition of the disprivileged and the rationalism of the bourgeoisie, which is shaped by its way of life This additional factor is intellectualism as such, more particularly the metaphysical needs of the human mind as it is driven to reflect on ethical and religious questions, driven not by material need but by an inner compulsion to understand the world as a meaningful cosmos and to take up a position toward it.

NOTES

1. The *Humiliati* were bourgeois lay ascetics who were barely tolerated from their emergence in the 12th century to their final suppression by the Counter-Reformation in the 16th century.

2. Gustav Adolf Deissmann, *Licht vom Osten* (Tübingen: Mohr, 1908), 234f.

3. See Werner Sombart, *Das Proletariat* (Frankfurt: Rütten und Loening, 1906), 75ff. and id., *Sozialismus und soziale Bewegung*, 1908, 6th ed., 25. (W)

4. Cf. Weber, *The Religion of India*, 306ff.

5. The *theotokos* is the regal Virgin; the term "imperialist" in the German text refers to the "proto-renaissance" style of Nicola Pisano (c. 1225–c. 1278). On this point, and the bourgeois trends, see Albert Brach, *Nicola und Giovanni Pisano und die Plastik des XIV. Jahrhunderts in Siena* (Strassburg: Heitz, 1904). Around 1904 there was a dispute about the origins of Nicola Pisano's style; one thesis derived it from the Imperial studios of Emperor Frederick II in Southern Italy; cf. Georg Swarzenski, *Nicolo Pisano* (Frankfurt: Iris, 1926). The *embourgeoisement* can be observed in Pisa in the contrast between Nicola's pulpit in the Baptistery (1259) and that made by Giovanni for the *Duomo* (1311). (Wi)

6. On *ressentiment* and the "slave revolt in morality," see Friedrich Nietzsche, *Werke* (Leipzig: Kröner, 1930), II, 38 and 98f.

VII

Intellectualism, Intellectuals, and Salvation Religion

1. *Priests and Monks as Intellectualist Elaborators of Religion*

The destiny of religions has been influenced in a most comprehensive way by intellectualism and its various relationships to the priesthood and political authorities. These relationships were in turn influenced by the provenience of the stratum which happened to be the most important carrier of the particular intellectualism. At first the priesthood itself was the most important carrier of intellectualism, particularly wherever sacred scriptures existed, which would make it necessary for the priesthood to become a literary guild engaged in interpreting the scriptures and teaching their content, meaning, and proper application. But no such development took place in the religions of the ancient city-states, and notably not among the Phoenicians, Greeks, or Romans; nor was this phenomenon present in the ethics of China. In these instances the development of all metaphysical and ethical thought fell into the hands of non-priests, as did the development of theology, which developed to only a very limited extent, e.g., in Hesiod.

By contrast, the development of intellectualism by the priesthood,

was true to the highest degree in India, in Egypt, in Babylonia, in Zoroastrianism, in Islam, and in ancient and medieval Christianity. So far as theology is concerned, the development of intellectualism by the priesthood has also taken place in modern Christianity. In the religions of Egypt, in Zoroastrianism, in some phases of ancient Christianity, and in Brahmanism during the age of the Vedas (i.e., before the rise of lay asceticism and the philosophy of the Upanishads) the priesthood succeeded in largely monopolizing the development of religious metaphysics and ethics. Such a priestly monopoly was also present in Judaism and Islam. But in Judaism it was strongly reduced by the strong impact of lay prophecy, and in Islam the very impressive power of the priesthood was limited by the challenge of Sufi speculation. In all the branches of Buddhism and Islam, as well as in ancient and medieval Christianity, it was the monks or groups oriented to monasticism who, besides the priests or in their stead, concerned themselves with and wrote in all the areas of theological and ethical thought, as well as in metaphysics and considerable segments of science. In addition, they also occupied themselves with the production of artistic literature. The cultic importance of the singer played a role in bringing epic, lyrical and satirical poetry into the Vedas in India and the erotic poetry of Israel into the Bible; the psychological affinity of mystic and spiritual (*pneumatisch*) emotion to poetic inspiration shaped the role of the mystic in the poetry of both the Orient and Occident.

But here we are concerned, not with literary production, but rather the determination of the religion itself by the particular character of the intellectual strata who exerted a decisive influence upon it. The intellectual influence upon religion of the priesthood, even where it was the chief carrier of literature, was of quite varied scope, depending on which non-priestly strata opposed the priesthood and on the power position of the priesthood itself. The specifically ecclesiastical influence reached its strongest expression in late Zoroastrianism and in the religions of Egypt and Babylonia. Although Judaism of the Deuteronomic and exilic periods was prophetic in essence, the priesthood exerted a marked formative influence upon the developing religion. In later Judaism, however, it was not the priest but the rabbi who exercised the decisive influence. Christianity was decisively influenced by the priesthood and by monasticism at the end of Antiquity and in the High Middle Ages, and then again in the period of the Counter-Reformation. Pastoral influences were dominant in Lutheranism and early Calvinism. Hinduism was formed and influenced to an extraordinary degree by the Brahmins, at least in its institutional and social components. This applies particularly to the caste system that arose wherever the Brahmins arrived, the social

hierarchy of which was ultimately determined by the rank the Brahmins assigned to each particular caste. Buddhism in all its varieties, but particularly Lamaism, has been thoroughly influenced by monasticism, which has to a lesser degree influenced large groups in oriental Christianity.

2. *High-Status Intellectuals as Religious Innovators*

Here we are particularly concerned with the relationship to the priesthood of the non-ecclesiastical lay intelligentsia other than the monks, and in addition, with the relation of the intellectual strata to the religious enterprise and their position within the religious community. We must at this point establish as a fact of fundamental importance that all the great religious doctrines of Asia are creations of intellectuals. The salvation doctrines of Buddhism and Jainism, as well as all related doctrines, were carried by an intellectual elite that had undergone training in the Vedas. This training, though not always of a strictly scholarly nature, was appropriate to the education of Hindu aristocrats, particularly members of the Kshatriya nobility, who stood in opposition to the Brahmins. In China the carriers of Confucianism, beginning with the founder himself and including Lao Tzu, who is officially regarded as the initiator of Taoism, were either officials who had received a classical literary education or philosophers with corresponding training.

The religions of China and India display counterparts of practically all the theoretical variants of Greek philosophy, though frequently in modified form. Confucianism, as the official ethic of China, was entirely borne by a group of aspirants to official positions who had received a classical literary education, but it is true that Taoism became a popular enterprise of practical magic. The great reforms of Hinduism were accomplished by aristocratic intellectuals who had received a Brahminic education, although subsequently the organization of communities frequently fell into the hands of members of lower castes. Thus, the process of reform in India took another direction from that of the Reformation in Northern Europe, which was also led by educated men who had received professional clerical training, as well as from that of the Catholic Counter-Reformation, which at first found its chief support from Jesuits trained in dialectic, like Salmeron and Laynez. The course of the reform movement in India differed also from the reconstruction of Islamic doctrine by al-Ghazâlî [A.D. 1058–1111], which combined mysticism and orthodoxy, with leadership remaining partly in the hands of the official hierarchy and partly in the hands of a newly

developed office nobility with theological training. So too, Manicheanism and Gnosticism, the salvation religions of the Near East, are both specifically religions of intellectuals. This is true of their founders, their chief carriers, and the character of their salvation doctrines as well.

In all these cases, in spite of various differences among the religions in question, the intellectual strata were relatively high in the social scale and possessed philosophical training that corresponded to that of the Greek schools of philosophy or to the most learned types of monastic or secular humanistic training of the late medieval period. These groups were the bearers of the ethic or the salvation doctrine in each case. Thus intellectual strata might, within a given religious situation, constitute an academic enterprise comparable to that of the Platonic academy and the related schools of philosophy in Greece. In that case the intellectual strata, like those in Greece, would take no official position regarding existing religious practice. They often ignored or philosophically reinterpreted the existing religious practice rather than directly withdrawing themselves from it. On their part, the official representatives of the cult, like the state officials charged with cultic responsibility in China or the Brahmins in India, tended to treat the doctrine of the intellectuals as either orthodox or heterodox, the latter in the cases of the materialistic doctrines of China and the dualist Sankhya philosophy of India. We cannot enter into any additional details here regarding these movements, which have a primarily academic orientation and are only indirectly related to practical religion. Our chief interest is rather in those other movements, previously mentioned, which are particularly concerned with the creation of a religious ethic. Our best examples in classical Antiquity are the Pythagoreans and Neo-Platonists. These movements of intellectuals have uniformly arisen among socially privileged strata or have been led or decisively influenced by men from these groups.

3. *The Political Decline of Privileged Strata and the Escapism of Intellectuals*

The development of a strong salvation religion by socially privileged groups normally has the best chance when demilitarization has set in for these groups and when they have lost either the possibility of political activity or the interest in it. Consequently, salvation religions usually emerge when the ruling strata, noble or middle class, have lost their political power to a bureaucratic-militaristic unitary state. The withdrawal of the ruling strata from politics, for whatever reason, also favors

the development of a salvation religion. In such a case, the ruling strata come to consider their intellectual training in its ultimate intellectual and psychological consequences far more important for them than their practical participation in the external affairs of the mundane world. This does not mean that the salvation religions arise only at such times. On the contrary, the intellectual conceptions in question may sometimes arise without the stimulus of such anterior conditions, as a result of unprejudiced reflection in periods of dynamic political or social change. But in that case such modes of thought tend to lead a kind of underground existence, normally becoming dominant only when the intellectuals have undergone depoliticization.

Confucianism, the ethic of a powerful officialdom, rejected all doctrines of salvation. On the other hand, Jainism and Buddhism, which provide radical antitheses to Confucianist accommodation to the world, were tangible expressions of an intellectualist attitude that was utterly anti-political, pacifistic, and world-rejecting. We do not know, however, whether the sometimes considerable following of these two religions in India was increased by events of the times which tended to reduce preoccupation with political matters. The pluralism of tiny states headed by minor Hindu princes before the time of Alexander, states lacking any sort of political dynamic in the face of the impressive unity of Brahmanism (which was gradually forging to the front everywhere in India), was in itself enough to induce those groups of the nobility who had undergone intellectual training to seek fulfillment of their interests outside of politics. Therefore the scripturally enjoined world-renunciation of the Brahmin (as a *vanaprastha*—forest dweller—who foregoes his portion in old age) and the popular veneration accorded to him resulted in the evolution of non-Brahminic ascetics (*shramanas*). It is possible of course that the actual development went in the other direction, so that the recommendation of world-renunciation to the Brahmin who "has seen the son of his son" is the later of the two phenomena, and a borrowing. In any case, the *shramanas*, as the possessors of ascetic charisma, soon outstripped the official priesthood in popular esteem. This form of monastic apoliticism had been endemic among the nobles of India since very early times, i.e., long before apolitical philosophical salvation doctrines arose.

The Near Eastern salvation religions, whether of a mystagogic or prophetic type, as well as the oriental and Hellenistic salvation doctrines, whether of a more religious type or a more philosophical type of which lay intellectuals were the protagonists, were, insofar as they included the socially privileged strata at all, virtually without exception the conse-

quence of the educated strata's enforced or voluntary loss of political influence and participation. In Babylonia the turn to salvation religion, intersected by components whose provenience was outside Babylonia, appeared first in Mandaeism. The religion of intellectuals in the Near East took this turn first through participation in the cult of Mithra and the cults of other saviors, and then through participation in the cults of Gnosticism and Manicheism, after all political interest had died off in the educated strata. In Greece there had always been salvation religion among the intellectual strata, even before the Pythagorean sect arose, but it did not dominate groups with decisive political power. The success of philosophical salvation doctrines and the propaganda of salvation cults among the lay elite during late Hellenic and Roman times parallels these groups' final turning aside from political participation. Indeed, the somewhat verbose "religious" interests of our German intellectuals of the present time are intimately connected with political frustrations that are responsible for their political indifference.

Quests for salvation which arise among privileged classes are generally characterized by a disposition toward an "illumination" mysticism, to be analyzed later, which is associated with a distinctively intellectual qualification for salvation. This brings about a strong devaluation of the natural, sensual, and physical, as constituting, according to their psychological experience, a temptation to deviate from this distinctive road to salvation. The exaggeration and fastidious refinement of sexuality, along with the simultaneous suppression of normal sexuality in favor of substitute abreactions, were determined by the life patterns of those who might be termed "nothing-but-intellectuals"; and these exaggerations and suppressions of sexuality occasionally played a role for which modern psychopathology has not yet formulated uniformly applicable rules. These phenomena are strongly reminiscent of certain phenomena, especially in the Gnostic mysteries, which clearly appear to have been sublimated masturbatory surrogates for the orgies of the peasantry. These purely psychological preconditions of the process whereby religion is irrationalized are intersected by the natural rationalistic need of intellectualism to conceive the world as a meaningful cosmos. Some typical outcomes are the Hindu doctrine of ***karma*** (of which more will be said presently) and its Buddhist variant; the Book of Job among the Hebrews, which presumably originated in aristocratic intellectual groups; and the comparable elements in Egyptian literature, in Gnostic speculation, and in Manichean dualism.

Once a salvation doctrine and an ethic of intellectualist origin has become a mass religion, an esotericism or aristocratic status ethic arises

that is adjusted to the needs of the intellectually trained groups. Meanwhile, however, the religion has become transformed into a doctrine of a popular magical savior, thereby meeting the needs of the nonintellectual masses. Thus in China, alongside the Confucianist status ethic of the bureaucrats, who were completely uninterested in salvation, Taoist magic and Buddhist sacramental and ritual grace survived in a petrified form as the faith of the folk, though such beliefs were despised by those who had received a classical education. Similarly, the Buddhist salvation ethic of the monastic groups lived on alongside the magic and idolatry of the laity, the continued existence of tabooistic magic, and the new development of a savior religion within Hinduism. In Gnosticism and its related cults the intellectualist religion took the form of mystagogy, with a hierarchy of sanctifications which the unilluminated were excluded from attaining.

The salvation sought by the intellectual is always based on inner need, and hence it is at once more remote from life, more theoretical and more systematic than salvation from external distress, the quest for which is characteristic of nonprivileged strata. The intellectual seeks in various ways, the casuistry of which extends into infinity, to endow his life with a pervasive meaning, and thus to find unity with himself, with his fellow men, and with the cosmos. It is the intellectual who conceives of the "world" as a problem of meaning. As intellectualism suppresses belief in magic, the world's processes become disenchanted, lose their magical significance, and henceforth simply "are" and "happen" but no longer signify anything. As a consequence, there is a growing demand that the world and the total pattern of life be subject to an order that is significant and meaningful.

The conflict of this requirement of meaningfulness with the empirical realities of the world and its institutions, and with the possibilities of conducting one's life in the empirical world, are responsible for the intellectual's characteristic flight from the world. This may be an escape into absolute loneliness, or in its more modern form, e.g., in the case of Rousseau, to a nature unspoiled by human institutions. Again, it may be a world-fleeing romanticism like the flight to the "people," untouched by social conventions, characteristic of the Russian *narodnichestvo*. It may be more contemplative, or more actively ascetic; it may primarily seek individual salvation or collective revolutionary transformation of the world in the direction of a more ethical status. All these doctrines are equally appropriate to apolitical intellectualism and may appear as religious doctrines of salvation, as on occasion they have actually appeared. The distinctive world-fleeing character of intellectualist religion also has one of its roots here.

4. *The Religious Impact of Proletarian, Petty-Bourgeois and Pariah Intellectualism*

Yet the philosophical intellectualism of those classes that are usually well provided for socially and economically (particularly apolitical nobles or rentiers, officials, and incumbents of benefices whether of churches, monastic establishments, institutions of higher learning, or the like) is by no means the only kind of intellectualism, and frequently it is not the most important kind of intellectualism for the development of religion. For there is also a quasi-proletarian (proletaroid) intellectualism that is everywhere connected with aristocratic intellectualism by transitional forms and differs from it only in the character of its distinctive attitude. Members of this class include people at the edge of the minimum standard of living; small officials and incumbents of prebends, who generally are equipped with what is regarded as an inferior education; scribes, who were not members of privileged strata in periods when writing was a special vocation; elementary school teachers of all sorts; wandering poets; narrators; reciters; and practitioners of similar free proletaroid callings. Above all, we must include in this category the self-taught intelligentsia of the disprivileged ("negatively privileged") strata, of whom the classic examples are the Russian proletaroid peasant intelligentsia in Eastern Europe, and the socialist-anarchist proletarian intelligentsia in the West. To this general category there might also be added groups of a far different background, such as the Dutch peasantry as late as the first half of the nineteenth century, who had an impressive knowledge of the Bible, the petty-bourgeois Puritans of seventeenth-century England, and the religiously interested journeymen of all times and peoples. Above all, there must be included the classical manifestations of the Jewish laity, including the Pharisees, the Chassidim, and the mass of the pious Jews who daily studied the law.

It may be noted that pariah intellectualism, appearing among all proletaroid incumbents of small prebends, the Russian peasantry, and the more or less itinerant folk, derives its intensity from the fact that the groups which are at the lower end of, or altogether outside of, the social hierarchy stand to a certain extent on the point of Archimedes in relation to social conventions, both in respect to the external order and in respect to common opinions. Since these groups are not bound by the social conventions, they are capable of an original attitude toward the meaning of the cosmos; and since they are not impeded by any material considerations, they are capable of intense ethical and religious emotion. Insofar as they belonged to the middle classes, like the religiously self-taught petty-bourgeois groups, their religious needs tended to assume

either an ethically rigorous or an occult form. The intellectualism of the journeyman stands midway between these [pariah and petty-bourgeois manifestations of intellectualism], and is significant because the itinerant journeyman is particularly qualified for missionizing.

In Eastern Asia and India, so far as is known, pariah intellectualism is practically non-existent, as is petty-bourgeois intellectualism. The latter requires the communal feeling of an urban citizenry, but this is absent. Both also lack the emancipation from magic, which is a prerequisite for them. Indeed, even those forms of religion that emerged out of the lower castes take their Gathas from the Brahmins. In China as well, there is no independent, unofficial intellectualism apart from the Confucian education. Confucianism is *the* ethic of the "noble" man (i.e., the "gentleman," as Dvořak[1] has correctly translated the term). Confucianism is quite explicitly a status ethic, or more correctly, a systematization of rules of etiquette appropriate to a dignified stratum the members of which have undergone literary training. The situation was not different in the ancient Levant and Egypt, so far as is known. There the intellectualism of the scribes, insofar as it lead to ethical and religious reflection, belonged entirely to the type of intellectualism which is sometimes apolitical but always aristocratic and anti-plebeian.

5. *The Intellectualism of Higher- and Lower-Ranking Strata in Ancient Judaism*

In ancient Israel, the author of the Book of Job assumed that upper-class groups are among the carriers of religious intellectualism. The Book of Proverbs and related works show traces in their very form of having been touched by the internationalization of the educated and apolitical higher strata resulting from their mutual contact with each other after Alexander's arrival in the East. Some of the dicta in Proverbs are directly attributed to a non-Jewish king, and in general the literature stamped with the name of "Solomon" betrays marks of an international culture. Ben Sira's emphatic stress upon the wisdom of the fathers in opposition to Hellenization already demonstrates that there was a trend in this direction. Moreover, as Bousset[2] correctly pointed out, the "scribe" or "scriptural scholar" of that time who was learned in the law was, according to the Book of Ben Sira, a widely traveled and cultivated gentleman. There is throughout this book, as Meinhold has emphasized, a clearly expressed anti-plebeian line, quite comparable to that found among the Greeks: How can the peasant, the smith, or the potter have wisdom,

which only leisure for reflection and dedication to study can produce?[3] Ezra is designated as the "first scribe," yet far older was the influential position of the priests, ideologists with a pure religious interest who had swarmed about the prophets, and without whom the imposition of the Book of Deuteronomy would never have taken place. On the other hand, the dominant position of the scribes, that means, those who know Hebrew and can interpret the divine commands, and whose position is almost equivalent to the Islamic mufti, arises much later than that of Ezra, the official creator of the theocracy, who had received his powers from the Persian emperor.

The social position of the scribes nevertheless underwent changes. At the time of the Maccabean commonwealth, piety—in essence a rather sober wisdom of life, as illustrated by the doctrine of xenophilia—was regarded as identical with education or "culture" (*musar, paideia*); the latter was the key to virtue, which was regarded as teachable in the same sense as among the Greeks. Yet the pious intellectuals of even that period, like the majority of the Psalmists, felt themselves to be in sharp opposition to the wealthy and proud, among whom fidelity to the law was uncommon, even though these intellectuals were of the same social class as the wealthy and proud. On the other hand, the schools of scriptural scholars of the Herodian period, whose frustration and psychological tension grew in the face of the obvious inevitability of subjugation to a foreign power, produced a proletaroid class of interpreters of the law. These served as pastoral counselors, preachers and teachers in the synagogues, and their representatives also sat in the Sanhedrin. They influenced decisively the popular piety of those members (*chaberim*) of the Jewish community who were rigidly faithful to the law in the sense of the *perushim* (*pharisaioi*). In the Talmudic period, this functional activity developed into the rabbinate, a profession of congregational functionaries. Through this stratum there now ensued, in contrast to what had gone before, a tremendous expansion of petty-bourgeois and pariah intellectualism, such as we do not find among any other people. Philo already regarded "general public schools" for the diffusion of literacy and of systematic education in casuistical thinking as the hallmark of the Jews. It was the influence of this stratum that first supplanted, among urban Jews, the activity of the prophets by the cult of fidelity to the law and to the study of the sacred scriptures of the law.

This Jewish stratum of popular intellectuals, entirely remote from any connection with mystery religions, unquestionably occupied a lower social position than the strata of philosophers and mystagogues in Hellenistic societies of the Near East. But intellectualism was undoubtedly already diffused throughout the various social strata of the Hellenistic

Orient in pre-Christian times, and in fact produced in the various mysteries and cults of salvation, by allegory and speculation, dogmas similar to those generated by the Orphics, who generally seem to have belonged to the middle classes. These mysteries and soteriological speculations were certainly well known to a scriptural scholar of the Diaspora like Paul, who rejected them vigorously; it will be recalled that the cult of Mithra was widely diffused in Cilicia during the time of Pompey [ca. 60 B.C.] as a religion of pirates, although the epigraphic evidence for its existence specifically at Tarsus stems from the Christian era. It is quite likely that salvation hopes of different kinds and origins existed side by side in Judaism for a long period, especially in the provinces. Otherwise, it would have been impossible for Judaism to produce even in the period of the prophets, in addition to the idea of a future monarch of the Jewish people restored to power, the idea that another king of the poor folk would enter Jerusalem upon a donkey; and indeed it would have been difficult for the Jews to evolve their idea of the "son of man," an obvious linguistic product of Semitic grammar.

All in all, lay intellectualism, whether of the noble or the pariah kind, is involved in every complex soteriology which develops abstractions and opens up cosmic perspectives, going far beyond mythologies oriented to the mere processes of nature or to the simple prediction of the appearance at some future time of a good king who is already waiting somewhere in concealment.

6. *The Predominance of Anti-Intellectualist Currents in Early Christianity*

This scriptural scholarship, which is an instance of petty-bourgeois intellectualism, entered from Judaism into early Christianity. Paul, apparently an artisan like many of the late Jewish scriptural scholars (in sharp contrast to the intellectuals of the period of Ben Sira, who produced anti-plebeian wisdom doctrines), is an outstanding representative of this class in early Christianity, though of course other traits are also to be found in Paul. His *gnosis*, though very remote from that conceived by the speculative intellectuals of the Hellenistic Orient, could later provide many points of support for the Marcionite movement. Intellectualism rooted in a sense of pride that only those chosen by god understand the parables of the master was also strongly marked in Paul, who boasted that his true knowledge was "to the Jews a stumbling block and to the Greeks foolishness." Paul's doctrine of the dualism of flesh and

spirit has some relationship to the attitudes toward sensuality typical of intellectualist salvation doctrines, but it is rooted in other conceptions. A somewhat superficial acquaintance with Hellenistic philosophy can be presumed in his thought. Above all, Paul's conversion was not merely a vision, in the sense of hallucinatory perception. Rather, his conversion was also recognition of the profound inner relationship between the personal fate of the resurrected founder of Christianity and the cultic ideologies of the general Oriental savior doctrines and conceptions of salvation (with which Paul was well acquainted), in which the promises of Jewish prophecy now found their place for him.

The argumentation of Paul's Epistles represents the highest type of dialectic found among petty-bourgeois intellectuals. Paul assumes a remarkable degree of direct "logical imagination" on the part of the groups he is addressing in such compositions as the Epistle to the Romans. It is most likely that it was not Paul's doctrine of justification which was taken over at the time, but rather his conception of the relationship between spirit and the community and his conception of the manner in which spirit is accommodated to the facts of the everyday world. The fierce anger directed against him by the Jews of the Diaspora, for whom his dialectical method must have appeared as a misuse of education, only shows how thoroughly just such a method corresponded to the mental attitude of the petty-bourgeois intellectual. This intellectualism was continued by the charismatic teachers (*didaskaloi*) in pristine Christian communities as late as the *Didache;* and Harnack found a specimen of its hermeneutic in the Epistle to the Hebrews.[4] But this intellectualism disappeared with the slow growth of the bishops' and presbyters' monopoly of the spiritual leadership of the community. In replacement of such intellectuals and teachers came first the intellectualist apologists, then the patristic church fathers and dogmatists, who had received a Hellenistic education and were almost all clerics, and then the emperors, who had a dilettante interest in theology. The culmination of this development was the emergence into power in the East, after victory in the iconoclastic struggle, of monks recruited from the lowest non-Greek social groups. Thenceforth it became impossible to eliminate completely from the Eastern church the type of formalistic dialectic common to all these circles and associated with a semi-intellectualistic, semi-primitive, and magical ideal of self-deification of the church.

Yet one factor was decisive for the fate of ancient Christianity. From its inception Christianity was a salvation doctrine in respect to its genesis, its typical carrier, and the religious way of life that appeared decisive to this carrier. From its very beginning, Christianity, notwithstanding the many similarities of its soteriological myth to the general Near Eastern

pattern of such myths, from which it borrowed elements that it changed, took a position against intellectualism with the greatest possible awareness and consistency. Nor does it argue against the anti-intellectualism of Christianity that Paul took over the hermeneutical methodology of the scribes. Primitive Christianity took stands against both the ritualistic and legalistic scholarship of Judaism and the soteriology of the Gnostic intellectual aristocrats, and it most strongly repudiated ancient philosophy.

The distinctive characteristics of Christianity were its rejection of the Gnostic denigration of believers (*pistikoi*) and its affirmation that the exemplary Christians were those endowed with *pneuma*, the poor in spirit, rather than the scholars. Christianity also taught uniquely that the way to salvation is not derived from academic education in the Law, from wisdom about the cosmic or psychological grounds of life and suffering, from knowledge of the conditions of life within the world, from knowledge of the mysterious significance of sacramental rites, or from knowledge of the future destiny of the soul in the other world. To these hallmarks of Christianity must be added the fact that a considerable portion of the inner history of the early church, including the formulation of dogma, represented the struggle of Christianity against intellectualism in all its forms.

If one wishes to characterize succinctly, in a formula so to speak, the types representative of the various strata that were the primary carriers or propagators of the so-called world religions, they would be the following: In Confucianism, the world-organizing bureaucrat; in Hinduism, the world-ordering magician; in Buddhism, the mendicant monk wandering through the world; in Islam, the warrior seeking to conquer the world; in Judaism, the wandering trader; and in Christianity, the itinerant journeyman. To be sure, all these types must not be taken as exponents of their own occupational or material "class interests," but rather as the ideological carriers of the kind of ethical or salvation doctrine which rather readily conformed to their social position.

As for Islam, its distinctive religiosity could have experienced an infusion of intellectualism, apart from the official schools of law and theology and the temporary efflorescence of scientific interests, only after its penetration by Sufism, but the latter's orientation was not along intellectual lines. Indeed, tendencies toward rationalism were completely lacking in the popular dervish faith. In Islam only a few heterodox sects, which possessed considerable influence at certain times, displayed a distinctly intellectualistic character. Otherwise Islam, like medieval Christianity, produced in its universities tendencies towards scholasticism.

7. *Elite and Mass Intellectualism in Medieval Christianity*

It is imposisble to expatiate here on the relationships of intellectualism to religion in medieval Christianity. In any case this religion, at least as far as its sociologically significant effects are concerned, was not specifically oriented to intellectual elements. The strong influence of monastic rationalism upon the substantive content of the culture may be clarified only by a comparison of Occidental monasticism with that of the Near East and Asia, of which a brief sketch will be given later. The peculiar nature of Occidental monasticism determined the distinctive cultural influence of the church in the West. During the medieval period, Occidental Christianity did not have a religious lay intellectualism of any appreciable extent, whether of a petty-bourgeois or of a pariah character, although some religious lay intellectualism was occasionally found among the sects. On the other hand, the role of the educated classes in the development of the church was not a minor one. The educated strata of Carolingian, Ottonic, and Salic imperialism worked towards an imperial and theocratic cultural organization, just as did the Josephite monks in 16th century Russia.[3] Above all, the Gregorian reform movement and the struggle for power on the part of the papacy were carried forward by the ideology of an elite intellectual stratum that entered into a united front with the rising bourgeoisie against the feudal powers. With the increasing dissemination of university education and with the struggle of the papacy to monopolize, for the sake of fiscal administration or simple patronage, the enormous number of benefices which provided the economic support for this educated stratum, the ever-growing class of these "beneficiaries" turned against the papacy in what was at first an essentially economic and nationalistic interest in monopoly. Then, following the Schism, these intellectuals turned against the papacy ideologically, becoming the carriers of the conciliary reform movement and later of Humanism.

The sociology of the Humanists, particularly the transformation of a feudal and clerical education into a courtly culture based on the largesse of patrons, is not without inherent interest, but we are unable to linger over it at this point. The ambivalent attitude of the Humanists toward the Reformation was primarily caused by ideological factors. Insofar as Humanists placed themselves in the service of building the churches of either the Reformation or the Counter-Reformation, they played an extremely important, though not decisive, role in organizing church schools and in developing doctrine. But insofar as they became the carriers of particular religiosity (actually a whole series of particular

types of faith), they remained without permanent influence. In keeping with their entire pattern of life, these Humanist groups of the classically educated were altogether antipathetic to the masses and to the religious sects. They remained alien to the turmoil and particularly to the demagogy of priests and preachers; on the whole they remained Erastian or irenic in temper, for which reason alone they were condemned to suffer progressive loss of influence.

In addition to sophisticated scepticism and rationalistic enlightenment, the Humanists displayed a tender religiousness, particularly in the Anglican group, an earnest and frequently ascetic moralism, as in the circle of Port Royal; and an individualistic mysticism, as in Germany during the first period and in Italy. But struggles involving realistic power and economic interests were waged, if not by outright violence, then at least with the means of demagogy, to which these Humanist groups were not equal. It is obvious that at least those churches desiring to win the participation of the ruling classes and particularly of the universities needed classically trained theological polemicists as well as preachers with classical training. Within Lutheranism, as a result of its alliance with the power of the nobility, the combination of education and religious activity rapidly devolved exclusively upon professional theologians.

Hudibras [Samuel Butler's mock-heroic poem, 1663–78] still mocked the Puritan groups for their ostensible philosophical erudition, but what gave the Puritans, and above all the Baptist sects, their insuperable power of resistance was not the intellectualism of the elite but rather the intellectualism of the plebeian and occasionally even the pariah classes, for Baptist Protestantism was in its first period a movement carried by wandering craftsmen or apostles. There was no distinctive intellectual stratum with a characteristic life pattern among these Protestant sects, but after the close of a brief period of missionary activity by their wandering preachers, it was the middle class that became suffused with their intellectualism. The unparalleled diffusion of knowledge about the Bible and interest in extremely abstruse and ethereal dogmatic controversies which was characteristic of the Puritans of the seventeenth century, even among peasants, created a popular religious intellectualism never found since, and comparable only to that found in late Judaism and to the religious mass intellectualism of the Pauline missionary communities. In contrast to the situations in Holland, parts of Scotland, and the American colonies, this popular religious intellectualism soon dwindled in England after the power spheres and the limits for seizing power had been tested and determined in the religious wars. However, this period formed the intellectualism of the educated in the Anglo-Saxon

realm, marked as it is by a traditional deference toward a deistic-enlightened kind of religion, of varying degrees of mildness, which never reach the point of anti-clericalism (a phenomenon that we will not pursue at this point). Since this Anglo-Saxon mentality has been determined by the traditionalist attitudes and the moralistic interests of the politically powerful middle class, and thus by a religious plebeian intellectualism, it provides the sharpest contrast to the transformation of the basically aristocratic and court-centered education of the Latin countries into radical antipathy or indifference to the church.

8. *Modern Intellectual Status Groups and Secular Salvation Ideologies*

These Anglo-Saxon and Latin developments, which ultimately had an anti-metaphysical impact, contrast with the German brand of "non-political" elite education, which is neither apolitical nor anti-political.[6] This kind of education resulted from concrete historical events and had few (and mostly negative) sociological determinants. It was metaphysically oriented, but had very little to do with specifically religious needs, least of all any quest for salvation. On the other hand, the plebeian and pariah intellectualism of Germany, like that of the Latin countries, increasingly took a radically anti-religious turn, which became particularly marked after the rise of the economically eschatological faith of socialism. This development was in marked contrast to that in the Anglo-Saxon areas, where the most serious forms of religion since Puritan times have had a sectarian rather than an institutional-authoritarian character.

Only these anti-religious sects had a stratum of declassed intellectuals who were able to sustain a quasi-religious belief in the socialist eschatology at least for a while. This particular "academic" element receded to the extent that the workers took their interests into their own hands. It receded further because of the inevitable disillusionment with an almost superstitious veneration of science as the possible creator or at least prophet of social revolution, violent or peaceful, in the sense of salvation from class rule. So, too, it comes about that the only remaining variant of socialism in western Europe equivalent to a religious faith, namely syndicalism, can easily turn into a romantic game played by circles without direct economic interests.

The last great movement of intellectuals which, though not sustained by a uniform faith, shared enough basic elements to approximate

a religion was the Russian revolutionary intelligentsia, in which patrician, academic and aristocratic intellectuals stood next to plebeian ones. Plebeian intellectualism was represented by the proletaroid minor officialdom, which was highly sophisticated in its sociological thinking and broad cultural interests; it was composed especially of the *zemstvo* officials (the so-called "third element"). Moreover, this kind of intellectualism was advanced by journalists, elementary school teachers, revolutionary apostles and a peasant intelligentsia that arose out of the Russian social conditions. In the eighteen-seventies, this movement culminated in an appeal to a theory of natural rights, oriented primarily toward agricultural communism, the so-called *narodnichestvo* (populism). In the nineties, this movement clashed sharply with Marxist dogmatics, but in part also aligned itself with it. Moreover, attempts were made to relate it, usually in an obscure manner, first to Slavophile romantic, then mystical, religiosity or, at least, religious emotionalism. Under the influence of Dostoevsky and Tolstoy, an ascetic and acosmistic patterning of personal life was created among some relatively large groups of these Russian intellectuals. We shall leave untouched here the question as to what extent this movement, so strongly infused with the influence of Jewish proletarian intellectuals who were ready for any sacrifice, can continue after the catastrophe of the Russian revolution (in 1906).

In Western Europe, ever since the seventeenth century, the viewpoints of Enlightenment religions produced, in both Anglo-Saxon and, more recently, Gallic culture areas, unitarian and deistic communities and communities of a syncretistic, atheistic, or free-church variety. Buddhistic conceptions, or what passed for such, also played some part in this development. In Germany, Enlightenment religious views found a hearing among the same groups that were interested in Freemasonry, namely those devoid of direct economic interests, especially university professors but also declassed ideologists and educated groups partly or wholly belonging to the proletariat. On the other hand, both the Hindu Enlightenment (Brahma-Samaj) and the Persian Enlightenment were products of contact with European culture.

The practical importance of such movements for the sphere of culture was greater in the past than now. Many elements conspire to render unlikely any serious possibility of a new congregational religion borne by intellectuals. This constellation of factors includes the interest of the privileged strata in maintaining the existing religion as an instrument for controlling the masses, their need for social distance, their abhorrence of mass enlightenment as tending to destroy the prestige of elite groups, and their well-founded rejection of any faith in the possibility that some new creed acceptable to large segments of the population could supplant

the traditional creeds (from the texts of which everyone interprets something away, orthodoxy ten percent and liberals ninety percent). Finally, and above all, there is the scornful indifference of the privileged strata to religious problems and to the church. Performance of some irksome formalities does not constitute much of a sacrifice, inasmuch as everyone knows they are just that—formalities best performed by the official guardians of orthodoxy and the social conventions, and acted on in the interest of a successful career because the state requires them performed.

The need of literary, academic, or café-society intellectuals to include "religious" feelings in the inventory of their sources of impressions and sensations, and among their topics for discussion, has never yet given rise to a new religion. Nor can a religious renascence be generated by the need of authors to compose books on such interesting topics or by the far more effective need of clever publishers to sell such books. No matter how much the appearance of a widespread religious interest may be simulated, no new religion has ever resulted from such needs of intellectuals or from their chatter. The pendulum of fashion will presently remove this subject of conversation and journalism.

NOTES

1. See Rudolf Dvořak, *Chinas Religionen* (Münster: Aschendorff, 1895), vol. I, "Confucius und seine Lehre," 122; Dvořak uses the English term "gentleman"; cf. also *GAzRS*, I, 449.

2. See Wilhelm Bousset, *Die Religion des Judentums im neutestamentlichen Zeitalter* (Berlin: Reuther und Reichard, 1906), sec. ed., 187f.

3. Ecclesiasticus (i.e., *The Wisdom of Jesus ben Sirach*) xxxviii:25–39. The reference to Johannes Meinhold's writings could not be identified, but cf. his *Geschichte des jüdischen Volkes* (Leipzig: Quelle und Meyer, 1916), 63, which was probably published too late to be used here.

4. Cf. Adolf von Harnack, *Lehrbuch der Dogmengeschichte* (Tübingen: Mohr, 1909), vol. I, 104ff; on the *Didache* and the ancient Christian distinction between apostles, prophets and charismatic teachers, see *id.*, *Die Mission und Ausbreitung des Christentums in den ersten drei Jahrhunderten* (Leipzig: Hinrich, 1902), 237–51.

5. This refers to the so-called "Church Party" of the period of Ivan II and Vasilii III, around 1500. Its leader was Iosif Sanin, the abbot of Volokolamsk, who extolled the Muscovite rulers as the God-ordained secular arm of the church; it was during this time that the idea of Moscow as the Third (and last) Rome became established. Iosif and his followers, the "Josephites," fought both the rationalist heresy of the so-called Judaizers, a widespread and highly-placed anti-Trinitarian and anti-monastic movement, and the radical monastic movement of Nil Sorski who wanted the cloisters to abandon the lands and villages attached to them. The Josephites pressed for an improvement of monastic *mores*, but they defended the monastic landholdings against the secular interest of the Tsar as well as against otherwordly radicalism. Cf. D. S. Mirsky, *Russia: A Social His-*

tory (London: Cresset, 1931), 138; Günther Stöckl, *Russische Geschichte* (Stuttgart: Kröner, 1962), 218–30.

6. In German *unpolitisch* (non-political) usually refers to an attitude of proud disdain for any involvement in partisan activities and for the realities of parliamentary politics. Thomas Mann's nationalist aberration during the first World War, for example, was entitled *Reflections of a Non-Political Man* (*Betrachtungen eines Unpolitischen*). Weber attacked the "non-political" politics of the literati during the same period in his "Parliament and Government in a Reconstructed Germany" (see Appendix II). Since the literati tended to propagate grand, albeit unrealistic, political schemes, they were not "anti-political," and they were also not "apolitical" in an otherworldly religious sense.

VIII

Theodicy, Salvation, and Rebirth

1. *Theodicy and Eschatology*

Only Judaism and Islam are strictly monotheistic in principle, and even in the latter there are some deviations from monotheism in the later cult of saints. Christian trinitarianism appears to have a monotheistic trend when contrasted with the tritheistic forms of Hinduism, late Buddhism, and Taoism. Yet in practice, the Roman Catholic cult of masses and saints actually comes fairly close to polytheism. It is by no means the case that every ethical god is necessarily endowed with absolute unchangeableness, omnipotence, and omniscience—that is to say, with an absolutely transcendental character. What provides him with this quality is the speculation and the ethical dynamic of passionate prophets. Only the God of the Jewish prophets attained this trait in an absolute and consistent form, and he became also the God of the Christians and Muslims. Not every ethical conception of god produced this result, nor did it lead to ethical monotheism as such. Hence, not every approximation to monotheism is based on an increase in the ethical content of the god-concept. It is certainly true that not every religious ethic has crystallized a god of transcendental quality who created the universe out of nothing and directed it himself.

Yet the legitimation of every distinctively ethical prophecy has always required the notion of a god characterized by attributes that set him sublimely above the world, and has normally been based on the rationalization of the god-idea along such lines. Of course the manifesta-

tion and the significance of this sublimity may be quite different, depending in part on fixed metaphysical conceptions and in part on the expression of the concrete ethical interests of the prophets. But the more the development tends toward the conception of a transcendental unitary god who is universal, the more there arises the problem of how the extraordinary power of such a god may be reconciled with the imperfection of the world that he has created and rules over.

The resultant problem of theodicy is found in ancient Egyptian literature as well as in Job and in Aeschylus, but in very different forms. All Hindu religion was influenced by it in the distinctive way necessitated by its fundamental presuppositions; even a meaningful world order that is impersonal and super-theistic must face the problem of the world's imperfections. In one form or another, this problem belongs everywhere among the factors determining religious evolution and the need for salvation. Indeed, a recent questionnaire submitted to thousands of German workers disclosed the fact that their rejection of the god-idea was motivated, not by scientific arguments, but by their difficulty in reconciling the idea of providence with the injustice and imperfection of the social order.[1]

Now the problem of theodicy has been solved in various ways. These solutions stand in the closest relationship both to the forms assumed by the god-concept and to the conceptions of sin and salvation crystallized in particular social groups. Let us separate out the various theoretically pure types.

One solution is to assure a just equalization by pointing, through messianic eschatologies, to a future revolution in this world. In this way the eschatological process becomes a political and social transformation of this world. This solution held that sooner or later there would arise some tremendous hero or god who would place his followers in the positions they truly deserved in the world. The suffering of the present generation, it was believed, was the consequence of the sins of the ancestors, for which god holds the descendants responsible, just as someone carrying out blood revenge may hold an entire tribe accountable, and as Pope Gregory VII excommunicated descendants down to the seventh generation. Also, it was held that only the descendants of the pious could behold the messianic kingdom, as a consequence of their ancestors' piety. If it perhaps appeared necessary to renounce one's own experience of salvation, there was nothing strange in this. Concern about one's children was everywhere a definite fact of organic social life, pointing beyond the personal interest of an individual and in the direction of another world, at least a world beyond one's own death. For those who were alive, the exemplary and strict fulfillment of the positive divine commandments

gained obligatory, in order to obtain for the individual himself the optimum opportunity for success in life by virtue of god's favor, and in order to obtain for his descendants a share in the realm of salvation. Sin is a breach of fidelity toward god and an impious rejection of god's promises. Moreover, the desire to participate personally in the messianic kingdom leads to further consequences: a tremendous religious excitation is generated when the establishment of the Kingdom of God here on earth appears imminent. Prophets repeatedly arose to proclaim the coming of the kingdom, but when such supervention of the messianic kingdom appeared to be unduly delayed, it was inevitable that consolation should be sought in genuine otherworldly hopes.

The germ of the conception of a world beyond the present one is already present in the development of magic into a belief in spirits. But it by no means follows that the existence of a belief in the souls of the dead always develops into a conception of a special realm of the dead. Thus, a very widespread view is that the souls of the dead may be incorporated into animals and plants, depending on the souls' different manners of life and death, and influenced by their clan and caste connections. This is the source of all conceptions regarding the transmigration of the soul. Where there exists a belief in a domain of the deceased —at first in some geographically remote place, and later above or beneath the earth—it by no means follows that the existence of the souls there is conceived as eternal. For the souls may be destroyed by violence, may perish as the result of the cessation of sacrifices, or may simply die, which is apparently the ancient Chinese view.

In keeping with the law of marginal utility, a certain concern for one's destiny after death would generally arise when the most essential earthly needs have been met, and thus this concern is limited primarily to the circles of the noble and the well-to-do. Only these groups and occasionally only the chieftains and priests, but never the poor and only seldom women, can secure for themselves life in the next world, and they do not spare great expenditures in doing so. It is primarily the example of these groups that serves as a strong stimulus for preoccupation with otherworldly expectations.

At this point there is as yet no question of retribution in the world to come. Where a doctrine of retributions arises, errors in ritual are deemed to be the principal causes of such unfortunate consequences. This is seen most extensively in the sacred law of the Hindus: whosoever violates a caste taboo may be certain of punishment in hell. Only after the god-concept has been ethicized does the god employ moral considerations in deciding the fate of human beings in the world to come. The differentiation of a paradise and a hell does not necessarily arise con-

comitantly with this development, but is a relatively late product of evolution. As otherworldly expectations become increasingly important, the problem of the basic relationship of god to the world and the problem of the world's imperfections press into the foreground of thought; this happens the more life here on earth comes to be regarded as a merely provisional form of existence when compared to that beyond, the more the world comes to be viewed as something created by god *ex nihilo*, and therefore subject to decline, the more god himself is conceived as subject to transcendental goals and values, and the more a person's behavior in this world becomes oriented to his fate in the next. At times, the hope for continued existence in the world beyond produces a direct inversion—in accordance with the formula, "the last shall be first"—of the primordial view in which it had held this to be a matter of concern only to the noble and the wealthy.

But this view has seldom been worked out consistently, even in the religious conceptions of pariah peoples. It did play a great role, however, in the ancient Jewish ethic. The assumption that suffering, particularly voluntary suffering, would mollify god and improve one's chances in the world to come is found sprinkled through and developed in many types of expectation regarding continued existence after death. These may arise from very diverse religious motivations, and may perhaps derive to some extent from the ordeals of heroic asceticism and the practice of magical mortification. As a rule, and especially in religions under the influence of the ruling strata, the converse view obtained, viz., that terrestrial differentiations of status could continue into the next world as well, for the reason that they had been divinely ordained. This belief is still apparent in the phrase current in Christian nations, "His late Majesty, the King."

However, the distinctively ethical view was that there would be concrete retribution of justice and injustice on the basis of a trial of the dead, generally conceived in the eschatological process as a universal day of judgment. In this way, sin assumed the character of a *crimen* to be brought into a system of rational casuistry, a *crimen* for which satisfaction must somehow be given in this world or in the next so that one might ultimately stand vindicated before the judge of the dead. Accordingly, it would have made sense to grade rewards and punishments into relative degrees of merit and transgression, which was still the case in Dante, with the result that they could not really be eternal. But because of the pale and uncertain character of a person's chances in the next world, by comparison with the realities of this world, the remission of eternal punishments was practically always regarded as impossible by prophets and priests. Eternal punishment, moreover, seemed to be the

only appropriate fulfillments of the demand for vengeance against unbelieving, renegade, and godless sinners, especially those who had gone unpunished on earth.

2. *Predestination and Providence*

Heaven, hell, and the judgment of the dead achieved practically universal importance, even in religions for which such concepts were completely alien, such as ancient Buddhism. However, even though intermediate realms of existence, such as those depicted in the teachings of Zoroaster or in the Roman Catholic conception of purgatory, realms encompassing punishments which would only be undergone for limited durations, weakened the consistency of conceptions of eternal punishment, there always remained the difficulty of reconciling the punishment of human acts with the conception of an ethical and at the same time all-powerful creator of the world, who is ultimately responsible for these human actions himself. As people continued to reflect about the insoluble problem of the imperfections of the world in the light of god's omnipotence, one result was inevitable: the conception of an unimaginably great ethical chasm between the transcendental god and the human being continuously enmeshed in the toils of new sin. And this conception inevitably led to the ultimate conclusion, almost reached in the Book of Job, that the omnipotent creator God must be envisaged as beyond all the ethical claims of his creatures, his counsels impervious to human comprehension. Another facet of this emerging view was that God's absolute power over his creatures is unlimited, and therefore that the criteria of human justice are utterly inapplicable to his behavior. With the development of this notion, the problem of theodicy simply disappeared altogether.

In Islam, Allah was deemed by his most passionate adherents to possess just such a limitless power over men. In Christianity, the *deus absconditus* was so envisaged, especially by the virtuosi of Christian piety. God's sovereign, completely inexplicable, voluntary, and antecedently established (a consequence of his omniscience) determination has decreed not only human fate on earth but also human destiny after death. The idea of the determinism or predestination from all eternity of both human life on this earth and human fate in the world beyond comes to its strongest possible expression in such views. The damned might well complain about their sinfulness, imposed by predestination, in the same manner as animals might complain because they had not been created human beings, a notion expressly stated in Calvinism.

In such a context, ethical behavior could never bring about the improvement of one's own chances in either this world or the next. Yet it might have another significance, the practical psychological consequences of which would in certain circumstances be of even greater moment; it might be considered as a symptom or index of one's own state of religious grace as established by god's decree. For the absolute sovereignty of an omnipotent god compels a practical religious concern to try, at the very least, to penetrate god's design in individual cases. Above all, the need to ascertain one's own personal destiny in the world beyond is of paramount importance. Hence, concomitant with the tendency to regard god as the unlimited sovereign over his creatures, there was an inclination to see and interpret god's providence and his personal interposition everywhere in the world's process.

Belief in providence is the consistent rationalization of magical divination, to which it is related, and which for that very reason it seeks to devaluate as completely as possible, as a matter of principle. No other view of the religious relationship could possibly be as radically opposed to all magic, both in theory and in practice, as this belief in providence which was dominant in the great theistic religions of Asia Minor and the Occident. No other so emphatically affirms the nature of the divine to be an essentially dynamic activity manifested in god's personal, providential rule over the world. Moreover, there is no view of the religious relationship which holds such firm views regarding god's discretionary grace and the human creature's need of it, regarding the tremendous distance between god and all his creatures, and consequently regarding the reprehensibility of any deification of "things of the flesh" as a sacrilege against the sovereign god. For the very reason that this religion provides no rational solution of the problem of theodicy, it conceals the greatest tensions between the world and god, between the actually existent and the ideal.

3. *Other Solutions of Theodicy: Dualism and the Transmigration of the Soul*

Besides predestination, there are two other religious outlooks that provide systematically conceptualized treatment of the problem of the world's imperfections. The first is dualism, as expressed more or less consistently in the later form of Zoroastrianism, in the many forms of religion in Asia Minor influenced by Zoroastrianism, above all in the final form of Babylonian religion (containing some Jewish and Christian in-

fluences), and in Mandaeism and Gnosticism, down to the great ideas of Manicheism.

At the turn of the third century, Manicheism seemed to stand on the threshold of a struggle for world mastery, even in the Mediterranean area. According to the Manicheans, god is not almighty, nor did he create the world out of nothingness. Injustice, unrighteousness, and sin—in short, all the factors that have generated the problem of theodicy—result from the darkening of the luminous purity of the great and good gods through contact with the opposite autonomous powers of darkness, which are identified with impure matter. The dominance of these forces, which gives dominion over the world to some satanic power, has arisen through some primordial wickedness of men or of angels, or, as in the view of many Gnostics, through the inferiority of some subordinate creator of the world, e.g., Jehovah or the Demiurge. The final victory of the god of light in the ensuing struggle is generally regarded as certain, and this constitutes a deviation from strict dualism. The world process, although full of inevitable suffering, is a continuous purification of the light from the contamination of darkness. This conception of the final struggle naturally produces a very powerful eschatological emotional dynamic.

The general result of such views must be the enhancement of an aristocratic feeling of prestige on the part of the pure and elect. The conception of evil, which, on the assumption of a definitely omnipotent god, always tends to take a purely ethical direction, may here assume a strongly spiritual character. This is because man is not regarded as a mere creature facing an absolutely omnipotent power, but as a participant in the realm of light. Moreover, the identification of light with what is clearest in man, namely the spiritual, and conversely, the identification of darkness with the material and corporeal which carry in themselves all the coarser temptations, is practically unavoidable. This view, then, connects easily with the doctrine of impurity found in tabooistic ethics. Evil appears as soiling, and sin—in a fashion quite like that of magical misdeeds—appears as a reprehensible and headlong fall to earth from the realm of purity and clarity into that of darkness and confusion, leading to a state of contamination and deserved ignominy. In practically all the religions with an ethical orientation there are unavowed limitations of divine omnipotence in the form of elements of a dualistic mode of thought.

The most complete formal solution of the problem of theodicy is the special achievement of the Indian doctrine of *karma*, the so-called belief in the transmigration of souls. This world is viewed as a completely connected and self-contained cosmos of ethical retribution. Guilt and merit within this world are unfailingly compensated by fate in the successive

lives of the soul, which may be reincarnated innumerable times in animal, human, or even divine forms. Ethical merits in this life can make possible rebirth into life in heaven, but that life can last only until one's credit balance of merits has been completely used up. The finiteness of earthly life is the consequence of the finiteness of good or evil deeds in the previous life of a particular soul. What may appear from the viewpoint of retribution as unjust suffering in the present life of a person should be regarded as atonement for sin in a previous existence. Each individual forges his own destiny exclusively, and in the strictest sense of the word.

The belief in the transmigration of souls has certain links with widely diffused animistic views regarding the passage of the spirits of the dead into natural objects. It rationalizes these beliefs, and indeed the entire cosmos, by means of purely ethical principles. The naturalistic "causality" of our habits of thought is thus supplanted by a universal mechanism of retribution, for which no act that is ethically relevant can ever be lost. The consequence for dogma is the complete dispensability, and indeed unthinkableness, of an omnipotent god's interference with this mechanism, for the eternal world process provides for ethical obligations through automatic functioning. The mechanism of retribution is, therefore, a consistent deduction from the super-divine character of the eternal order of the world, in contrast to the notion of a god who is set over the world, rules it personally, and imposes predestination upon it. In ancient Buddhism, where this mechanistic notion of the eternal order of the world has been developed with the greatest consistency, even the soul is completely eliminated. What alone exists is the sum of individual good or evil actions, which are relevant for the mechanisms of *karma* and associated with the illusion of the ego.

But on their part, all actions are products of the eternally helpless struggle of all created life, which by the very fact of its finite creation is destined for annihilation; they all arise from the thirst for life, which brings forth all questing for the world to come and all surrender to pleasures here on earth. This thirst for life is the ineradicable basis of individuation and creates life and rebirth as long as it exists. Strictly speaking, there is no sin, but only offenses against one's own clear interest in escaping from this endless wheel, or at least in not exposing oneself to a rebirth under even more painful circumstances. The meaning of ethical behavior may then lie, when modestly conceived, either in improving one's chances in his next incarnation or—if the senseless struggle for mere existence is ever to be ended—in the elimination of rebirth as such.

In the doctrine of metempsychosis there is none of the bifurcation

of the world that is found in the ethical dualistic religions of providence. The dualism of a sacred, omnipotent, and majestic god confronting the ethical inadequacy of all his creatures is altogether lacking. Nor is there, as in spiritualistic dualism, the bisection of all creation into light and darkness or into pure and clear spirit on the one side with dark and sullied matter on the other. Here, rather, is an ontological dualism, one contrasting the world's transitory events and behavior with the serene and perduring being of eternal order—immobile divinity, resting in dreamless sleep. Only Buddhism has deduced from the doctrine of the transmigration of souls its ultimate consequences. This is the most radical solution of the problem of theodicy, and for that very reason it provides as little satisfaction for ethical claims upon god as does the belief in predestination.

4. *Salvation: This-Worldly and Other-Worldly*

Only a few religions of salvation have produced a single pure solution of the problem of the relation of god to the world and to man from among the various possible pure types we have just sketched. Wherever such a pure type was produced it lasted for only a little while. Most religions of salvation have combined various theories, as a result of mutual interaction with each other, and above all in attempts to satisfy the diverse ethical and intellectual needs of their adherents. Consequently, the differences among various religious theories of god's relation to the world and to man must be measured by their degree of approximation to one or another of these pure types.

Now the various ethical colorations of the doctrines of god and sin stand in the most intimate relationship to the striving for salvation, the content of which will be different depending upon what one wants to be saved from, and what one wants to be saved for. Not every rational religious ethic is necessarily an ethic of salvation. Thus, Confucianism is a religious ethic, but it knows nothing at all of a need for salvation. On the other hand, Buddhism is exclusively a doctrine of salvation, but it has no god. Many other religions know salvation only as a special concern cultivated in narrow conventicles, frequently as a secret cult. Indeed, even in connection with religious activities which are regarded as distinctively sacred and which promise their participants some salvation that may be achieved only through these activities, the crassest utilitarian expectations frequently replace anything we are accustomed to term "salvation." The pantomimic musical mystery festivals of the great chthonic deities, which controlled both the harvest and the realm of the dead, promised to the participant in the Eleusinian mysteries who

was ritually pure, first wealth and then improvement in his lot in the next world. But this was proclaimed without any idea of compensation, purely as a consequence of ritualistic devotion.

In the catalog of goods in the *Shih ching*, the highest rewards promised to the Chinese subjects for their correct performances of the official cult and their fulfillment of personal religious obligations are wealth and long life, while there is a complete absence of expectations in regard to another world and any compensation there. Again, it is wealth that Zoroaster, by the grace of his god, principally expects for himself and those faithful to him, apart from rather extensive promises relating to the world beyond. As rewards for the ethical conduct of its laity, Buddhism promises wealth and a long and honorable life, in complete consonance with the doctrines of all inner-worldly ethics of the Hindu religions. Finally, wealth is the blessing bestowed by God upon the pious Jew.

But wealth, when acquired in a systematic and legal fashion, is also one of the indices of the certification of the state of grace among Protestant ascetic groups, e.g., Calvinists, Baptists, Mennonites, Quakers, Reformed Pietists, and Methodists. To be sure, in these cases we are dealing with a conception that decisively rejects wealth (and other mundane goods) as a religious goal. But in practice the transition to this standpoint is gradual and easy. It is difficult to completely separate conceptions of salvation from such promises of redemption from oppression and suffering as those held forth by the religions of the pariah peoples, particularly the Jews, and also by the doctrines of Zoroaster and Muhammad. For the faithful, these promises might include world dominion and social prestige, which the true believer in ancient Islam carried in his knapsack[3] as the reward for holy war against all infidels; or the promises might include a distinctive religious prestige, such as that which the Israelites were taught by their tradition that God had promised them as their future. Particularly for the Israelites, therefore, God was in the first instance a redeemer, because he had saved them from the Egyptian house of bondage and would later redeem them from the ghetto.

In addition to such economic and political salvation, there is the very important factor of liberation from fear of noxious spirits and bad magic of any sort, which is held to be responsible for the majority of all the evils in life. That Christ broke the power of the demons by the force of his spirit and redeemed his followers from their control was, in the early period of Christianity, one of the most important and influential of its messages. Moreover, the Kingdom of God proclaimed by Jesus of Nazareth, which had already come or was held to be close at hand, [Lk. 11:20, Mk. 1:15] was a realm of blessedness upon this earth, purged of all hate, anxiety, and need; only later did heaven and hell appear in

the doctrine. Of course, an eschatology oriented to a future in this world would show a distinct tendency to become a hope for the world beyond, once the Second Coming (*parousia*) was delayed. Henceforth, emphasis had to be shifted to the afterlife: those alive at present would not be able to see salvation during their lifetime, but would see it after death, when the dead would awaken.

The distinctive content of otherworldly salvation may essentially mean freedom from the physical, psychological, and social sufferings of terrestrial life. On the other hand, it may be more concerned with a liberation from the senseless treadmill and transitoriness of life as such. Finally, it may be focused primarily on the inevitable imperfection of the individual, whether this be regarded more as chronic contamination, acute inclination to sin, or more spiritually, as entanglement in the murky confusion of earthly ignorance.

Our concern is essentially with the quest for salvation, whatever its form, insofar as it produced certain consequences for practical behavior in the world. It is most likely to acquire such a positive orientation to mundane affairs as the result of a conduct of life which is distinctively determined by religion and given coherence by some central meaning or positive goal. In other words, a quest for salvation in any religious group has the strongest chance of exerting practical influences when there has arisen, out of religious motivations, a systematization of practical conduct resulting from an orientation to certain integral values. The goal and significance of such a pattern of life may remain altogether oriented to this world, or it may focus on the world beyond, at least in part. In the various religions, this has taken place in exceedingly diverse fashions and in different degrees, and even within each religion there are corresponding differences among its various adherents. Furthermore, the religious systematization of the conduct of life has, in the nature of the case, certain limits insofar as it seeks to exert influence upon economic behavior. Finally, religious motivations, especially the hope of salvation, need not necessarily exert any influence at all upon the manner of the conduct of life, particularly the manner of economic conduct. Yet they may do so to a very considerable extent.

The hope of salvation has the most far-reaching consequences for the conduct of life when salvation takes the form of a process that casts its shadow before it in this life already, or the form of a subjective process taking place completely in this world; hence, when this hope is tantamount to "sanctification" or leads to it or is a precondition of it. Sanctification may then occur as either a gradual process of purification or a sudden transformation of the spirit (*metanoia*), a rebirth.

The notion of rebirth as such is very ancient, and its most classical

development is actually to be found in the spirit belief of magic. The possession of magical charisma almost always presupposes rebirth. The distinctive education of the magician himself, his specific pattern of life, and his distinctive training of the warrior hero are all oriented to rebirth and the insurance of the possession of magical power. This process is mediated by "removal" (*Entrückung*) in the form of ecstasy, and by the acquisition of a new soul, generally followed by a change of name. A vestige of these notions is still extant in the monastic consecration ceremony. Rebirth is at first relevant only to the professional magician, as a magical precondition for insuring the charisma of the wizard or warrior. But in the most consistent types of salvation religion it becomes a quality of devotional mood indispensable for religious salvation, an attitude which the individual must acquire and which he must make manifest in his pattern of life.

NOTES

1. See Adolf Levenstein, *Die Arbeiterfrage* (Munich: Reinhardt, 1912). Levenstein, a worker and self-taught researcher, who pioneered in the survey field, was publicly prodded by Weber into making a more detailed analysis of his results. See Weber, "Zur Methodik sozialpsychologischer Enqueten und ihrer Bearbeitung," *Archiv für Sozialwissenschaft*, 29, 1909, 949–58; cf. also Anthony R. Oberschall, *Empirical Social Research in Germany 1848–1914* (The Hague: Mouton, 1965) 94ff., and Paul Lazarsfeld and *id.*, "Max Weber and Empirical Social Research," *American Sociological Review*, 30:2, April 1965, 190f.

2. An allusion to the famous, but apocryphal statement attributed to Napoleon I: "Tout soldat français porte dans sa giberne le bâton de maréchal de France."

IX

Salvation Through The Believer's Efforts[1]

1. *Salvation Through Ritual*

The influence any religion exerts on the conduct of life, and especially on the conditions of rebirth, varies in accordance with the particular path to salvation which is desired and striven for, and in accordance with the psychological quality of the salvation in question.

Salvation may be the accomplishment of the individual himself without any assistance on the part of supernatural powers, e.g., in ancient Buddhism. In this case, one path to salvation leads through the purely ritual activities and ceremonies of cults, both within religious worship and in everyday behavior. Pure ritualism as such is not very different from magic in its effect on the conduct of life. Indeed, ritualism may even lag behind magic, inasmuch as magical religion occasionally produced a definite and rather thorough methodology of rebirth, which ritualism did not always succeed in doing. A religion of salvation may systematize the purely formal and specific activities of ritual into a devotion with a distinctive religious mood (*Andacht*), in which the rites to be performed are symbols of the divine. Then this religious mood is the truly redemptory quality. Once it is missing, only the bare and formal magical ritualism remains. This has happened as a matter of course again and again in the routinization of all devotional religions.

The consequences of a ritualistic religion of devotion may be quite diversified. The comprehensive ritualistic regimentation of life among pious Hindus, which by European standards placed extraordinary daily demands upon the devout, would have rendered virtually impossible the coexistence of a life of exemplary piety in the world with any intensive acquisitive economic activity, if these demands had been followed exactly. Such extreme devotional piety is diametrically opposite to Puritanism in one respect: such a program of ritualism could be executed completely only by a man of means, who is free from the burden of hard work. But this circumstance limiting the number of those whose conduct of life can be influenced by ritualism is to some extent avoidable, whereas another inherent limiting circumstance is even more basic to the nature of ritualism.

Ritualistic salvation, especially when it limits the layman to a spectator role, or confines his participation to simple or essentially passive manipulations, especially in situations in which the ritual attitude is sublimated as much as possible into a devotional mood, stresses the mood of the pious moment that appears to bring the salvation. Consequently, the possession of an essentially ephemeral subjective state is striven after, and this subjective state—because of the idiosyncratic irresponsibility characterizing, for example, the hearing of a mass or the witnessing of a mystical play—has often only a negligible effect on behavior once the ceremony is over. The meager effect such experiences frequently have upon everyday ethical living may be compared to the insignificant influence, in this respect, of a beautiful and inspiring play upon the theater public no matter how much it has been moved by it. All salvation deriving from mysteries has such an inconstant character as it purports to

produce its effect *ex opere operato*, by means of an occasional devotional mood. There is no motivation for the believer's actual proof by deed, which might guarantee a rebirth.

On the other hand, when the occasional devotion induced by ritual is escalated into a continuing piety and the effort is made to incorporate this piety into everyday living, this ritualistic piety most readily takes on a mystical character. This transition is facilitated by the requirement that religious devotion lead to the participant's possession of a subjective state. But the disposition to mysticism is an individual charisma. Hence, it is no accident that the great mystical prophecies of salvation, like the Hindu and others in the Orient, have tended to fall into pure ritualism as they have become routinized. What is of primary concern to us is that in ritualism the psychological condition striven for ultimately leads directly away from rational activity. Virtually all mystery cults have this effect. Their typical intention is the administration of sacramental grace: redemption from guilt is achieved by the sheer sacredness of the manipulation. Like every form of magic, this process has a tendency to become diverted from everyday life, thereby failing to exert any influence upon it.

But a sacrament might have a very different effect if its distribution and administration were linked to the presupposition that the sacrament could bring salvation only to those who have become ethically purified in the sight of god, and might indeed bring ruin to all others. Even up to the threshold of the present time, large groups of people have felt a terrifying fear of the Lord's Supper (the sacrament of the Eucharist) because of the doctrine that "whoever does not believe and yet eats, eats and drinks himself to judgment." Such factors could exert a strong influence upon everyday behavior wherever, as in ascetic Protestantism, there was no central source for the provision of absolution, and where further participation in the sacramental communion occurred frequently, providing a very important index of piety.

In all Christian denominations, participation in sacramental communion is connected with a prescription of confession as the prelude to partaking of the Lord's Supper. But in assessing the importance of confession, everything depends upon what religious rules are prescribed as determining whether sacramental communion may be taken with profit to the participant. Only ritual purity was required for this purpose by the majority of non-Christian ancient mystery cults, though under certain circumstances the devotee was disqualified by grave blood guilt or other specific sins. Thus, most of these mysteries had nothing resembling a confessional. But wherever the requirement of ritual purity became rationalized in the direction of spiritual freedom from sin, the particu-

lar forms of control and, where it existed, of the confessional became important for the type and degree of their possible influence upon daily life. From the pragmatic point of view, ritual as such was in every case only an instrument for influencing the all-important extra-ritual behavior. So much is this the case that wherever the Eucharist was most completely stripped of its magical character, and where further no control by means of the confessional existed, e.g., in Puritanism, communion nevertheless exerted an ethical effect, in some cases precisely because of the absence of magical and confessional controls.

A ritualistic religion may exert an ethical effect in another and indirect way, by requiring that participants be specially schooled. This happened where, as in ancient Judaism, the fulfillment of ritual commandments required of the laity some active ritual behavior or some ritual avoidance of behavior, and where the formalistic side of the ritual had become so systematized into a comprehensive body of law that adequate understanding of it required special schooling. Philo emphasized already in ancient times that the Jews, in contrast to all other peoples, were trained from their earliest youth (along the lines of our public school system) and received a continuous intellectual training in systematic casuistry. Indeed, the literary character of Jewish law is responsible for the fact that even in modern times many Jews, e.g., those in Eastern Europe, have been the only people in their society to enjoy systematic popular education. Even in Antiquity, pious Jews had been led to equate persons unschooled in the law with the godless. Such casuistic training of the intellect naturally exerts an effect on everyday life, especially when it involves not only ritual and cultic obligations, as those of Hindu law, but also a systematic regulation of the ethics of everyday living as well. Then the works of salvation are primarily social achievements, distinctively different from cultic performances.

2. *Salvation Through Good Works*

The social achievements which are regarded as conducive to salvation may be of very different types. Thus, gods of war welcome into their paradise only those who have fallen in battle, or at least show them preference. In the Brahmin ethic the king was explicitly enjoined to seek death in battle once he had beheld his grandson. On the other hand, the social achievements in question may be works of "love for one's fellow men." But in either case systematization may ensue, and, as we have already seen, it is generally the function of prophecy to accomplish just this systematization.

A developing systematization of an ethic of "good works" may assume either of two very different forms. In the first major form of systematization of an ethic of good works, the particular actions of an individual in quest of salvation, whether virtuous or wicked actions, can be evaluated singly and credited to or subtracted from the individual's account. Each individual is regarded as the carrier of his own behavior pattern and as possessing ethical standards only tenuously; he may turn out to be a weaker or a stronger creature in the face of temptation, according to the force of the subjective or external situation. Yet it is held that his religious fate depends upon his actual achievements, in their relationship to one another.

This first type of systematization is consistently followed in Zoroastrianism, particularly in the oldest Gathas by the founder himself, which depict the judge of all the dead balancing the guilt and merit of individual actions in a very precise bookkeeping and determining the religious fate of the individual person according to the outcome of this accounting. This notion appears among the Hindus in an even more heightened form, as a consequence of the doctrine of *karma.* It is held that within the ethical mechanism of the world not a single good or evil action can ever be lost. Each action, being ineradicable, must necessarily produce, by an almost automatic process, inevitable consequences in this life or in some future rebirth. This essential principle of life-accounting also remained the basic view of popular Judaism regarding the individual's relationship to God. Finally, Roman Catholicism and the oriental Christian churches held views very close to this, at least in practice. The *intentio,* according to the ethical evaluation of behavior in Catholicism, is not really a uniform quality of personality, of which conduct is the expression. Rather, it is the concrete intent (somewhat in the sense of the *bona fides, mala fides, culpa,* and *dolus* of the Roman law) behind a particular action. This view, when consistently maintained, eschews the yearning for "rebirth" [in this life] in the strict sense of an ethic of inwardness. A result is that the conduct of life remains, from the viewpoint of ethics, an unmethodical and miscellaneous succession of discrete actions.

The second major form of systematization of an ethic of good works treats individual actions as symptoms and expressions of an underlying ethical total personality. It is instructive to recall the attitude of the more rigorous Spartans toward a comrade who had fallen in battle in order to atone for an earlier manifestation of cowardice—a kind of "redeeming duel" [as practiced by German fraternities]. They did not regard him as having rehabilitated his ethical status, since he had acted bravely for a specific reason and not "out of the totality of his personality," as we

would term it. In the religious sphere too, formal sanctification by the good works shown in external actions is supplanted by the value of the total personality pattern, which in the Spartan example would be an habitual temper of heroism. A similar principle applies to social achievements of all sorts. If they demonstrate "love for one's fellow man," then ethical systematization of this kind requires that the actor possess the charisma of "goodness."

It is important that the specific action be really symptomatic of the total character and that no significance be attached to it when it is a result of accident. Thus, this ethic of inwardness (*Gesinnungsethik*), in its most highly systematized forms, may make increased demands at the level of the total personality and yet be more tolerant in regard to particular transgressions. But this is not always the case, and the ethic of inwardness is generally the most distinctive form of ethical rigorism. On the one hand, a total personality pattern with positive religious qualifications may be regarded as a divine gift, the presence of which will manifest itself in a general orientation to whatever is demanded by religion, namely a pattern of life integrally and methodically oriented to the values of religion. On the other hand, a religious total personality pattern may be envisaged as something which may in principle be acquired through training in goodness. Of course this training itself will consist of a rationalized, methodical direction of the entire pattern of life, and not an accumulation of single, unrelated actions. Although these two views of the origin of a religious total personality pattern produce very similar practical results, yet one particular result of the methodical training of the total personality pattern is that the social and ethical quality of actions falls into secondary importance, while the religious effort expended upon oneself becomes of primary importance. Consequently, religious good works with a social orientation become mere instruments of *self-perfection*: a methodology of salvation.

3. *Salvation Through Self-Perfection*

Now ethical religions are by no means the first to produce such a "methodology" of salvation. On the contrary, highly systematized procedures frequently played significant roles in those awakenings to charismatic rebirth which promised the acquisition of magical powers. This animistic trend of thinking entailed belief in the incarnation of a new soul within one's own body, the possession of one's soul by a powerful demon, or the removal of one's soul to a realm of spirits. In all cases

the possibility of attaining superhuman actions and powers was involved. "Other-worldly" goals were of course completely lacking in all this. What is more, this capacity for ecstasy might be used for the most diverse purposes. Thus, only by acquiring a new soul through rebirth can the warrior achieve superhuman deeds of heroism. The original sense of "rebirth" as producing either a hero or a magician remains present in all vestigial initiation ceremonies, e.g., the reception of youth into the religious brotherhood of the phratry and their equipment with the paraphernalia of war, or the decoration of youth with the insignia of manhood in China and India (where the members of the higher castes are termed the "twice-born"). All these ceremonies were originally associated with activities which produced or symbolized ecstasy, and the only purpose of the associated training is the testing or arousing of the capacity for ecstasy.

Ecstasy as an instrument of salvation or self-deification, our exclusive interest here, may have the essential character of an acute mental aberration or possession; or else the character of a chronically heightened idiosyncratic religious mood, tending either toward greater intensity of life or toward alienation from life. This escalated, intensified religious mood can be of either a more contemplative or a more active type. It should go without saying that a methodical approach to sanctification was not the means used to produce the state of acute ecstasy. Rather, the various methods for breaking down organic inhibitions were of primary importance in producing ecstasy. Organic inhibitions were broken down by the production of acute toxic states induced by alcohol, tobacco, or other drugs which have intoxicating effects; by music and dance; by sexuality; or by a combination of all three—in short by orgy. Ecstasy was also produced by the provocation of hysterical or epileptoid seizures among those with predispositions toward such paroxysms, which in turn produced orgiastic states in others. However, these acute ecstasies are transitory in their nature and apt to leave but few positive traces on everyday behavior. Moreover, they lack the meaningful content revealed by prophetic religion.

It would appear that a much more enduring possession of the charismatic condition is promised by those milder forms of euphoria which may be experienced as either a dreamlike mystical illumination or a more active and ethical conversion. Furthermore, they produce a meaningful relationship to the world, and they correspond in quality to evaluations of an eternal order or an ethical god such as are proclaimed by prophecy. We have already seen that magic is acquainted with a systematic procedure of sanctification for the purpose of evoking charismatic qualities, in addition to its last resort to the acute orgy. For pro-

fessional magicians and warriors need permanent states of charisma as well as acute ecstasies.

Not only do the prophets of ethical salvation not need orgiastic intoxication, but it actually stands in the way of the systematic ethical patterning of life they require. For this reason, the primary target of Zoroaster's indignant ethical rationalism was orgiastic ecstasy, particularly the intoxicating cult of the *soma* sacrifice, which he deemed unworthy of man and cruel to beasts. For the same reason, Moses directed his rationalized ethical attack against the orgy of the dance, just as many founders or prophets of ethical religion attacked "whoredom," i.e., orgiastic temple prostitution. As the process of rationalization went forward, the goal of methodically planned religious sanctification increasingly transformed the acute intoxication induced by orgy into a milder but more permanent *habitus*, and moreover one that was consciously possessed. This transformation was strongly influenced by, among other things, the particular concept of the divine that was entertained. The ultimate purpose to be served by the planned procedure of sanctification remained everywhere the same purpose which was served in an acute way by the orgy, namely the incarnation within man of a supernatural being, and therefore presently of a god. Stated differently, the goal was self-deification. Only now this incarnation had to become a continuous personality pattern, so far as possible. Thus, the entire procedure for achieving consecration was directed to attaining this possession of the god himself hereon earth.

But wherever there is belief in a transcendental god, all-powerful in contrast to his creatures, the goal of methodical sanctification can no longer be self-deification in this sense and must become the acquisition of those religious qualities the god demands in men. Hence the goal of sanctification becomes oriented to the world beyond and to ethics. The aim is no longer to possess god, for this cannot be done, but either to become his instrument or to be spiritually suffused by him. Spiritual suffusion is obviously closer to self-deification than is instrumentality. This difference had important consequences for methodic sanctification itself, as we shall later explain. But in the beginning of this development there were important points of agreement between the methods directed at instrumentality and those directed at spiritual suffusion. In both cases the average man had to eliminate from his everyday life whatever was not godlike, so that he himself might become more like god. The primary ungodlike factors were actually the average *habitus* of the human body and the everyday world, as those are given by nature.

At this early point in the development of soteriological methodology of sanctification, it was still directly linked with its magical precursor,

the methods of which it merely rationalized and accommodated to its new views concerning the nature of the superhuman and the significance of religious sanctification. Experience taught that by the hysteroid "deadening" of the bodies of those with special religious qualifications it was possible to render such bodies anesthetic or cataleptic and to produce in them by suggestion sundry actions that normal neurological functioning could never produce. It had also been learned from experience that all sorts of visionary and spiritual phenomena might easily appear during such states. In different persons, these phenomena might consist in speaking with strange tongues, manifesting hypnotic and other suggestive powers, experiencing impulses toward mystical illumination and ethical conversion, or experiencing profound anguish over one's sins and joyous emotion deriving from suffusion by the spirit of the god. These states might even follow each other in rapid succession. It was a further lesson of experience that all these extraordinary capacities and manifestations would disappear following a surrender to the natural functions and needs of the body, or a surrender to the distracting interests of everyday life. As the yearning for salvation developed, men everywhere drew [negative] inferences about the relationship of mental states to the natural functioning of the body and to the social and economic requirements of everyday life.

The specific soteriological methods and procedures for achieving sanctification are, in their most highly developed forms, practically all of Indian provenience. In India they were undoubtedly developed in connection with procedures for the magical coercion of spirits. Even in India these procedures increasingly tended to become a methodology of self-deification, and indeed they never lost this tendency. Self-deification was the prevalent goal of sanctification, from the beginnings of the *soma* cult of intoxication in ancient Vedic times up through the development of sublime methods of intellectualist ecstasy and the elaboration of erotic orgies (whether in coarser or more refined form, and whether actually enacted in behavior or only imaginatively enacted within the cult), which to this day dominate the most popular form of Hindu religion, the cult of Krishna. This sublimated type of intellectualist ecstasy and an attenuated method of orgiastic dervishism were introduced into Islam via Sufism. To this day Indians are still their typical carriers even as far afield as Bosnia (according to a recent statement by Dr. Frank).*

The two greatest powers of religious rationalism in history, the Roman church in the Occident and Confucianism in China, consistently suppressed this type of ecstasy in their domains. Christianity also sublimated ecstasy into semi-erotic mysticism such as that of Saint Bernard, fervent Mariolatry, the quietism of the Counter-Reformation, and the

emotional piety of Zinzendorf. The specifically extraordinary nature of the experiences characteristic of all orgiastic cults, and particularly of all erotic ones, accounts for their having exerted no influence on everyday life, or at least in the direction of rationalization or systematization—as is seen clearly in the fact that the Hindu and (in general) the dervish religiosities produced no methodology that aimed at the control of everyday living.

4. *The Certainty of Grace and the Religious* Virtuosi

Yet the gap between unusual and routine religious experiences tends to be eliminated by evolution towards the systematization and rationalization of the methods for attaining religious sanctification. Out of the unlimited variety of subjective conditions which may be engendered by methodical procedures of sanctification, certain of them may finally emerge as of central importance, not only because they represent psychophysical states of extraordinary quality, but because they also appear to provide a secure and continuous possession of the distinctive religious acquirement. This is the *assurance of grace* (*certitudo salutis, perseverantia gratiae*). This certainly may be characterized by a more mystical or by a more actively ethical coloration, about which more will be said presently. But in either case, it constitutes the conscious possession of a lasting, integrated foundation for the conduct of life. To heighten the conscious awareness of this religious possession, orgiastic ecstasy and irrational, merely irritating emotional methods of deadening sensation are replaced, principally by planned reductions of bodily functioning, such as can be achieved by continuous malnutrition, sexual abstinence, regulation of respiration, and the like. In addition, thinking and other psychic processes are trained in a systematic concentration of the soul upon whatever is alone essential in religion. Examples of such psychological training are found in the Hindu techniques of Yoga, the continuous repetition of sacred syllables (e.g., *Om*), meditation focused on circles and other geometrical figures, and various exercises designed to effect a planned evacuation of the consciousness.

But in order to further secure continuity and uniformity in the possession of the religious good, the rationalization of the methodology of sanctification finally evolved even beyond the methods just mentioned to an apparent inversion, a planned limitation of the exercises to those devices which tend to insure continuity of the religious mood. This meant the abandonment of all techniques that are irrational from

the viewpoint of hygiene. For just as every sort of intoxication, whether it be the orgiastic ecstasy of heroes, erotic orgies or the ecstasy of terpsichorean frenzies, inevitably culminates in physical collapse, so hysterical suffusion with religious emotionalism leads to psychic collapse, which in the religious sphere is experienced as a state of profound abandonment by god.

In Greece the cultivation of disciplined martial heroism finally attenuated the warrior ecstasy into the perpetual equableness of *sophrosyne,* tolerating only the purely musical, rhythmically engendered forms of *ekstasis,* and carefully evaluating the ethos of music for political correctness. In the same way, but in a more thorough manner, Confucian rationalism permitted only the pentatonic scale in music. Similarly, the monastic procedural plan for attaining sanctification developed increasingly in the direction of rationalization, culminating in India in the salvation methodology of ancient Buddhism and in the Occident in the Jesuit monastic order which exerted the greatest historical influence. Thus, all these methodologies of sanctification developed a combined physical and psychic regimen and an equally methodical regulation of the manner and scope of all thought and action, thus producing in the individual the most completely alert, voluntary, and anti-instinctual control over his own physical and psychological processes, and insuring the systematic regulation of life in subordination to the religious end. The goals, the specific contents, and the actual results of the planned procedures were very variable.

That people differ widely in their religious capacities was found to be true in every religion based on a systematic procedure of sanctification, regardless of the specific goal of sanctification and the particular manner in which it was implemented. As it had been recognized that not everyone possesses the charisma by which he might evoke in himself the experiences leading to rebirth as a magician, so it was also recognized that not everyone possesses the charisma that makes possible the continuous maintenance in everyday life of the distinctive religious mood which assures the lasting certainty of grace. Therefore, rebirth seemed to be accessible only to an aristocracy of those possessing religious qualifications. Just as magicians had been recognized as possessing distinctive magical qualities, so also the religious virtuosi who work methodically at their salvation now became a distinctive religious "status group" within the community of the faithful, and within this circle they attained what is specific to every status group, a social honor of their own.

In India all the sacred laws concerned themselves with the ascetic in this sense, since most of the Hindu religions of salvation were monastic. The earliest Christian sources represent these religious virtuosi

as comprising a particular category, distinguished from their comrades in the congregation, and they later constituted the monastic orders. In Protestantism they formed the ascetic sects or pietistic conventicles. In Judaism they were the *perushim* (*Pharisaioi*), an aristocracy with respect to salvation which stood in contrast to *am haarez*. In Islam they were the dervishes, and among the dervishes the particular virtuosi were the authentic Sufis. In the [Russian] Skoptsy sect they constituted the esoteric community of the castrated. We shall later return to the important sociological consequences of these groups.

When methodical techniques for attaining sanctification stressed ethical conduct based on religious sentiment, one practical result was the transcendence of particular desires and emotions of raw human nature which had not hitherto been controlled by religion. We must determine for each particular religion whether it regarded cowardice, brutality, selfishness, sensuality, or some other natural drive as the one most prone to divert the individual from his charismatic character. This matter belongs among the most important substantive characteristics of any particular religion. But the methodical religious doctrine of sanctification always remains, in this sense of transcending human nature, an ethic of virtuosi. Like magical charisma, it always requires demonstration by the virtuosi. As we have already established, religious virtuosi possess authentic certainty of their sanctification only as long as their own virtuoso religious temper continues to maintain itself in spite of all temptations. This holds true whether the religious adept is a brother in a world-conquering order like that of the Muslims at the time of Umar or whether he is a world-fleeing ascetic like most monks of either the Christian or the less consistent Jainist type. It is equally true of the Buddhist monk, a virtuoso of world-rejecting contemplation, the ancient Christian, who was an exponent of passive martyrdom, and the ascetic Protestant, a virtuoso of the demonstration of religious merit in one's calling. Finally, this holds true of the formal legalism of the Pharisaic Jew and of the acosmistic goodness of such persons as St. Francis. This maintenance of the certainty of sanctification varied in its specific character, depending on the type of religious salvation involved, but it always —both in the case of the Buddhist *arhat* and the case of the early Christian—required the upholding of religious and ethical standards, and hence the avoidance of at least the most corrupt sins.

Demonstration of the certainty of grace takes very different forms, depending on the concept of religious salvation in the particular religion. In early Christianity, a person of positive religious qualification, namely one who had been baptized, was bound never again to fall into a mortal sin. "Mortal sin" designates the type of sin which destroys

religious qualification. Therefore, it is unpardonable, or at least capable of remission only at the hands of someone specially qualified, by virtue of his possession of charisma, to endow the sinner anew with religious charisma (the loss of which the sin documented). When this virtuoso doctrine became untenable in practice within the ancient Christian communities, the Montanist group clung firmly and consistently to one virtuoso requirement, that the sin of cowardice remain unpardonable, quite as the Islamic religion of heroic warriors unfailingly punished apostasy with death. Accordingly, the Montanists segregated themselves from the mass church of the average Christians when the persecutions under Decius and Diocletian made even this virtuoso requirement impractical, in view of the interest of the priests in maintaining the largest possible membership in the community.

NOTES

1. The present and the following two sections constitute a single section in the German edition, entitled "The Different Roads to Salvation and Their Influence on Conduct."

2. Perhaps C. Frank, author of *Studien zur babylonischen Religion*, I, 1911. (W)

X

Asceticism, Mysticism and Salvation

1. *Asceticism: World-Rejecting and Inner-Worldly*

As we have already stated at a number of points, the specific character of the certification of salvation and also of the associated practical conduct is completely different in religions which differently represent the character of the promised salvation, the possession of which assures blessedness. Salvation may be viewed as the distinctive gift of active ethical behavior performed in the awareness that god directs this behavior, i.e, that the actor is an instrument of god. We shall designate this type of attitude toward salvation, which is characterized by a methodical procedure for achieving religious salvation, as "ascetic." This designation is for our purposes here, and we do not in any way deny

that this term may be and has been used in another and wider sense. The contrast between our usage and the wider usage will become clearer later on in this work.

Religious virtuosity, in addition to subjecting the natural drives to a systematic patterning of life, always leads to a radical ethico-religious critique of the relationship to society, the conventional virtues of which are inevitably unheroic and utilitarian. Not only do the simple, "natural" virtues within the world not guarantee salvation, but they actually place salvation in hazard by producing illusions as to that which alone is indispensable. The "world" in the religious sense, i.e., the domain of social relationships, is therefore a realm of temptations. The world is full of temptations, not only because it is the site of sensual pleasures which are ethically irrational and completely diverting from things divine, but even more because it fosters in the religiously average person complacent self-sufficiency and self-righteousness in the fulfillment of common obligations, at the expense of the uniquely necessary concentration on active achievements leading to salvation.

Concentration upon the actual pursuit of salvation may entail a formal withdrawal from the "world": from social and psychological ties with the family, from the possession of worldly goods, and from political, economic, artistic, and erotic activities—in short, from all creaturely interests. One with such an attitude may regard any participation in these affairs as an acceptance of the world, leading to alienation from god. This is "world-rejecting asceticism" (*weltablehnende Askese*).

On the other hand, the concentration of human behavior on activities leading to salvation may require participation within the world (or more precisely: within the institutions of the world but in opposition to them) on the basis of the religious individual's piety and his qualifications as the elect instrument of god. This is "inner-worldly asceticism" (*innerweltliche Askese*). In this case the world is presented to the religious virtuoso as his responsibility. He may have the obligation to transform the world in accordance with his ascetic ideals, in which case the ascetic will become a rational reformer or revolutionary on the basis of a theory of natural rights. Examples of this were seen in the "Parliament of the Saints" under Cromwell, in the Quaker State of Pennsylvania, and in the conventicle communism of radical Pietism.

As a result of the different levels of religious qualification, such a congery of ascetics always tends to become an aristocratic, exclusive organization within or, more precisely, outside the world of the average people who surround these ascetics—in principle, it is not different from a "class". Such a religiously specialized group might be able to master the world, but it still could not raise the religious endowment

of the average person to its own level of virtuosity. Any rational religious associations that ignored this obvious fact were bound sooner or later to experience in their own everyday existence the consequences of differences in religious endowment.

From the point of view of the basic values of asceticism, the world as a whole continues to constitute a *massa perditionis*. The only remaining alternative is a renunciation of the demand that the world conform to religious claims. Consequently, if a demonstration of religious fidelity is still to be made within the institutional structure of the world, then the world, for the very reason that it inevitably remains a natural vessel of sin, becomes a challenge for the demonstration of the ascetic temper and for the strongest possible attacks against the world's sins. The world abides in the lowly state of all things of the flesh. Therefore, any sensuous surrender to the world's goods may imperil concentration upon and possession of the ultimate good of salvation, and may be a symptom of unholiness of spirit and impossibility of rebirth. Nevertheless, the world as a creation of god, whose power comes to expression in it despite its creatureliness, provides the only medium through which one's unique religious charisma may prove itself by means of rational ethical conduct, so that one may become and remain certain of one's own state of grace.

Hence, as the field provided for this active certification, the order of the world in which the ascetic is situated becomes for him a vocation which he must fulfill rationally. As a consequence, and although the enjoyment of wealth is forbidden to the ascetic, it becomes his vocation to engage in economic activity which is faithful to rationalized ethical requirements and which conforms to strict legality. If success supervenes upon such acquisitive activity, it is regarded as the manifestation of god's blessing upon the labor of the pious man and of god's pleasure with his economic pattern of life.

Any excess of emotional feeling for one's fellow man is prohibited as being a deification of the creaturely, which denies the unique value of the divine gift of grace. Yet it is man's vocation to participate rationally and soberly in the various rational organizations (*Zweckverbände*) of the world and in their objective goals as set by god's creation. Similarly, any eroticism that tends to deify the human creature is proscribed. On the other hand, it is a divinely imposed vocation of man "to soberly produce children" (as the Puritans expressed it) within marriage. Then, too, there is a prohibition against the exercise of force by an individual against other human beings for reasons of passion or revenge, and above all for purely personal motives. However, it is divinely enjoined that the rationally ordered state shall suppress and punish sins and rebelliousness. Finally, all personal secular enjoyment

of power is forbidden as a deification of the creaturely, though it is held that a rational legal order within society is pleasing to god.

The person who lives as a worldly ascetic is a rationalist, not only in the sense that he rationally systematizes his own conduct, but also in his rejection of everything that is ethically irrational, esthetic, or dependent upon his own emotional reactions to the world and its institutions. The distinctive goal always remains the alert, methodical control of one's own pattern of life and behavior. This type of inner-worldly asceticism included, above all, ascetic Protestantism, which taught the principle of loyal fulfillment of obligations within the framework of the world as the sole method of proving religious merit, though its several branches demonstrated this tenet with varying degrees of consistency.

2. *Mysticism versus Asceticism*

But the distinctive content of salvation may not be an active quality of conduct, that is, an awareness of having executed the divine will; it may instead be a subjective condition of a distinctive kind, the most notable form of which is mystic illumination. This too is confined to a minority who have particular religious qualifications, and among them only as the end product of the systematic execution of a distinctive type of activity, namely contemplation. For the activity of contemplation to succeed in achieving its goal of mystic illumination, the extrusion of all everyday mundane interests is always required. According to the experience of the Quakers, God can speak within one's soul only when the creaturely element in man is altogether silent. All contemplative mysticism from Lao Tzu and the Buddha up to Tauler [c. 1300–1361] is in agreement with this notion, if not with these very words.

These beliefs may result in absolute flight from the world. Such a contemplative flight from the world, characteristic of ancient Buddhism and to some degree characteristic of all Asiatic and Near Eastern forms of salvation, seems to resemble the ascetic world view—but it is necessary to make a very clear distinction between the two. In the sense employed here, "world-rejecting asceticism" is primarily oriented to activity within the world. Only activity within the world helps the ascetic to attain that for which he strives, a capacity for action by god's grace. The ascetic derives renewed assurances of his state of grace from his awareness that his possession of the central religious salvation gives him the power to act and his awareness that through his actions he serves god. He feels himself to be a warrior in behalf of god, regardless

of who the enemy is and what the means of doing battle are. Furthermore, his opposition to the world is felt, not as a flight, but as a repeated victory over ever new temptations which he is bound to combat actively, time and again. The ascetic who rejects the world sustains at least the negative inner relationship with it which is presupposed in the struggle against it. It is therefore more appropriate in his case to speak of a "rejection of the world" than of a "flight from the world." Flight is much more characteristic of the contemplative mystic.

In contrast to asceticism, contemplation is primarily the quest to achieve rest in god and in him alone. It entails inactivity, and in its most consistent form it entails the cessation of thought, of everything that in any way reminds one of the world, and of course the absolute minimization of all outer and inner activity. By these paths the mystic achieves that subjective condition which may be enjoyed as the possession of, or mystical union (*unio mystica*) with, the divine. This is a distinctive organization of the emotions which seems to promise a certain type of knowledge. To be sure, the subjective emphasis may be more upon the extraordinary content of this knowledge or more upon the emotional coloration of the possession of this knowledge; objectively, the latter is decisive.

The unique character of mystical knowledge consists in the fact that, although it becomes more incommunicable the more it is specifically mystical, it is nevertheless recognized as knowledge. For mystical knowledge is not new knowledge of any facts or doctrines, but rather the perception of an overall meaning in the world. This usage of "knowledge" is intended wherever the term occurs in the numerous formulations of mystics; it denotes a practical form of knowledge. Such *gnosis* is basically a "possession" of something from which there may be derived a new practical orientation to the world, and under certain circumstances even new and communicable items of knowledge. These items will constitute knowledge of values and non-values within the world. We are not interested here in the details of this general problem, but only in this negative effect upon "action" which can be ascribed to contemplation, in contrast to asceticism in our sense of the term.

Pending a more thorough exposition, we may strongly emphasize here that the distinction between world-rejecting asceticism and world-fleeing contemplation is of course fluid. For world-fleeing contemplation must originally be associated with a considerable degree of systematically rationalized patterning of life. Only this, indeed, leads to concentration upon the boon of salvation. Yet, rationalization is only an instrument for attaining the goal of contemplation and is of an essentially negative type, consisting in the avoidance of interruptions caused by nature and

the social milieu. Contemplation does not necessarily become a passive abandonment to dreams or a simple self-hypnosis, though it may approach these states in practice. On the contrary, the distinctive road to contemplation is a very energetic concentration upon certain truths. The decisive aspect of this process is not the content of these truths, which frequently seems very simple to non-mystics, but rather the type of emphasis placed upon the truths. The mystical truths come to assume a central position within, and to exert an integrating influence upon, the total view of the world. In Buddhism, no one becomes one of the illuminated by explicitly affirming the obviously highly trivial formulations of the central Buddhist dogma, or even by achieving a penetrating understanding of the central dogma. The concentration of thought, together with the various other procedures for winning salvation, is only a means, not the goal. The illumination consists essentially in a unique quality of feeling or, more concretely, in the felt emotional unity of knowledge and volitional mood which provides the mystic with decisive assurance of his religious state of grace.

For the ascetic too, the perception of the divine through emotion and intellect is of central importance, only in his case feeling the divine is of a "motor" type, so to speak. This "feel" arises when he is conscious that he has succeeded in becoming a tool of his god, through rationalized ethical action completely oriented to god. But for the contemplative mystic, who neither desires to be nor can be the god's "instrument," but desires only to become the god's "vessel," the ascetic's ethical struggle, whether of a positive or a negative type, appears to be a perpetual externalization of the divine in the direction of some peripheral function. For this reason, ancient Buddhism recommended inaction as the precondition for the maintenance of the state of grace, and in any case Buddhism enjoined the avoidance of every type of rational, purposive activity, which it regarded as the most dangerous form of secularization. On the other hand, the contemplation of the mystic appears to the ascetic as indolent, religiously sterile, and ascetically reprehensible self-indulgence—a wallowing in self-created emotions prompted by the deification of the creaturely.

From the standpoint of a contemplative mystic, the ascetic appears, by virtue of his transcendental self-maceration and struggles, and especially by virtue of his ascetically rationalized conduct within the world, to be forever involved in all the burdens of created things, confronting insoluble tensions between violence and generosity, between matter-of-factness and love. The ascetic is therefore regarded as permanently alienated from unity with god, and as forced into contradictions and compromises that are alien to salvation. But from the converse stand-

point of the ascetic, the contemplative mystic appears not to be thinking of god, the enhancement of his kingdom and glory, or the fulfillment of his will, but rather to be thinking exclusively about himself. Therefore the mystic lives in everlasting inconsistency, since by reason of the very fact that he is alive he must inevitably provide for the maintenance of his own life. This is particularly true when the contemplative mystic lives within the world and its institutions. There is a sense in which the mystic who flees the world is more dependent upon the world than is the ascetic. The ascetic can maintain himself as an anchorite, winning the certainty of his state of grace through the labors he expends in an effort to maintain himself as an anchorite. Not so the contemplative mystic. If he is to live consistently according to his theory, he must maintain his life only by means of what nature or men voluntarily donate to him. This requires that he live on berries in the woods, which are not always available, or on alms. This was actually the case among the most consistent Hindu *shramanas* (and it accounts also for the very strict injunction in all *bhikshu* regulations against receiving anything that has not been given freely).

In any case, the contemplative mystic lives on whatever gifts the world may present to him, and he would be unable to stay alive if the world were not constantly engaged in that very labor which the mystic brands as sinful and leading to alienation from god. For the Buddhist monk, agriculture is the most reprehensible of all occupations, because it causes violent injury to various forms of life in the soil. Yet the alms he collects consist principally of agricultural products. In circumstances like these, the mystic's inevitable feeling that he is an aristocrat with respect to salvation reaches striking expression, culminating in the mystic's abandonment of the world, the unilluminated, and those incapable of complete illumination, to their inevitable and ineluctable fate. It will be recalled that the central and almost sole lay virtue among the Buddhists was originally the veneration of the monks, who alone belonged to the religious community, and whom it was incumbent upon the laity to support with alms. However, it is a general rule that every human being "acts" in some fashion, and even the mystic perforce acts. Yet he minimizes activity just because it can never give him certainty of his state of grace, and what is more, because it may divert him from union with the divine. The ascetic, on the other hand, finds the certification of his state of grace precisely in his behavior in the world.

The contrast between the ascetic and mystical modes of behavior is clearest when the full implications of world-rejection and world-flight are not drawn. The ascetic, when he wishes to act within the world, that is, to practice inner-worldly asceticism, must become afflicted with a

sort of happy closure of the mind regarding any question about the meaning of the world, for he must not worry about such questions. Hence, it is no accident that inner-worldly asceticism reached its most consistent development on the foundation of the Calvinist god's absolute inexplicability, utter remoteness from every human criterion, and unsearchableness as to his motives. Thus, the inner-worldly ascetic is the recognized "man of a vocation," who neither inquires about nor finds it necessary to inquire about the meaning of his actual practice of a vocation within the whole world, the total framework of which is not his responsibility but his god's. For him it suffices that through his rational actions in this world he is personally executing the will of god, which is unsearchable in its ultimate significance.

On the other hand, the contemplative mystic is concerned with perceiving the essential meaning of the world, but he cannot comprehend it in a rational form, for the very reason that he has already conceived of the essential meaning of the world as a unity beyond all empirical reality. Mystical contemplation has not always resulted in a flight from the world in the sense of an avoidance of every contact with the social milieu. On the contrary, the mystic may also require of himself the maintenance of his state of grace against every pressure of the mundane order, as an index of the enduring character of that very state of grace. In that case, even the mystic's position within the institutional framework of the world becomes a vocation, but one leading in an altogether different direction from any vocation produced by inner-worldly asceticism.

Neither asceticism nor contemplation affirms the world as such. The ascetic rejects the world's empirical character of creatureliness and ethical irrationality, and rejects its ethical temptations to sensual indulgence, to epicurean satisfaction, and to reliance upon natural joys and gifts. But at the same time he affirms individual rational activity within the institutional framework of the world, affirming it to be his responsibility as well as his means for securing certification of his state of grace. On the other hand, the contemplative mystic living within the world regards action, particularly action performed within the world's institutional framework, as in its very nature a temptation against which he must maintain his state of grace.

The contemplative mystic minimizes his activity by resigning himself to the institutions of the world as it is, and lives in them incognito, so to speak, as those "that are quiet in the land" [Psalms, 35:20] have always done, since god has ordained once and for all that man must live in the world. The activity of the contemplative mystic within the world is characterized by a distinctive brokenness, colored by humility.

He is constantly striving to escape from activity in the world back to the quietness and inwardness of his god. Conversely, the ascetic, whenever he acts in conformity with his type, is certain to become god's instrument. For this reason the ascetic's humility, which he considers a necessary obligation incumbent upon a creature of god, is always of dubious genuineness. The success of the ascetic's action is a success of the god himself, who has contributed to the action's success, or at the very least the success is a special sign of divine blessing upon the ascetic and his activity. But for the genuine mystic, no success which may crown his activity within the world can have any significance with respect to salvation. For him, his maintenance of true humility within the world is his sole warranty for the conclusion that his soul has not fallen prey to the snares of the world. As a rule, the more the genuine mystic remains within the world, the more broken his attitude toward it becomes, in contrast to the proud aristocratic feeling with respect to salvation entertained by the contemplative mystic who lives apart from the world.

For the ascetic, the certainty of salvation always demonstrates itself in rational action, integrated as to meaning, end, and means, and governed by principles and rules. Conversely, for the mystic who actually possesses a subjectively appropriated state of salvation the result of this subjective condition may be anomism. His salvation manifests itself not in any sort of activity but in a subjective condition and its idiosyncratic quality. He feels himself no longer bound by any rule of conduct; regardless of his behavior, he is certain of salvation. With this consequence of mystical contemplation (with the feeling of πάντα μοι ἔξεστιν) Paul had to struggle; and in numerous other contexts the abandonment of rules for conduct has been an occasional result of the mystical quest for salvation.

For the ascetic, moreover, the divine imperative may require of human creatures an unconditional subjection of the world to the norms of religious virtue, and indeed a revolutionary transformation of the world for this purpose. In that event, the ascetic will emerge from his remote and cloistered cell to take his place in the world as a prophet in opposition to the world. But he will always demand of the world an ethically rational order and discipline, corresponding to his own methodical self-discipline. Now a mystic may arrive at a similar position in relation to the world. His sense of divine inwardness, the chronic and quiet euphoria of his solitary contemplative possession of substantively divine salvation, may become transformed into an acute feeling of sacred possession by or possession of the god who is speaking in and through him. He will then wish to bring eternal salvation to men as soon as they have prepared, as the mystic himself has done, a place for god upon earth,

i.e., in their souls. But in this case the result will be the emergence of the mystic as a magician who causes his power to be felt among gods and demons; and this may have the practical consequences of the mystic's becoming a mystagogue, something which has actually happened very often.

If the mystic does not follow this path towards becoming a mystagogue, for a variety of reasons which we hope to discuss later, he may bear witness to his god by doctrine alone. In that case his revolutionary preaching to the world will be chiliastically irrational, scorning every thought of a rational order in the world. He will regard the absoluteness of his own universal acosmistic feeling of love as completely adequate for himself, and indeed regard this feeling as the only one acceptable to his god as the foundation for a mystically renewed community among men, because this feeling alone derives from a divine source. The transformation of a mysticism remote from the world into one characterized by chiliastic and revolutionary tendencies took place frequently, most impressively in the revolutionary mysticism of the sixteenth-century Baptists. The contrary transformation has also occurred, as in the conversion of John Lilburne to Quakerism.

To the extent that an inner-worldly religion of salvation is determined by contemplative features, the usual result is the acceptance of the given social structure, an acceptance that is relatively indifferent to the world but at least humble before it. A mystic of the type of Tauler completes his day's work and then seeks contemplative union with his god in the evening, going forth to his usual work the next morning, as Tauler movingly suggests, in the correct inner state. Similarly, Lao Tzu taught that one recognizes the man who has achieved union with the Tao by his humility and by his self-depreciation before other men. The mystic component in Lutheranism, for which the highest bliss available in this world is the ultimate *unio mystica*, was responsible (along with other factors) for the indifference of the Lutheran church towards the external organization of the preaching of the gospel, and also for that church's anti-ascetic and traditionalistic character.

In any case, the typical mystic is never a man of conspicuous social activity, nor is he at all prone to accomplish any rational transformation of the mundane order on the basis of a methodical pattern of life directed toward external success. Wherever genuine mysticism did give rise to communal action, such action was characterized by the acosmism of the mystical feeling of love. Mysticism may exert this kind of psychological effect, thus tending—despite the apparent demands of logic—to favor the creation of communities (*gemeinschaftsbildend*).

The core of the mystical concept of the oriental Christian church

was a firm conviction that Christian brotherly love, when sufficiently strong and pure, must necessarily lead to unity in all things, even in dogmatic beliefs. In other words, men who sufficiently love one another, in the Johannine sense of mystical love, will also think alike and, because of the very irrationality of their common feeling, act in a solidary fashion which is pleasing to God. Because of this concept, the Eastern church could dispense with an infallibly rational authority in matters of doctrine. The same view is basic to the Slavophile conception of the community, both within and beyond the church. Some forms of this notion were also common in ancient Christianity. The same conception is at the basis of Muhammad's belief that formal doctrinal authorities can be dispensed with. Finally, this conception along with other factors accounts for the minimization of organization in the monastic communities of early Buddhism.

Conversely, to the extent that an inner-worldly religion of salvation is determined by distinctively ascetical tendencies, it always demands a practical rationalism, in the sense of the maximization of rational action as such, the maximization of a methodical systematization of the external conduct of life, and the maximization of the rational reorganization of the worldly arrangements (*Ordnungen*), whether monastic communities or theocracies.

3. *The Decisive Differences Between Oriental and Occidental Salvation*

The decisive historical difference between the predominantly oriental and Asiatic types of salvation religion and those found primarily in the Occident is that the former usually culminate in contemplation and the latter in asceticism. The great importance of this distinction, for our purely empirical consideration of religions, is in no way diminished by the fact that the distinction is a fluid one, recurrent combinations of mystical and ascetic characteristics demonstrating that these heterogeneous element may combine, as in the monastic religiosity of the Occident. For our concern is with the consequences for action.

In India, even so ascetical a planned procedure for achieving salvation as that of the Jain monks culminated in a purely contemplative and mystical ultimate goal; and in Eastern Asia, Buddhism became the characteristic religion of salvation. In the Occident, on the other hand, apart from a few representatives of a distinctive quietism found only in modern times, even religions of an explicitly mystical type regularly

became transformed into an active pursuit of virtue, which was naturally ascetical in the main. Stated more precisely, there occurred along the way an inner selection of motivations which placed the primary preference upon some type of active conduct, generally a type pointing toward asceticism, and which implemented this motivational preference. Neither the mystical contemplativeness of St. Bernard and his followers, nor Franciscan spirituality, nor the contemplative trends among the Baptists and the Jesuits, nor even the emotional suffusions of Zinzendorf were able to prevent either the community or the individual mystic from attributing superior importance to conduct and to the demonstration of grace through conduct, though this was conceptualized very differently in each case, ranging from pure asceticism to attenuated contemplation. It will be recalled that Meister Eckehart finally placed Martha above Mary, notwithstanding the pronouncements of Jesus.[1]

But to some extent this emphasis upon conduct was characteristic of Christianity from the very outset. Even in the earliest period, when all sorts of irrational charismatic gifts of the spirit were regarded as the decisive hallmark of sanctity, Christian apologetics had already given a distinctive answer to the question of how one might distinguish the divine origin of the pneumatic achievements of Christ and the Christians from comparable phenomena that were of Satanic or demonic origin: this answer was that the manifest effect of Christianity upon the morality of its adherents certified its divine origin. No Hindu could make this kind of statement.

There are a number of reasons for this basic different between the salvation religions, Orient and Occident, but at this point it is only necessary to stress the following aspects of the distinction.

1. The concept of a transcendental, absolutely omnipotent god, implying the utterly subordinate and creaturely character of the world created by him out of nothing, arose in Asia Minor and was imposed upon the Occident. One result of this for the Occident was that any planned procedure for achieving salvation faced a road that was permanently closed to any self-deification and to any genuinely mystical possession of god, at least in the strict sense of the term, because this appeared to be a blasphemous deification of a mere created thing. The path to the ultimate pantheistic consequences of the mystical position was blocked, this path being always regarded as heterodox. On the contrary, salvation was always regarded as having the character of an ethical justification before god, which ultimately could be accomplished and maintained only by some sort of active conduct within the world. The certification of the really divine quality of the mystical possession of salvation (certification before the ultimate judgment of the mystic him-

self) could be arrived at through the path of activity alone. Activity in turn introduced into mysticism paradoxes, tensions, and the loss of the mystic's ultimate union with god. This was spared to Hindu mysticism. For the occidental mystic, the world is a "work" which has been created and is not simply given for all eternity, not even in its institutions, as in the view of the Asiatic mystic. Consequently, in the Occident mystical salvation could not be found simply in the consciousness of an absolute union with a supreme and wise order of things as the only true being. Nor, on the other hand, could a work of divine origin ever be regarded in the Occident as a possible object of absolute rejection, as it was in the flight from the world characteristic of the Orient.

2. This decisive contrast between oriental and occidental religions is closely related to the character of Asiatic salvation religions as pure religions of intellectuals who never abandoned the "meaningfulness" of the empirical world. For the Hindu, there was actually a way leading directly from insight into the ultimate consequences of the *karma* chain of causality, to illumination, and thence to a unity of knowledge and action. This way remained forever closed to every religion that faced the absolute paradox of a perfect god's creation of a permanently imperfect world. Indeed, in this latter type of religion, the intellectual mastery of the world leads away from god, not toward him. From the practical point of view, those instances of occidental mysticism which have a purely philosophical foundation stand closest to the Asiatic type.

3. Further to be considered in accounting for the basic distinction between occidental and oriental religion are various practical factors. Particular emphasis must be placed on the fact that the Roman Occident alone developed and maintained a rational law, for various reasons yet to be explained. In the Occident the relationship of man to god became, in a distinctive fashion, a sort of legally definable relationship of subjection. Indeed, the question of salvation can be settled by a sort of legal process, a method which was later distinctively developed by Anselm of Canterbury. Such a legalistic procedure of achieving salvation could never be adopted by the oriental religions which posited an impersonal divine power or which posited, instead of a god standing above the world, a god standing within a world which is self-regulated by the causal chains of *karma*. Nor could the legalistic direction be taken by religions teaching concepts of Tao, belief in the celestial ancestor gods of the Chinese emperor, or, above all, belief in the Asiatic popular gods. In all these cases the highest form of piety took a pantheistic form, and one which turned practical motivations toward contemplation.

4. Another aspect of the rational character of a methodical procedure for achieving salvation was in origin partly Roman, partly Jewish. The

Greeks, despite all the misgivings of the urban patriciate in regard to the Dionysiac cult of intoxication, set a positive value upon ecstasy, both the acute orgiastic type of divine intoxication and the milder form of euphoria induced primarily by rhythm and music, as engendering an awareness of the uniquely divine. Indeed, among the Greeks the ruling stratum especially lived with this mild form of ecstasy from their very childhood. Since the time when the discipline of the hoplites had become dominant, Greece had lacked a stratum possessing the prestige of the office nobility in Rome. Social relationships in Greece were in all respects simpler and less feudal. In Rome the nobles, who constituted a rational nobility of office of increasing range, and who possessed whole cities and provinces as client holdings of single families, completely rejected ecstasy, like the dance, as utterly unseemly and unworthy of a nobleman's sense of honor. This is obvious even in the terminology employed by the Romans to render the Greek word for ecstasy (*ekstasis*) into Latin: *superstitio*. Cultic dances were performed only among the most ancient colleges of priests, and in the specific sense of a round of dances, only among the *fratres arvales*, and then only behind closed doors, after the departure of the congregation. Most Romans regarded dancing and music as unseemly, and so Rome remained absolutely uncreative in these arts. The Romans experienced the same distaste towards the naked exercises in the *gymnasion*, which the Spartans had created as an arena for planned exercise. The Senate proscribed the Dionysiac cult of intoxication. The rejection by Rome's world-conquering military-official nobility of every type of ecstasy and of all preoccupation with individually planned procedures for attaining salvation (which corresponds closely to the equally strong antipathy of the Confucian bureaucracy towards all methodologies of salvation) was therefore one of the sources of a strictly empirical rationalism with a thoroughly practical political orientation.

As Christian communities developed in the Occident, they found this contempt for ecstatic procedures to be characteristic of all religion possible on essentially Roman territory. The Christian community of Rome in particular adopted this attitude against ecstasy quite consciously and consistently. In no instance did this community accept on its own initiative any irrational element, from charismatic prophecy to the greatest innovations in church music, into the religion or the culture. The Roman Christian community was infinitely poorer than the Hellenistic Orient and the community of Corinth, not only in theological thinkers but also, as the sources seem to suggest, in every sort of manifestation of the spirit (*pneuma*). Whether despite this lack of theology and *pneuma* or because of it, the soberly practical rationalism of Christianity,

the most important legacy of Rome to the Christian church, almost everywhere set the tone of a dogmatic and ethical systematization of the faith, as is well known. The development of the methods for salvation in the Occident continued along similar lines. The ascetic requirements of the old Benedictine regulations and the reforms of Cluny are, when measured by Hindu or oriental standards, extremely modest and obviously adapted to novices recruited from the higher social circles. Yet, it is precisely in the Occident that *labor* emerges as the distinctive mark of Christian monasticism, and as an instrument of both hygiene and asceticism. This emphasis came to the strongest expression in the starkly simple, methodical regulations of the Cistercians. Even the mendicant monks, in contrast to their monastic counterparts in India, were forced into the service of the hierarchy and compelled to serve rational purposes shortly after their appearance in the Occident. These rational purposes included preaching, the supervision of heretics, and systematic charity, which in the Occident was developed into a regular enterprise (*Betrieb*). Finally, the Jesuit order expelled all the unhygienic elements of the older asceticism, becoming the most completely rational discipline for the purposes of the church. This development is obviously connected with the next point we are to consider.

5. The occidental church is a uniformly rational organization with a monarchical head and a centralized control of piety. That is, it is headed not only by a personal transcendental god, but also by a terrestrial ruler of enormous power, who actively controls the lives of his subjects. Such a figure is lacking in the religions of Eastern Asia, partly for historical reasons, partly because of the nature of the religions in question. Even Lamaism, which has a strong organization, does not have the rigidity of a bureaucracy, as we shall see later. The Asiatic hierarchs in Taoism and the other hereditary patriarchs of Chinese and Hindu sects were always partly mystagogues, partly the objects of anthropolatric veneration, and partly—as in the cases of the Dalai Lama and Tashi Lama—the chiefs of a completely monastic religion of magical character. Only in the Occident, where the monks became the disciplined army of a rational bureaucracy of office, did other-worldly asceticism become increasingly systematized into a methodology of active, rational conduct of life.

Moreover, only in the Occident was the additional step taken—by ascetic Protestantism—of transferring rational asceticism into the life of the world. The inner-worldly order of dervishes in Islam cultivated a planned procedure for achieving salvation, but this procedure, for all its variations, was oriented ultimately to the mystical quest for salvation of the Sufis. This search of the dervishes for salvation, deriving from

Indian and Persian sources, might have orgiastic, spiritualistic, or contemplative characteristics in different instances, but in no case did it constitute "asceticism" in the special sense of that term which we have employed. Indians have played a leading role in dervish orgies as far afield as Bosnia [cf. ix:3 above]. The asceticism of the dervishes is not, like that of ascetic Protestants, a religious ethic of vocation, for the religious actions of the dervishes have very little relationship to their secular occupations, and in their scheme secular vocations have at best a purely external relationship to the planned procedure of salvation. Even so, the procedure of salvation might exert direct effects on one's occupational behavior. The simple, pious dervish is, other things being equal, more reliable than a non-religious man, in the same way that the pious Parsee is prosperous as a businessman because of his strict adherence to the rigid injunction to be honest.

But an unbroken unity integrating in systematic fashion an ethic of vocation in the world with assurance of religious salvation was the unique creation of ascetic Protestantism alone. Furthermore, only in the Protestant ethic of vocation does the world, despite all its creaturely imperfections, possess unique and religious significance as the object through which one fulfills his duties by rational behavior according to the will of an absolutely transcendental god. When success crowns rational, sober, purposive behavior of the sort not oriented to worldly acquisition, such success is construed as a sign that god's blessing rests upon such behavior. This innerworldly asceticism had a number of distinctive consequences not found in any other religion. This religion demanded of the believer, not celibacy, as in case of the monk, but the avoidance of all erotic pleasure; not poverty, but the elimination of all idle and exploitative enjoyment of unearned wealth and income, and the avoidance of all feudalistic, sensuous ostentation of wealth; not the ascetic death-in-life of the cloister, hut an alert, rationally controlled patterning of life, and the avoidance of all surrender to the beauty of the world, to art, or to one's own moods and emotions. The clear and uniform goal of this asceticism was the disciplining and methodical organization of conduct. Its typical representative was the "man of a vocation" or "professional" (*Berufsmensch*), and its unique result was the rational organization of social relationships.

NOTES

1. See Meister Eckehart (b. c. 1260, d. 1327), *Schriften* (Düsseldorf: Diederichs, 1959), Hermann Büttner, trans. and ed., p. 259ff.; this is his sermon on Luke 10:38.

XI

Soteriology or Salvation from Outside

1. *Salvation Through the Savior's Incarnation and Through Institutional Grace*

Another view regarding the attainment of salvation rejects the individual's own labors as completely inadequate for the purpose of salvation. From this point of view, salvation is accessible only as a consequence of the achievement of some greatly endowed hero, or even the achievement of a god who has become incarnate for this very purpose and whose grace will redound to the credit of his devotees, *ex opere operato*. Grace might become available as a direct effect of magical activities, or it might be distributed to men out of the excess of grace which had accumulated as a result of the human or divine savior's achievements.

Beliefs in salvation through the abundant grace accumulated by a hero's or incarnate god's achievement was aided by the evolution of soteriological myths, above all myths of the struggling or suffering god, who in his various possible manifestations had become incarnate and descended upon earth or even traveled into the realm of the dead. Instead of a god of nature, particularly a sun god who struggles with other powers of nature, especially with darkness and cold, and having won a victory over them ushers in the spring, there now arises on the basis of the salvation myths a savior who, like Christ, liberates men from the power of the demons. The savior type is further exemplified in the Gnostics' seven archons, who save men from enslavement to the astrological determinism of fate;[1] and in Gnosticism's savior, who at the command of the concealed and gracious god rescues the world from the corruption brought upon it by an inferior creator god (Demiurge or Jehovah). The savior, as in the case of Jesus, may save men from the hard-hearted hypocrisy of the world and its reliance on good works. Or again, the salvation may be from the oppressive consciousness of sin, arising from man's awareness of the impossibility of filling certain requirements of the law, as was the case with Paul and, somewhat differently, with Augustine and Luther. Finally, the salvation may be from the abysmal corruption of the individual's own sinful nature, as in

Augustine. In all these cases the savior led man upward toward a secure haven in the grace and love of a good god.

To accomplish these purposes the savior must fight with dragons or evil demons, depending on the character of the salvation in question. In some cases he is not able to engage in such battle right away—he is often a child completely pure of sin—and so he must grow up in concealment or must be slaughtered by his enemies and journey to the realm of the dead in order to rise again and return victorious. From this particular belief may develop the view that the death of the savior is a tributary atonement for the power achieved over the souls of men by the devil as a result of men's sins. This is the view of earliest Christianity. Or the death of the savior may be viewed as a means of mollifying the wrath of god, before whom the savior appears as an intercessor for men, as in the cases of Christ, Muhammad, and other prophets and saviors. Again, the savior may, like the ancient bearer of salvation in magical religions, bring man forbidden knowledge of fire, technical arts, writing, or possibly the lore requisite for subjugating demons in this world or on the way toward heaven, as in Gnosticism. Finally, the decisive achievement of the savior may be contained, not in his concrete struggles and sufferings, but in the ultimate metaphysical root of the entire process. This ultimate metaphysical basis would of course be the incarnation of a god as the only device for bridging the gap between god and his creatures. This metaphysical conception constituted the culmination of Greek speculation about salvation, in Athanasius. The incarnation of god presented men with the opportunity to participate significantly in god, or as Irenaeus had already phrased it, "enabled men to become gods." The post-Athanasian philosophical formula for this was that god, by becoming incarnate, had assumed the essence (in the Platonic sense) of humanity. This formula points up the metaphysical significance of the concept of *homoousios* [i.e., of the Son who is "of the same substance" as the Father, the formulation of the Nicaean Creed].

According to another view, the god might not be content with one single act of incarnation, but as a result of the permanence of the world, which is practically axiomatic in Asiatic thought, he might become incarnate at various intervals or even continuously. Belief in continuous incarnation is the principal force of the *Mahayana* Buddhist idea of the *Bodhisattva*, though this idea is related to occasional utterances of the Buddha himself, in which he apparently expressed a belief in the limited duration of his doctrine on earth. Furthermore, the Bodhisattva was occasionally represented as a higher ideal than the Buddha, because the Bodhisattva forgoes his own entrance into *Nirvana*, which has only exemplary significance, to prolong his universal function in the service

of mankind. Here again, the savior "sacrifices" himself. But just as Jesus was superior in his own time to the saviors of other competing soteriological cults, by virtue of the fact that he had been an actual person whose resurrection had been observed by his apostles, so the continuously corporeal and living incarnation of god in the Dalai Lama is the logical conclusion of every incarnation soteriology. But even when the divine distributor of grace lives on as an incarnation, and especially when he does not linger continuously on earth, certain more tangible means are required to maintain the adherence of the mass of the faithful, who wish to participate personally in the gifts of grace made available by their god. It is these more tangible instruments of grace, exhibiting a wide variety, which exert a decisive influence on the character of the religion.

Of an essentially magical nature is the view that one may incorporate divine power into himself by the physical ingestion of some divine substance, some sacred totemic animal in which a mighty spirit is incarnated, or some host that has been magically transformed into the body of a god. Equally magical is the notion that through participation in certain mysteries one may directly share the nature of the god and therefore be protected against evil powers. This is the case of sacramental grace.

Now the means of acquiring these divine blessings may take either a magical or a ritualistic form, and in either case they entail, not only belief in the savior or the incarnate living god, but also the existence of human priests or mystagogues. Moreover, the manner in which this divine grace is distributed depends in considerable measure on whether certifying proofs of the personal possession of charismatic gifts of grace are required of these earthly intermediaries between man and the savior. If certifying proofs are required, a religious functionary who no longer shares in such a state of grace, as for example a priest living in mortal sin, cannot legitimately mediate this grace by officiating at the sacraments. Such a strict consistency in the principle of charismatic distribution of grace was maintained by the Montanists, Donatists, and in general all those religious communities of Antiquity that based the organization of their church on the principle of prophetic-charismatic leadership. The outcome of this view was that not every bishop who occupied an office or possessed other credentials, but only those bishops who manifested the verification of prophecy or other witnesses of the spirit, could effectively distribute divine grace. This was at least the case when what was required was the distribution of grace to a penitent who had fallen into mortal sin.

When we leave this requirement, we are dealing with an altogether

different notion of the distribution of grace. Now salvation supervenes by virtue of the grace which is distributed on a continuous basis by some institutional organization that has either divine or prophetic credentials for its establishment. For this type of operation we shall reserve the appellation of "institutional grace" (*Anstaltsgnade*). The institution may exert its power directly through purely magical sacraments or through its control over the accumulation of supernumerary achievements performed by officials or devotees, achievements which produce divine blessing or grace.

Wherever institutional grace operates consistently, three basic principles are involved. The first is *extra ecclesiam nulla salus:* salvation cannot be obtained apart from membership in a particular institution vested with the control of grace. The second principle is that it is not the personal charismatic qualification of the priest which determines the effectiveness of his distribution of divine grace. Third, the personal religious qualification of the individual in need of salvation is altogether a matter of indifference to the institution which has the power to distribute religious grace. That is, salvation is universal; it is accessible to other than the religious virtuosi. Indeed the religious virtuoso may easily fall into spiritual danger with respect to chances of salvation and the genuineness of his religious profession—and actually cannot fail to fall into this danger—if instead of relying ultimately on institutional grace he seeks to attain grace by his own unaided power, treading his own pathway to God. In this theory, all human beings are capable of finding salvation if they but obey god's requirements enough for the accession of grace distributed by the church to suffice for their attainment of salvation. The level of personal ethical accomplishment must therefore be made compatible with average human qualifications, and this in practice means that it will be set quite low. Whoever can achieve more in the ethical sphere, i.e., the religious virtuoso, may thereby, in addition to insuring his own salvation, accumulate good works for the credit of the institution, which will then distribute them to those in need of good works.

The viewpoint we have just described is the specific attitude of the Catholic church and determines its character as an institution of grace, which developed throughout many centuries but has been fixed since the time of Gregory the Great [ca. 600]. In practice, however, the viewpoint of the Catholic church has oscillated between a relatively magical and a relatively ethical and soteriological orientation.

The manner in which the dispensation of charismatic or of institutional grace influences the actual conduct of life of the adherents depends upon the preconditions which are attached to the granting of the means

of grace. Thus there are similarities here to ritualism, to which sacramental and institutional grace dispensation accordingly show close affinity. Ethical religiosity is affected in the same direction in yet another respect, which may be of considerable significance: Every type of actual dispensation of grace by a person, regardless of whether his authority derives from personal charismatic gifts or his official status within an institution, has the net effect of weakening the demands of morality upon the individual, just as does ritualism. The vouchsafing of grace always entails an inner release of the person in need of salvation; it consequently facilitates his capacity to bear guilt and, other things being equal, it largely spares him the necessity of developing an individual pattern of life based on ethical foundations. The sinner knows that he may always receive absolution by engaging in some occasional religious practice or by performing some religious rite. It is particularly important that sins remain discrete actions, against which other discrete deeds may be set up as compensations or penances. Hence, value is attached to concrete individual acts rather than to a total personality pattern produced by asceticism, contemplation, or eternally vigilant self-control, a pattern that must constantly be demonstrated and determined anew. A further consequence is that no need is felt to attain the *certitudo salutis* by one's own powers, and so this category, which may in other circumstances have such significant ethical consequences, recedes in importance.

For the reasons just discussed, the perpetual control of an individual's life pattern by the official—whether father confessor or spiritual director—empowered to distribute grace, a control that in certain respects is very effective, is in practice very often cancelled by the circumstance that there is always grace remaining to be distributed anew. Certainly the institution of the confessional, especially when associated with penances, is ambivalent in its effects, depending upon the manner in which it is implemented. The poorly developed and rather general method of confession which was particularly characteristic of the Russian church, frequently taking the form of a collective admission of iniquity, was certainly no way to effect any permanent influence over conduct. Also, the confessional practice of the early Lutheran church was undoubtedly ineffective. The catalog of sins and penances in the Hindu sacred scriptures makes no distinction between ritual and ethical sins, and enjoins ritual obedience (or other forms of compliance which are in line with the status interests of the Brahmins) as virtually the sole method of atonement. As a consequence, the pattern of everyday life could be influenced by these religions only in the direction of traditionalism. Indeed, the sacramental grace of the Hindu *gurus* even further weakened any possibility of ethical influence.

The Catholic church in the Occident carried through the Christianization of Western Europe with unparalleled force, by virtue of an unexampled system of confessionals and penances, which combined the techniques of Roman law with the Teutonic conception of fiscal expiation (*Wergeld*). But the effectiveness of this system in developing a rational plan of life was quite limited, even apart from the inevitable hazards of a loose system of dispensations. Even so, the influence of the confessional upon conduct is apparent "statistically," as one might say, in the impressive resistance to the two-children-per-family system among pious Catholics, though the limitations upon the power of the Catholic church in France are evident even in this respect.

A tremendous historical influence was actually exerted by the absence in Judaism and ascetic Protestantism of anything like the confessional, the dispensation of grace by a human being, or magical sacramental grace. This historical influence favored the evolution of an ethically rationalized pattern of life (*ethisch rationalen Lebensgestaltung*) in both Judaism and ascetic Protestantism, despite their differences in other respects. These religions provide no opportunity, such as the confessional or the purveyance of institutional grace, for obtaining release from sins. Only the Methodists maintained at certain of their meetings, the so-called "assemblages of the dozens," a system of confessions which had even comparable effects, and in that case the effects were in an altogether different direction. From such public confessions of sinfulness there developed the semi-orgiastic penitential practices of the Salvation Army.

Institutional grace, by its very nature, ultimately and notably tends to make obedience a cardinal virtue and a decisive precondition of salvation. This of course entails subjection to authority, either of the institution or of the charismatic personality who distributes grace. In India, for example, the *guru* may on occasion exercise unlimited authority. In such cases the resulting pattern of conduct is not a systematization from within, radiating out from a center which the individual himself has achieved, but rather is nurtured from some center outside the self. The content of the pattern of life is not apt to be pushed in the direction of ethical systematization, but rather in the reverse direction.

Such external authority, however, increases the elasticity of concrete sacred commandments and thus makes it easier to adjust them in practice to changed external circumstances, though in a direction different from that of a *Gesinnungsethik*. An example of this elasticity is provided by the Catholic church of the nineteenth century in its non-enforcement (in practice) of the prohibition against usury, despite the prohibition's ostensibly eternal validity on the basis of biblical authority and papal

decretals. To be sure, this was not accomplished openly by outright invalidation, which would have been impossible, but by an innocuous directive from the Vatican office to the confessional priests that thenceforth they should refrain from inquiring during confession concerning infractions of the prohibition against usury, and that they should grant absolution for this infraction as long as it could be taken for granted that if the Holy See should ever return to the older position the confessants would obediently accept such a reversal. There was a period in France when the clergy agitated for a similar treatment of the problem presented by families having only two children. Thus, the ultimate religious value is pure obedience to the institution, which is regarded as inherently meritorious, and not concrete, substantive ethical obligation, nor even the qualification of superior moral capacity achieved through one's own methodical ethical actions. Wherever the pattern of institutional grace is carried through consistently, the sole principle integrating the life pattern is a formal humility of obedience, which like mysticism produces a characteristic quality of brokenness or humility in the pious. In this respect, the remark of Mallinckrodt that the freedom of the Catholic consists in being free to obey the Pope appears to leave universal validity for systems of institutional grace.[18]

2. *Salvation Through Faith Alone and Its Anti-Intellectual Consequences*

Salvation, however, may be linked with faith. Insofar as this concept is not defined as identical with subjection to practical norms, it always presupposes some attribution of truth to certain metaphysical data and some development of dogmas, the acceptance of which becomes the distinctive hallmark of membership in the particular faith. We have already seen that dogmas develop in very different degrees within the various religions. However, some measure of doctrine is the distinctive differential of prophecy and priestly religion, in contrast to pure magic. Of course even pure magic presupposes faith in the magical power of the magician, and, for that matter, the magician's own faith in himself and his ability. This holds true of every religion, including early Christianity. Thus, Jesus taught his disciples that since they doubted their own power they would be unable to cure victims of demonic possession. Whosoever is completely persuaded of his own powers possesses a faith that can move mountains. On the other hand, the faith of those who demand magical miracles exercises a compulsive influence upon magic,

to this very day. So Jesus found himself unable to perform miracles in his birthplace and occasionally in other cities, and "wondered at their disbelief." He repeatedly declared that he was able to heal the crippled and those possessed by demons only through their belief in him and his power [Mk. 10:51–52]. To some degree this faith was sublimated in an ethical direction. Thus, because the adulterous woman believed in his power to pardon sins, Jesus was able to forgive her iniquities.

On the other hand, religious faith developed into an assertion of intellectual propositions which were products of ratiocination, and this is what primarily concerns us here. Accordingly, Confucianism, which knows nothing of dogma, is not an ethic of salvation. In ancient Islam and ancient Judaism, religion made no real demands with respect to dogma, requiring only, as primeval religion does everywhere, belief in the power (and hence also in the existence) of its own god, now regarded by it as the only god, and in the mission of this god's prophets. But since both these religions were scriptural (in Islam the Koran was believed to have been divinely created), they also insisted upon belief in the substantive truth of the scriptures. Yet, apart from their cosmogonic, mythologic, and historical narratives, the biblical books of the law and the prophets and the Koran contain primarily practical commandments and do not inherently require intellectual views of a definite kind.

Only in the non-prophetic religions is belief equivalent to sacred lore. In these religions the priests are still, like the magicians, guardians of mythological and cosmogonic knowledge; and as sacred bards they are also custodians of the heroic sagas. The Vedic and Confucian ethics attributed full moral efficacy to the traditional literary educations obtained through schooling which, by and large, was identical with mere memorized knowledge. In religions that maintain the requirement of intellectual understanding there is an easy transition to the philosophical or gnostic form of salvation. This transition tends to produce a tremendous gap between the fully qualified intellectuals and the masses. But even at this point there is still no real, official dogmatics—only philosophical opinions regarded as more or less orthodox, e.g., the orthodox *Vedanta* or the heterodox *Sankhya* in Hinduism.

But the Christian churches, as a consequence of the increasing intrusion of intellectualism and the growing opposition to it, produced an unexampled mass of official and binding rational dogmas, a theological faith. In practice it is impossible to require both belief in dogma and the universal understanding of it. It is difficult for us today to imagine that a religious community composed principally of petty-bourgeois members could have thoroughly mastered and really assimilated the complicated

contents of the Epistle to the Romans, for example, yet apparently this must have been the case. This type of faith embodied certain dominant soteriological views current among the group of urban proselytes who were accustomed to meditating on the conditions of salvation and who were to some degree conversant with Jewish and Greek casuistry. Similarly, it is well known that in the sixteenth and seventeenth centuries broad petty-bourgeois strata achieved intellectual mastery over the dogmas of the Synods of Dort and Westminster, and over the many complicated compromise formulae of the Reformation churches. Still, under normal conditions it would be impossible for such intellectual penetration to take place in congregational religions without producing one of the following results for all those not belonging to the class of the philosophically knowledgeable (Gnostics). These less knowledgeable people, including the "hylics" and the mystically unilluminated "psychics," would either be excluded from salvation or limited to a lesser-order salvation reserved for the non-intellectual pious (*pistikoi*). These results occurred in Gnosticism and in the intellectual religions of India.

A controversy raged in early Christianity throughout its first centuries, sometimes openly and sometimes beneath the surface, as to whether theological *gnosis* or simple faith (*pistis*) is the higher religious quality, explicitly or implicitly providing the sole guarantee of religious salvation. In Islam, the Mu'tazilites held that a person who is "religious" in the average sense, and not schooled in dogma, is not actually a member of the real community of the faithful. A decisive influence was everywhere exerted on the character of religion by the relationships between the theological intellectuals, who were the virtuosi of religious knowledge, and the pious non-intellectuals, especially the virtuosi of religious asceticism and the virtuosi of religious contemplation, who equally regarded "dead knowledge" as of negligible value in the quest for salvation.

Even in the Gospels themselves, the parabolic form of Jesus' message is represented as being purposefully esoteric. To avoid the appearance of an esotericism propagated by an intellectualist aristocracy, religious faith must base itself upon something other than a real understanding and affirmation of a theological system of dogma. As a matter of fact, every prophetic religion has based religious faith upon something other than real understanding of theology, either at the very outset or at a later stage when it has become a congregational religion and has generated dogmas. Of course the acceptance of dogmas is always relevant to religious faith, except in the views of ascetics and more especially mystical virtuosi. But the explicit, personal recognition of dogmas, for which the technical term in Christianity is *fides explicita*, was required only with reference to those articles of faith which were regarded as absolutely

essential, greater latitude being permitted in regard to other dogmas. Protestantism made particularly strict demands upon belief in dogma, because of its doctrine of justification by faith. This was especially, though not exclusively, true of ascetic Protestantism, which regarded the Bible as a codification of divine law. This religious requirement was largely responsible for the intensive training of the youth of the Protestant sects and for the establishment of universal public schools like those of the Jewish tradition. This same religious requirement was the underlying reason for the familiarity with the Bible on the part of the Dutch and Anglo-Saxon Pietists and Methodists (in contrast to the conditions prevalent in the English public schools, for example), which aroused the amazement of travelers as late as the middle of the nineteenth century. Here, the people's conviction about the unequivocally dogmatic character of the Bible was responsible for the far-reaching demand that each man know the tenets of his own faith. In a church rich in dogmas, all that may be legitimately required in respect to the mass of dogmas is *fides implicita*, viz., a general readiness to subject one's own convictions to religious authority. The Catholic church has required this to the greatest possible degree, and indeed continues to do so. But a *fides implicita* is no longer an actual personal acceptance of dogmas; rather, it is a declaration of confidence in and dedication to a prophet or to the authority of an institution. In this way, faith loses its intellectual character.

Religion retains only a secondary interest in intellectual matters once religious ethics has become predominantly rational. This happens because the mere assertion of intellectual propositions falls to the lowest level of faith before a *Gesinnungsethik*, as Augustine among others maintained. Faith must also take on a quality of inwardness. Personal attachment to a particular god is more than knowledge and is therefore designated as "faith." This is the case in both the Old and New Testaments. The faith which was "accounted to Abraham to righteousness" was no intellectual assertion of dogmas, but a reliance upon the promises of God. For both Jesus and Paul, faith continued to hold the same central significance. Knowledge and familiarity with dogmas receded far into the background.

In a church organized as an institution, it works out in practice that the requirement of *fides explicita* is limited to priests, preachers, and theologians, all of whom have been trained in dogmatics. Such an aristocracy of those trained and knowledgeable in dogmatics arises within every religion that has been systematized into a theology. These persons presently claim, in different degrees and with varying measures of success, that they are the real carriers of the religion. The view that the

priest must demonstrate his capacity to understand more and believe more than is possible for the average human mind is still widely diffused today, particularly among the peasantry. This is only one of the forms in which there comes to expression in religion the status qualification resulting from special education that is found in every type of bureaucracy, be it political, military, ecclesiastical, or commercial. But even more fundamental is the aforementioned doctrine, found also in the New Testament, of faith as the specific charisma of an extraordinary and purely personal reliance upon god's providence, such as the shepherds of souls and the heroes of faith must possess. By virtue of this charismatic confidence in god's support, the spiritual representative and leader of the congregation, as a virtuoso of faith, may act differently from the layman in practical situations and bring about different results, far surpassing normal human capacity. In the context of practical action, faith can provide a substitute for magical powers.

This anti-rational inner attitude characteristic of religions of unlimited trust in god may occasionally produce an acosmistic indifference to obvious practical and rational considerations. It frequently produces an unconditional reliance on god's providence, attributing to god alone the consequences of one's own actions, which are interpreted as pleasing to god. In Christianity and in Islam, as well as elsewhere, this anti-rational attitude is sharply opposed to knowledge and particularly to theological knowledge. Anti-rationality may be manifested in a proud virtuosity of faith, or, when it avoids this danger of arrogant deification of the creaturely, it may be manifested in an unconditional religious surrender and a spiritual humility that requires, above all else, the death of intellectual pride. This attitude of unconditional trust played a major role in ancient Christianity, particularly in the case of Jesus and Paul and in the struggles against Greek philosophy, and in modern Christianity, particularly in the antipathies to theology on the part of the mystical spiritualist sects of the seventeenth century in Western Europe and of the eighteenth and nineteenth centuries in Eastern Europe.

At some point in its development, every genuinely devout religious faith brings about, directly or indirectly, that "sacrifice of the intellect" in the interests of a trans-intellectual, distinctive religious quality of absolute surrender and utter trust which is expressed in the formula *credo non quod sed quia absurdum est*. The salvation religions teaching belief in a transcendental god stress, here as everywhere, the inadequacy of the individual's intellectual powers when he confronts the exalted state of the divinity. Such a turning away from knowledge, based on faith in a transcendental god's power to save, is altogether different from the Buddhist's renunciation of knowledge concerning the world

beyond, which is grounded simply in his belief that such knowledge cannot advance contemplation that alone brings salvation. It is also altogether different in essence from skeptical renunciation of the possibility of understanding the meaning of the world, which indeed it is inclined to combat much more harshly than it combats the Buddhist form of renunciation of knowledge. The skeptical point of view has been common to the intellectual strata of every period. It is evident in the Greek epitaphs and in the highest artistic productions of the Renaissance, such as the works of Shakespeare; it has found expression in the philosophies of Europe, China, and India, as well as in modern intellectualism.

Deliberate belief in the absurd, as well as in triumphant joy expressed in the sermons of Jesus over the fact that the charisma of faith has been granted by God to children and minors rather than to scholars, typifies the great tension between this type of salvation religion and intellectualism. Nevertheless, this type of religion constantly seeks to adapt intellectualism to its own purposes. As Christianity became increasingly penetrated by Greek forms of thought, even in Antiquity but far more strongly after the rise of universities in the Middle Ages, it came to foster intellectualism. The medieval universities were actually centers for the cultivation of dialectics, created to counterbalance the achievements of the Roman jurists on behalf of the competing power of the Empire.

Every religion of belief assumes the existence of a personal god, as well as his intermediaries and prophets, in whose favor there must be a renunciation of self-righteousness and individual knowledge at some point or other. Consequently, religiosity based on this form of faith is characteristically absent in the Asiatic religions. We have already seen that faith may assume very different forms, depending on the direction in which it develops. To be sure, despite all diversities, a striking similarity to contemplative mysticism characterizes all religions of faith oriented to salvation which are found among peaceful groups, though it does not characterize ancient Islam and the religion of Yahweh, in both of which the primordial trust of the warrior in the tremendous power of his own god was still dominant. This similarity to contemplative mysticism derives from the fact that when the substantive content of salvation is envisaged and striven after as redemption, there is always at least a tendency for salvation to evolve into a primarily emotional relationship to the divine, a *unio mystica*. Indeed, the more systematically the "attitudinal" character of the faith is developed, the more easily may outright antinomian results ensue, as occurs in every type of mysticism.

The great difficulty of establishing an unequivocal relationship be-

tween ethical demands and a religion based on faith, i.e., a genuine salvation religion based on an attitude of utter trust, was already demonstrated by the Pauline Epistles, and even by certain contradictions in the utterances of Jesus, as those utterances are recorded in the tradition. Paul struggled continually with the immediate consequences of his own views, and with their very complicated implications. The consistent development of the Pauline doctrine of salvation by faith achieved in the Marcionite doctrines definitively demonstrated the antinomian consequences of Paul's teaching.[2] As increasing stress was placed upon salvation by faith, there was generally but little tendency for an active ethical rationalization of the pattern of life to take place within everyday religion, although the opposite was the case for the prophet of such a religion. Under certain circumstances, salvation by faith can have directly antirational effects in concrete cases as well as in principle. A minor illustration of this is found in the resistance of many religious Lutherans to entering into insurance contracts, on the ground that such action would manifest an irreligious distrust of God's providence. The wider importance of this problem lies in the fact that every rational and planned procedure for achieving salvation, every reliance on good works, and above all every effort to surpass normal ethical behavior by ascetic achievement, is regarded by religion based on faith as a wicked preoccupation with purely human powers.

Wherever the conception of salvation by faith has been developed consistently, as in ancient Islam, trans-worldly asceticism and especially monasticism have been rejected. As a result, the development of belief in salvation by faith may directly augment the religious emphasis placed upon vocational activity within the world, as actually happened in the case of Lutheran Protestantism. Moreover, religion based on faith may also strengthen the motivations for a religiously positive evaluation of vocations within the world, particularly when such religion also devalues the priestly grace of penance and sacrament in favor of the exclusive importance of the personal religious relationship to god. Lutheranism took this stand in principle from its very outset, and strengthened the stand subsequently, after the complete elimination of the confessional. The same effect of the belief in faith upon vocational motivations was particularly evident in the various forms of Pietism, which were given an ascetic cast by Spener and Francke, but which had also been exposed to Quaker and other influences of which they themselves were not too well aware.

Moreover, the German word for "vocation" (*Beruf*) is derived from the Lutheran translation of the Bible. The positive evaluation of ethical conduct within one's worldly calling, as the only mode of life acceptable

to god, was central in Lutheranism from the very beginning. But in Lutheranism, good works did not enter into consideration as the real basis for the salvation of the soul, as in Catholicism, nor did good works provide the intellectual basis for the recognition that one had been reborn, as in ascetic Protestantism. Instead, certainty of salvation was derived in Lutheranism from the habitual feeling of having found refuge in God's goodness and grace. Hence, Lutheranism taught, as its attitude toward the world, a patient resignation toward the world's institutional structures. In this regard, Lutheranism presents a striking contrast to those religions—especially those forms of Protestantism—which required for the assurance of one's salvation either a distinctive methodical pattern of life or a demonstration of good works, such as was known as *fides efficax* among the Pietists and as *amal* among the Muslim Kharijis, and an equally striking contrast to the virtuosi religions of ascetic sects.[8]

Lutheranism lacks any motivation toward revolutionary attitudes in social or political relationships and any inclination toward rational reformist activity. Its teaching requires one to maintain, both within the world and against it, the substance of the salvation promised by one's faith, but does not require one to attempt a transformation of the world in any rationalized ethical direction. The Lutheran Christian has all that is needful for him, if only the word of God is proclaimed pure and clear; the remaking of the eternal order of the world and even the remaking of the church is a matter of indifference, an *adiaphoron*. To be sure, this emotionalist quality of the faith, which is relatively indifferent to the world, but in contrast to asceticism also "open" to it, was the product of a gradual development. It is difficult for such an emotionalist faith to generate anti-traditionalist, rational patterns of conduct, and it lacks any drive toward the rational control and transformation of the world.

"Faith," in the form known to the warrior religions of ancient Islam and of Yahwism, took the form of simple allegiance to the god or to the prophet, along the lines that originally characterize all relationships to anthropomorphic gods. Faithfulness is rewarded and disloyalty punished by the god. This personal relationship to the god takes on other qualities when the carriers of salvation religion become peaceful groups, and more particularly when they become members of the middle classes. Only then can faith as an instrument of salvation take on the emotionally tinged character and assume the lineaments of love for the god or the savior. This transformation is already apparent in exilic and post-exilic Judaism, and is even more strongly apparent in early Christianity, especially in the teachings of Jesus and John. God now appears as a gracious master or father of a household. But it is of course a vulgar

error to see in the *paternal* quality of the god proclaimed by Jesus an intrusion of non-Semitic religion, on the argument that the gods of the (generally Semitic) desert peoples "create" mankind whereas the Greek deities "beget" it. For the Christian god never thought of begetting *men* —the phrase "begotten and not created (γεννηθέντα μὴ ποιηθέντα) is precisely the distinctive predicate of the trinitarian, deified, Christ which sets him off from humankind; moreover, even though the Christian god surrounds mankind with superhuman love, he is by no means a tender modern "daddy," but rather a primarily benevolent, yet also wrathful and strict, regal patriarch, such as was also the Jewish god.

In any case, the emotional content of religions of faith may be deepened whenever the followers of these religions substitute the view that they are children of god for the ascetic view that they are merely his instruments. The result may be a strong tendency to seek the integration of one's pattern of life in subjective states and in an inner reliance upon god, rather than in the consciousness of one's continued ethical probation. This tendency may even further weaken the practical, rational character of the religion. Such an emotional emphasis is suggested by the "language of Canaan" which came to expression with the renaissance of Pietism, that whining cadence of typical Lutheran sermons in Germany which has so often driven strong men out of the church.

A completely anti-rational effect upon the conduct of life is generally exerted by religions of faith when the relationship to the god or the savior exhibits the trait of passionate devotion, and consequently whenever the religion has a latent or manifest tinge of eroticism. This is apparent in the many varieties of love of god in Sufism, in the Canticles type of mysticism of St. Bernard and his followers, in the cult of Mary and the Sacred Heart of Jesus, in other comparable forms of devotionalism, and finally in the characteristic manifestations of emotionally suffused Pietism within Lutheranism, such as the movement of Zinzendorf. However, its most striking manifestation occurs in the characteristically Hindu religiosity of love (*bhakti*) which from the fifth and sixth centuries on supplanted the proud and noble intellectualistic religion of Buddhism, becoming the popular form of salvation religion among the masses of India, particularly in the soteriological forms of Vishnuism. In this Hindu religiosity of love, devotion to Krishna, who had been apotheosized from the *Mahabharata* to the status of a savior, and more especially devotion to the Krishna child, is raised to a state of erotically tinged devotion. This process takes place through the four levels of contemplation: servant love, friendship love, filial or parental love, and, at the highest level, a piety tinged with definite eroticism, after the fashion of the love of the *gopis* (the love of Krishna's

mistresses for him). Since the procedure enjoined by this religion as necessary for salvation is essentially hostile to the concerns of everyday life, it has always presupposed some degree of sacramental intermediation in the achievement of grace, by priests, *gurus*, or *gosains*. In its practical effects, this religion is a sublimated counterpart of the Shakti religion, which is popular among the lowest social strata in India. The religion of Shakti is a worship of the wives of gods, always very close to the orgiastic type of religion and not infrequently involving a cult of erotic orgies, which of course makes it utterly remote from a religion of pure faith, such as Christianity, with its continuous and unshakeable trust in God's providence. The erotic element in the personal relationship to the savior in Hindu salvation religion may be regarded as largely the technical result of the practices of devotion; whereas, in marked contrast, the Christian belief in providence is a charisma that must be maintained by the exercise of the will of the believer.

3. *Salvation Through Belief in Predestination*

Finally, salvation may be regarded as a completely free, inexplicable gift of grace from a god absolutely unsearchable as to his decisions, who is necessarily unchanging because of his omniscience, and utterly beyond the influence of any human behavior. This is the grace of predestination. This conception unconditionally presupposes a transcendental creator god, and is therefore lacking in all ancient and Asiatic religions. It is also lacking in warrior and heroic religions, since they posit a superdivine fate, whereas the doctrine of predestination posits a world order or regime which is rational from god's point of view even though it may appear irrational to human beings. On the other hand, a religion of predestination obliterates the goodness of god, for he becomes a hard, majestic king. Yet it shares with religions of fate the capacity for inducing nobility and rigor in its devotees. It has this effect in spite of the fact, or rather because of the fact, that only in respect to this kind of god is the complete devaluation of all the powers of an individual a prerequisite for his salvation by free grace alone.

Dispassionate and sober ethical men like Pelagius might believe in the adequacy of their own good works. But among the prophets and founders of religions, predestination has been the belief of men animated by a drive to establish rationally organized religious power, as in the case of Calvin and Muhammad, each of whom felt that the certainty of his own mission in the world derived less from any personal perfection than from his situation in the world and from god's will. In other cases, e.g., Augustine and also Muhammad, the belief in predestination

may arise as a result of recognizing the necessity for controlling tremendous passions and feeling that this can be accomplished only, if at all, through a power acting upon the individual from without and above. Luther, too, knew this feeling during the terribly excited period after his difficult struggle with sin, but it receded in importance for him after he had achieved a better adjustment to the world.

Predestination provides the individual who has found religious grace with the highest possible degree of certainty of salvation, once he has attained assurance that he belongs to the very limited aristocracy of salvation who are the elect. But the individual must find certain indices (*Symptome*) by which he may determine whether he possesses this incomparable charisma, inasmuch as it is impossible for him to live on in absolute uncertainty regarding his salvation. Since god has deigned to reveal at least some positive injunctions for the type of conduct pleasing to him, the aforementioned indices must reside, in this instance as in the case of every religiously active charisma, in the decisive demonstration of the capacity to serve as one of god's instruments in fulfilling his injunctions, and that in a persevering and methodical fashion, for either one possesses predestined grace or one does not. Moreover, the assurance of this grace is not affected by any particular transgressions of the individual in question. The ultimate certainty of one's salvation and one's continuance in a state of grace, notwithstanding disparate transgressions which the man predestined to salvation commits in the same way that all other sinful creatures commit transgressions, is provided by one's knowledge that, despite these particular errors, one's behavior is acceptable to god and flows out of an inner relationship based on the mysterious quality of grace—in short, salvation is based on a central and constant quality of personality.

Hence, the belief in predestination, although it might logically be expected to result in fatalism, produced in its most consistent followers the strongest possible motives for acting in accordance with god's pattern. Of course this action assumed different forms, depending upon the primary content of the religious prophecy. In the case of the Muslim warriors of the first generation of Islam, the belief in predestination often produced a complete obliviousness to self, in the interest of fulfillment of the religious commandment of a holy war for the conquest of the world. In the case of the Puritans governed by the Christian ethic, the same belief in predestination often produced ethical rigorism, legalism, and rationally planned procedures for the patterning of life. Discipline acquired during wars of religion was the source of the unconquerableness of both the Islamic and Cromwellian cavalries. Similarly, innerworldly asceticism and the disciplined quest for salvation in a vocation pleasing to God were the sources of the virtuosity in acquisitiveness

characteristic of the Puritans. Every consistent doctrine of predestined grace inevitably implied a radical and ultimate devaluation of all magical, sacramental, and institutional distributions of grace, in view of god's sovereign will, a devaluation that actually occurred wherever the doctrine of predestination appeared in its full purity and maintained its strength. By far the strongest such devaluation of magical and institutional grace occurred in Puritanism.

Islamic predestination knew nothing of the "double decree"; it did not dare attribute to Allah the predestination of some people to hell, but only attributed to him the withdrawal of his grace from some people, a belief which admitted man's inadequacy and inevitable transgression. Moreover, as a warrior religion, Islam had some of the characteristics of the Greek *moira* in that it developed far less the specifically rational elements of a world order and the specific determination of the individual's fate in the world beyond. The ruling conception was that predestination determined, not the fate of the individual in the world beyond, but rather the uncommon events of this world, and above all such questions as whether or not the warrior for the faith would fall in battle. The religious fate of the individual in the next world was held, at least according to the older view, to be adequately secured by the individual's belief in Allah and the prophets, so that no demonstration of salvation in the conduct of life is needed. Any rational system of ascetic control of everyday life was alien to this warrior religion from the outset, so that in Islam the doctrine of predestination manifested its power especially during the wars of faith and the wars of the Mahdi. The doctrine of predestination tended to lose its importance whenever Islam became more civilianized, because the doctrine produced no planned procedure for the control of the workaday world, as did the Puritan doctrine of predestination.

In Puritanism, predestination definitely did affect the fate of the individual in the world beyond, and therefore his assurance of salvation was determined primarily by his maintenance of ethical integrity in the affairs of everyday life. For this reason, the belief in predestination assumed greater importance in Calvinism as this religion became more bourgeois than it had been at the outset. It is significant that the Puritan belief in predestination was regarded by authorities everywhere as dangerous to the state and as hostile to authority, because it made Puritans skeptical of the legitimacy of all secular power. It is interesting to note by way of contrast that in Islam the family and following of Umar, who were denounced for their alleged secularism, were followers of the belief in predestination, since they hoped to see their dominion, which had been established by illegitimate means, legitimized by the predestined will of Allah.

Clearly, every use of predestination to determine concrete events in history, rather than to secure one's orientation to one's place in the world beyond, immediately causes predestination to lose its ethical, rational character. The belief in predestination practically always had an ascetic effect among the simple warriors of the early Islamic faith, which in the realm of ethics exerted largely external and ritual demands, but the ascetic effects of the Islamic belief in predestination were not rational, and for this reason they were repressed in everyday life. The Islamic belief in predestination easily assumed fatalistic characteristics in the beliefs of the masses, viz., *kismet*, and for this reason predestination did not eliminate magic from the popular religion.

Finally, the Chinese patrimonial bureaucracy, in keeping with the character of its Confucian ethic, considered knowledge concerning destiny or fate to be indissolubly associated with sophistication. On the other hand, Confucianism permitted destiny to assume certain fatalistic attributes in the magical religion of the masses, though in the religion of the educated it assumed approximately a middle position between providence and *moira*. For just as the *moira*, together with the courage to endure it, nurtured the heroic pride of warriors, so also did predestination feed the "pharisaical" pride of the heroes of middle-class asceticism.

But in no other religion was the pride of the predestined aristocracy of salvation so closely associated with the man of a vocation and with the idea that success in rationalized activity demonstrates god's blessing as in Puritanism (and hence in no other religion was the influence of ascetic motivation upon the attitude toward economic activity so strong). Predestination too is a belief of virtuosi, who alone can accept the thought of the everlasting "double decree." But as this doctrine continued to flow into the routine of everyday living and into the religion of the masses, its dour bleakness became more and more intolerable. Finally, all that remained of it in occidental ascetic Protestantism was a vestige, a *caput mortuum*: the contribution which this doctrine of grace made to the rational capitalistic temperament, the idea of the methodical demonstration of vocation in one's economic behavior.

The neo-Calvinism of Kuyper no longer dared to maintain the pure doctrine of predestined grace.[4] Nevertheless, the doctrine was never completely eliminated from Calvinism; it only altered its form. Under all circumstances, the determinism of predestination remained an instrument for the greatest possible systematization and centralization of the *Gesinnungsethik*. The "total personality," as we would say today, has been provided with the accent of eternal value by "God's election," and not by any individual action of the person in question.

There is a non-religious counterpart of this religious evaluation, one

based on a mundane determinism. It is that distinctive type of "guilt" and, so to speak, godless feeling of sin which characterizes modern secular man precisely because of his own *Gesinnungsethik*, regardless of its metaphysical basis. Not that he has *done* a particular deed, but that by virtue of his unalterable qualities, acquired without his cooperation, he "*is*" such that he *could* commit the deed—this is the secret anguish borne by modern man, and this is also what the others, in their "pharisaism" (now turned determinism), blame him for. It is a "merciless" attitude because there is no significant possibility of "forgiveness," "contrition," or "restitution"—in much the same way that the religious belief in predestination was merciless, but at least it could conceive of some impenetrable divine rationality.

NOTES

1. Cf. Wilhelm Bousset, *Hauptprobleme der Gnosis* (Göttingen: Vandenhoeck, 1907), ch. I. Since Weber used Bousset's work on *Die Religion des Judentums* (1906), it appears likely that Bousset was also one of his major sources on gnosticism.

1a. Hermann Mallinckrodt (1821–74) was one of the founders of the Catholic Center Party and one of its most vociferous spokesmen; he was a member of the *Reichstag* from 1867 until 1871. His sister Pauline founded the congregation of the "Sisters of Christian Love."

2. Cf. Adolf von Harnack, *Lehrbuch der Dogmengeschichte* (Tübingen: Mohr, 1931), vol. I, 292–309. This is the fourth edition of the 1909 publication, and another of Weber's major sources.

3. On the Kharijis, see Chantepie et al., *op. cit.*, vol. I, 682ff.; on *amal*, see C. H. Becker, *Islamstudien*, vol. I, 165, 167. (W)

4. On Abraham Kuyper, Dutch theologian and Minister of the Interior (1901–05), see Weber, "The Protestant Sects. . . .," in Gerth and Mills, *op. cit.*, 452f.

XII

Religious Ethics and the World: Economics

1. *Worldly Virtues and the Ethics of Ultimate Ends*

The more a religion of salvation has been systematized and internalized in the direction of an ethic of ultimate ends (*Gesinnungsethik*), the greater becomes its tension in relation to the world. This tension between religion and the world appears in a less consistent fashion and less

as a matter of principle, so long as the religion has a ritualistic or legalistic form. In these earlier stages, religions of salvation generally assume the same forms and exert the same effects as those of magical ethics. That is to say, a salvation religion generally begins by assigning inviolable sanctity to those conventions received by it, since all the followers of a particular god are interested in avoiding the wrath of the deity, and hence in punishing any transgression of the norms enjoined by him. Consequently, once an injunction has achieved the status of a divine commandment, it rises out of the circle of alterable conventions into the rank of sanctity. Henceforth, the regulations enjoined by the religion are regarded, like the arrangements of the cosmos as a whole, as eternally valid—susceptible of interpretation, but not of alteration, unless the god himself reveals a new commandment.

In this stage, the religion exercises a stereotyping effect on the entire realm of legal institutions and social conventions, in the same way that symbolism stereotypes certain substantive elements of a culture and prescription of magical taboos stereotypes concrete types of relationships to human beings and to goods. The sacred books of the Hindus, Muslims, Parsees and Jews, and the classical books of the Chinese treat legal prescriptions in exactly the same manner that they treat ceremonial and ritual norms. The law is sacred law. The dominance of law that has been stereotyped by religion constitutes one of the most significant limitations on the rationalization of the legal order and hence also on the rationalization of the economy.

Conversely, when ethical prophecies have broken through the stereotyped magical or ritual norms, a sudden or a gradual revolution may take place, even in the daily order of human living, and particularly in the realm of economics. It must be admitted, of course, that there are limits to the power of religion in both spheres. It is by no means true that religion is always the decisive element when it appears in connection with the aforementioned transformation. Furthermore, religion nowhere creates certain economic conditions unless there are also present in the existing relationships and constellations of interests certain possibilities of, or even powerful drives toward, such an economic transformation. It is not possible to enunciate any general formula that will summarize the comparative substantive powers of the various factors involved in such a transformation or will summarize the manner of their accommodation to one another.

The needs of economic life make themselves manifest either through a reinterpretation of the sacred commandments or through their casuistic by-passing. Occasionally we also come upon a simple, practical elimination of religious injunctions in the course of the ecclesiastical dispensation of penance and grace. One example of this is the elimination

within the Catholic church of so important a provision as the prohibition against usury even *in foro conscientiae* (concerning which we shall have more to say presently), but without any express abrogation, which would have been impossible. Probably the same process will take place in the case of another forbidden practice, *onanismus matrimonialis*, viz., the limitation of offspring to two children per family.

The frequent ambivalence or silence of religious norms with respect to new problems and practices like the aforementioned results in the unmediated juxtaposition of the stereotypes' absolute unalterableness with the extraordinary capriciousness and utter unpredictability of the same stereotypes' validity in any particular application. Thus, in dealing with the Islamic *shar'iah* it is virtually impossible to assert what is the practice today in regard to any particular matter. The same confusion obtains with regard to all sacred laws and ethical injunctions that have a formal ritualistic and casuistical character, above all the Jewish law.

But the systematization of religious obligations in the direction of an ethic based on inner religious faith (*Gesinnungsethik*) produces a situation that is fundamentally different in essence. Such systematization breaks through the stereotypization of individual norms in order to bring about a meaningful total relationship of the pattern of life to the goal of religious salvation. Moreover, an inner religious faith does not recognize any sacred law, but only a "sacred inner religious state" that may sanction different maxims of conduct in different situations, and which is thus elastic and susceptible of accommodation. It may, depending on the pattern of life it engenders, produce revolutionary consequences from within, instead of exerting a stereotyping effect. But it acquires this ability to revolutionize at the price of also acquiring a whole complex of problems which becomes greatly intensified and internalized. The inherent conflict between the religious postulate and the reality of the world does not diminish, but rather increases. With the increasing systematization and rationalization of social relationships and of their substantive contents, the external compensations provided by the teachings of theodicy are replaced by the struggles of particular autonomous spheres of life against the requirements of religion. The more intense the religious need is, the more the world presents a problem. Let us now clarify this matter by analyzing some of the principal conflicts.

Religious ethics penetrate into social institutions in very different ways. The decisive aspect of the religious ethic is not the intensity of its attachment to magic and ritual or the distinctive character of the religion generally, but is rather its theoretical attitude toward the world. To the extent that a religious ethic organizes the world from a religious perspective into a systematic, rational cosmos, its ethical tensions with the social

institutions of the world are likely to become sharper and more principled; this is the more true the more the secular institutions (*Ordnungen*) are systematized autonomously. A religious ethic evolves that is oriented to the rejection of the world, and which by its very nature completely lacks any of that stereotyping character which has been associated with sacred laws. Indeed, the very tension which this religious ethic introduces into the human relationships toward the world becomes a strongly dynamic factor in social evolution.

2. *Familial Piety, Neighborly Help, and Compensation*

Those cases in which a religious ethic simply appropriates the general virtues of life within the world require no exposition here. These general virtues naturally include relationships within the family, truthfulness, reliability, and respect for another person's life and property, including wives. But the accentuation of the various virtues is characteristically different in different religions. Confucianism placed a tremendous stress on familial piety, a stress which was motivated by belief in magic, in view of the importance of the family spirits. This familial piety was cultivated in practice by a patriarchal and patrimonial-bureaucratic political organization. Confucius, according to a dictum attributed to him, regarded "insubordination as more reprehensible than brutality," which indicates that he expressly interpreted obedience to family authorities very literally as the distinctive mark of all social and political qualities. The directly opposite accentuation of general virtues of life is found in those more radical types of congregational religion which advocate the dissolution of all family ties. "Whosoever cannot hate his father cannot become a disciple of Jesus."

Another example of the different accentuations of virtues is the stress placed on truthfulness in the Hindu and Zoroastrian ethics, whereas the Decalogue of the Judeo-Christian tradition confines this virtue to judicial testimony. Even further from the Hindu and Zoroastrian requirements of truthfulness is the complete recession of the obligation of veracity in favor of the varied injunctions of ceremonious propriety found in the status ethic of the Confucian Chinese bureaucracy. Zoroastrianism forbids the torture of animals, as a consequence of the founder's campaign against orgiastic religion. Hindu religion goes far beyond any other in absolutely prohibiting the slaying of any living thing, a position that is based on conceptions of animism and metempsychosis.

The content of every religious ethic which goes beyond particular

magical prescriptions and familial piety is primarily determined by two simple motives that condition all everyday behavior beyond the limits of the family, namely, just retaliation against offenders and fraternal assistance to friendly neighbors. Both are in a sense compensations: the offender deserves punishment, the execution of which mollifies anger; and conversely, the neighbor is entitled to assistance. There could be no question in Chinese, Vedic, or Zoroastrian ethics, or in that of the Jews until postexile times, but that an enemy must be compensated with evil for the evil he has done. Indeed, the entire social order of these societies appears to have rested on just compensation. For this reason and because of its accommodation with the world, the Confucian ethic rejected the idea of love for one's enemy, which in China was partly mystical and partly based on notions of social utility, as being contrary to the interests of the state. The notion of love for one's enemy was accepted by the Jews in their postexile ethic, according to the interpretation of Meinhold, but only in the particular sense of causing their enemies all the greater humiliation by the benevolent attitude exhibited by the Jews. The postexile Jews added another proviso, which Christianity retained, that vengeance is the proper prerogative of God, who will the more certainly execute it the more man refrains from doing so himself.

Congregational religion added the fellow worshipper and the comrade in faith to the roster of those to whom the religiously founded obligation of assistance applied, which already included the blood-brother and the fellow member of clan or tribe. Stated more correctly, congregational religion set the co-religionist in the place of the fellow clansman. "Whoever does not leave his own father and mother cannot become a follower of Jesus." This is also the general sense and context of Jesus' remark that he came not to bring peace, but the sword. Out of all this grows the injunction of brotherly love, which is especially characteristic of congregational religion, in most cases because it contributes very effectively to the emancipation from political organization. Even in early Christianity, for example in the doctrines of Clement of Alexandria, brotherly love in its fullest extent was enjoined only within the circle of fellow believers, and not beyond.

The obligation to bring assistance to one's fellow was derived—as we saw [Part Two, ch. III:2]—from the neighborhood group. The nearest person helps the neighbor because he may one day require the neighbor's help in turn. The emergence of the notion of universal love is possible only after political and ethnic communities have become considerably intermingled, and after the gods have been liberated from connection with political organizations to become universal powers. The extension of the sentiment of love to include the followers of alien reli-

gions is more difficult when the other religious communities have become competitors, each proclaiming the uniqueness of its own god. Thus, Buddhist tradition relates that the Jainist monks expressed amazement that the Buddha had commanded his disciples to give food to them as well as to Buddhist monks.

3. *Alms-Giving, Charity, and the Protection of the Weak*

As economic differentiation proceeded, customs of mutual neighborly assistance in work and in meeting immediate needs were transformed into customs of mutual aid among various social strata. This process is reflected in religious ethics at a very early time. Sacred bards and magicians, the professional groups which first lost their contact with the soil, lived from the bounty of the rich. Consequently, the wealthy who share their plenty with religious functionaries receive the praises of the latter at all times, while the greedy and miserly have curses hurled at them. Under the economic conditions of early, natural agricultural economies, noble status is conferred, not just by wealth, but also by a hospitable and charitable manner of living, as we shall see later on. Hence, the giving of alms is a universal and primary component of every ethical religion, though new motivations for such giving may come to the fore. Jesus occasionally made use of the aforementioned principle of compensation as a source of motivation for giving to the poor. The gist of this notion was that god would all the more certainly render compensation to the giver of alms in the world beyond, since it was impossible for the poor to return the generosity. To this notion was added the principle of the solidarity of the brothers in the faith, which under certain circumstances might bring the brotherliness close to a communism of love.

In Islam, the giving of alms was one of the five commandments incumbent upon members of the faith. Giving of alms was the "good work" enjoined in ancient Hinduism, in Confucianism, and in early Judaism. In ancient Buddhism, the giving of alms was originally the only activity of the pious layman that really mattered. Finally, in ancient Christianity, the giving of alms attained almost the dignity of a sacrament, and even in the time of Augustine faith without alms was not regarded as genuine.

The impecunious Muslim warrior for the faith, the Buddhist monk, and the impoverished fellow believers of ancient Christianity, especially those of the Christian community in Jerusalem, were all dependent on alms, as were the prophets, apostles, and frequently even the priests of

salvation religions. In ancient Christianity, and among Christian sects as late as the Quaker community, charitable assistance was regarded as a sort of religious welfare insurance, and was one of the most important factors in the maintenance of the religious community and in missionary enterprises. Hence, when congregational religion lost its initial sectarian drive, charity lost its significance to a greater or lesser degree and assumed the character of a mechanical ritual. Still, charity continued to survive in principle. In Christianity, even after its expansion, the giving of alms remained so unconditionally necessary for the achievement of salvation by the wealthy that the poor were actually regarded as a distinctive and indispensable "status group" within the church. The rendering of assistance naturally developed far beyond the giving of alms, and so the sick, widows, and orphans were again and again described as possessing particular religious value.

The relationships among brothers in the faith came to be characterized by the same expectations which were felt between friends and neighbors, such as the expectations that credit would be extended without interest and that one's children would be taken care of in time of need without any compensation. Many of the secularized organizations which have replaced the sects in the United States still make such claims upon their members. Above all, the poor brother in the faith expects this kind of assistance and generosity from the powerful and from his own master. Indeed, within certain limitations, the powerful personage's own interests dictated that he protect his own subordinates and show them generosity, since the security of his own income depended ultimately on the good will and cooperation of his underlings, as long as no rational methods of control existed. On the other hand, the possibility of obtaining help or protection from powerful individuals provided every pauper, and notably the sacred bands, with a motive to seek out such individuals and praise them for their generosity. Wherever patriarchal relationships of power and coercion determined the social stratification, but especially in the Orient, the prophetic religions were able, in connection with the afore-mentioned purely practical situation, to create some kind of protectorate of the weak, i.e., women, children, slaves, etc. This is especially true of the Mosaic and Islamic prophetic religion.

This protection can also be extended to relationships between classes. To exploit unscrupulously one's particular class position in relation to less powerful neighbors in the manner typical of precapitalist times—through the merciless enslavement of debtors and the aggrandizement of land holdings, processes that are practically identical—meets with considerable social condemnation and religious censure, as being an offense against group solidarity. Similar objections apply to the

maximum utilization of one's purchasing power in acquiring consumer goods for the speculative exploitation of the critical condition of those in less favorable positions. On the other hand, the members of the ancient warrior nobility tend to regard as a parvenu any person who has risen in the social scale as a result of the acquisition of money. Therefore, the kind of avarice just described is everywhere regarded as abominable from the religious point of view. It was so regarded in the Hindu legal books, as well as in ancient Christianity and in Islam. In Judaism, the reaction against such avarice led to the creation of the characteristic institution of a jubilee year in which debts were cancelled and slaves liberated, to ameliorate the conditions of one's fellow believers. This institution was subsequently construed as the "sabbatical year," a result of theological casuistry and of a misunderstanding on the part of those pious people whose provenience was purely urban. Every systematization in the direction of a *Gesinnungsethik* crystallized from all these particular demands the distinctive religious mood or state known as "charity" (*caritas*).

4. *Religious Ethics, Economic Rationality and the Issue of Usury*

The rejection of usury appears as an emanation of this central religious mood in almost all ethical systems purporting to regulate life. Such a prohibition against usury is completely lacking, outside of Protestantism, only in the religious ethics which have become a mere accommodation to the world, e.g., Confucianism; and in the religious ethics of ancient Babylonia and the Mediterranean littoral in which the urban citizenry (more particularly the nobility residing in the cities and maintaining economic interests in trade) hindered the development of a consistent caritative ethics. The Hindu books of canonical law prohibit the taking of usury, at least for the two highest castes. Among the Jews, collecting usury from "members of the tribe" (*Volksgenossen*) was prohibited. In Islam and in ancient Christianity, the prohibition against usury at first applied only to brothers in faith, but subsequently became unconditional. It seems probable that the proscription of usury in Christianity is not primary in that religion. Jesus justified the biblical injunction to lend to the impecunious on the ground that God will not reward the lender in transactions which present no risk. This verse was then misread and mistranslated in a fashion that resulted in the prohibition of usury: μηδένα ἀπελπίζοντες was mistranslated as μηδέν, which in the Vulgate became *nihil inde sperantes*.[1]

The original basis for the thoroughgoing rejection of usury was generally the primitive custom of economic assistance to one's fellows, in accordance with which the taking of usury "among brothers" was undoubtedly regarded as a serious breach against the obligation to provide assistance. The fact that the prohibition against usury became increasingly severe in Christianity, under quite different conditions, was due in part to various other motives and factors. The prohibition of usury was not, as the materialist conception of history would represent it, a reflection of the absence of interest on capital under the general conditions of a natural economy. On the contrary, the Christian church and its servants, including the Pope, took interest without any scruples even in the early Middle Ages, i.e., in the very period of a natural economy; even more so, of course, they condoned the taking of interest by others. It is striking that the ecclesiastical persecution of usurious lending arose and became ever more intense virtually as a concomitant of the incipient development of actual capitalist instruments and particularly of acquisitive capital in overseas trade. What is involved, therefore, is a struggle in principle between ethical rationalization and the process of rationalization in the domain of economics. As we have seen, only in the nineteenth century was the church obliged, under the pressure of certain unalterable facts, to remove the prohibition in the manner we have described previously.

The real reason for religious hostility toward usury lies deeper and is connected with the attitude of religious ethics toward the imperatives of rational profitmaking. In early religions, even those which otherwise placed a high positive value on the possession of wealth, purely commercial enterprises were practically always the objects of adverse judgment. Nor is this attitude confined to predominantly agrarian economies under the influence of warrior nobilities. This criticism is usually found when commercial transactions are already relatively advanced, and indeed it arose in conscious protest against them.

We may first note that every economic rationalization of a barter economy has a weakening effect on the traditions which support the authority of the sacred law. For this reason alone the pursuit of money, the typical goal of the rational acquisitive quest, is religiously suspect. Consequently, the priesthood favored the maintenance of a natural economy (as was apparently the case in Egypt) wherever the particular economic interests of the temple as a bank for deposit and loans under divine protection did not militate too much against a natural economy.

But it is above all the impersonal and economically rationalized (but for this very reason ethically irrational) character of purely commercial relationships that evokes the suspicion, never clearly expressed but all

the more strongly felt, of ethical religions. For every purely personal relationship of man to man, of whatever sort and even including complete enslavement, may be subjected to ethical requirements and ethically regulated. This is true because the structures of these relationships depend upon the individual wills of the participants, leaving room in such relationships for manifestations of the virtue of charity. But this is not the situation in the realm of economically rationalized relationships, where personal control is exercised in inverse ratio to the degree of rational differentiation of the economic structure. There is no possibility, in practice or even in principle, of any caritative regulation of relationships arising between the holder of a savings and loan bank mortgage and the mortgagee who has obtained a loan from the bank, or between a holder of a federal bond and a citizen taxpayer. Nor can any caritative regulation arise in the relationships between stockholders and factory workers, between tobacco importers and foreign plantation workers, or between industrialists and the miners who have dug from the earth the raw materials used in the plants owned by the industrialists. The growing impersonality of the economy on the basis of association in the market place follows its own rules, disobedience to which entails economic failure and, in the long run, economic ruin.

Rational economic association always brings about depersonalization, and it is impossible to control a universe of instrumentally rational activities by charitable appeals to particular individuals. The functionalized world of capitalism certainly offers no support for any such charitable orientation. In it the claims of religious charity are vitiated not merely because of the refractoriness and weakness of particular individuals, as it happens everywhere, but because they lose their meaning altogether. Religious ethics is confronted by a world of depersonalized relationships which for fundamental reasons cannot submit to its primeval norms. Consequently, in a peculiar duality, priesthoods have time and again protected patriarchalism against impersonal dependency relations, also in the interest of traditionalism, whereas prophetic religion has broken up patriarchal organizations. However, the more a religious commitment becomes conscious of its opposition to economic rationalization as such, the more apt are the religion's virtuosi to end up with an anti-economic rejection of the world.

Of course, the various religious ethics have experienced diverse fates, because in the world of facts the inevitable compromises had to be made. From of old, religious ethics has been directly employed for rational economic purposes, especially the purposes of creditors. This was especially true wherever the state of indebtedness legally involved only the *person* of the debtor, so that the creditor had to appeal to the

filial piety of the heirs. An example of this practice is the impounding of the mummy of the deceased in Egypt [to shame his descendants into paying his debts]. Another example is the belief in some Asiatic religions that whoever fails to keep a promise, including a promise to repay a loan and especially a promise guaranteed by an oath, would be tortured in the next world and consequently might disturb the quiet of his descendants by evil magic. In the Middle Ages, as Schulte has pointed out,[2] the credit standing of bishops was particularly high because any breach of obligation on their part, especially of an obligation assumed under oath, might result in their excommunication, which would have ruined a bishop's whole existence. This reminds one of the credit-worthiness of our lieutenants and fraternity students [which was similarly upheld by the efficacy of threats to the future career].

By a peculiar paradox, asceticism actually resulted in the contradictory situation already mentioned on several previous occasions, namely that it was precisely its rationally ascetic character that led to the accumulation of wealth. The cheap labor of ascetic celibates, who underbid the indispensable minimum wage required by married male workers, was primarily responsible for the expansion of monastic businesses in the late Middle Ages. The reaction of the middle classes against the monasteries during this period was based on the "coolie" economic competition offered by the brethren. In the same way, the secular education offered by the cloister was able to underbid the education offered by married teachers.

The attitudes of a religion can often be explained on grounds of economic interest. The Byzantine monks were economically chained to the worship of icons, and the Chinese monks had an economic interest in the products of their workshops and printing establishments. An extreme example of this kind is provided by the manufacture of alcoholic liquors in modern monasteries, which defies the religious campaign against alcohol. Factors such as these have tended to work against any consistent religious opposition to worldly economic activities. Every organization, and particularly every institutional religion, requires sources of economic power. Indeed, scarcely any doctrine has been belabored with such terrible papal curses, especially at the hands of the greatest financial organizer of the church, John XXII, as the doctrine that Christ requires poverty of his true followers, a doctrine which enjoys scriptural authority and was consistently espoused by the Franciscan Spirituals (*Franziskanerobservanten*).[3] From the time of Arnold of Brescia and down through the centuries, a whole train of martyrs died for this doctrine.

It is difficult to estimate the practical effect of Christianity's prohibi-

tion of usury, and even more difficult to estimate the practical effect of Christianity's doctrine with respect to economic acquisition in business, viz., *deo placere non potest.*[4] The prohibitions against usury generated legalistic circumventions of all sorts. After a hard struggle, the church itself was virtually compelled to permit undisguised usury in the charitable establishments of the *montes pietatis* when the loans were in the interests of the poor; this became definitively established after Leo X [1513–21]. Furthermore, emergency loans for businesses at fixed rates of interest were provided during the Middle Ages by allocating this function to the Jews.

We must note, however, that in the Middle Ages fixed interest charges were rare in the entrepreneurial contracts extending business credit to enterprises subject to great risk, especially overseas commerce (credit contracts which in Italy also used the property of wards). The more usual procedure was actual participation in the risk and profit of an enterprise (*commenda, dare ad proficuum de mari*), with various limitations and occasionally with a graduated scale such as that provided in the Pisan *Constitutum Usus.*[5] Yet the great merchant guilds nevertheless protected themselves against the protest of *usuraria pravitas* by expulsion from the guild, boycott, or blacklist—punitive measures comparable to those taken under our stock exchange regulations against protests of contract. The guilds also watched over the personal salvation of the souls of their members by providing them with indulgences (as did the Florentine *Arte di Calimala*) and by innumerable testamentary gifts of conscience money or endowments.

The wide chasm separating the inevitabilities of economic life from the Christian ideal was still frequently felt deeply. In any case this ethical separation kept the most devout groups and all those with the most consistently developed ethics far from the life of trade. Above all, time and again it tended to attach an ethical stigma to the business spirit, and to impede its growth. The rise of a consistent, systematic, and ethically regulated mode of life in the economic domain was completely prevented by the medieval institutional church's expedient of grading religious obligations according to religious charisma and ethical vocation and by the church's other expedient of granting dispensations. (The fact that people with rigorous ethical standards simply could not take up a business career was not altered by the dispensation of indulgences, nor by the extremely lax principles of the Jesuit probabilistic ethics after the Counter-Reformation.) A business career was only possible for those who were lax in their ethical thinking.

The inner-worldly asceticism of Protestantism first produced a capitalistic ethics, although unintentionally, for it opened the way to a career

in business, especially for the most devout and ethically rigorous people. Above all, Protestantism interpreted success in business as the fruit of a rational mode of life. Indeed, Protestantism, and especially ascetic Protestantism, confined the prohibition against usury to clear cases of complete selfishness. But by this principle it now denounced interest as uncharitable usury in situations which the Roman church itself had, as a matter of practice, tolerated, e.g., in the *montes pietatis*, the extension of credit to the poor. It is worthy of note that Christian businessmen and the Jews had long since felt to be irksome the competition of these institutions which lent to the poor. Very different was the Protestant justification of interest as a legitimate form of participation by the provider of capital in the business profits accruing from the money he had lent, especially wherever credit had been extended to the wealthy and powerful—e.g., as political credit to the prince. The theoretical justification of this attitude was the achievement of Salmasius [*de usuris*, 1638].

One of the most notable economic effects of Calvinism was its destruction of the traditional forms of charity. First it eliminated unsystematic almsgiving. To be sure, the first steps toward the systematization of charity had been taken with the introduction of fixed rules for the distribution of the bishop's fund in the later medieval church, and with the institution of the medieval hospital—in the same way that the poor tax in Islam had rationalized and centralized almsgiving. Yet random almsgiving had still retained its qualification in Christianity as a "good work." The innumerable charitable institutions of ethical religions have always led in practice to the creation and direct cultivation of mendicancy, and in any case charitable institutions tended to make of charity a purely ritual gesture, as the fixed number of daily meals in the Byzantine monastic establishment or the official soup days of the Chinese. Calvinism put an end to all this, and especially to any benevolent attitude toward the beggar. For Calvinism held that the inscrutable God possessed good reasons for having distributed the gifts of fortune unequally. It never ceased to stress the notion that a man proved himself exclusively in his vocational work. Consequently, begging was explicitly stigmatized as a violation of the injunction to love one's neighbor, in this case the person from whom the beggar solicits.

What is more, all Puritan preachers proceeded from the assumption that the idleness of a person capable of work was inevitably his own fault. But it was felt necessary to organize charity systematically for those incapable of work, such as orphans and cripples, for the greater glory of God. This notion often resulted in such striking phenomena as dressing institutionalized orphans in uniforms reminiscent of fool's attire

and parading them through the streets of Amsterdam to divine services with the greatest possible fanfare. Care for the poor was oriented to the goal of discouraging the slothful. This goal was quite apparent in the social welfare program of the English Puritans, in contrast to the Anglican program, so well described by H. Levy.[a] In any case, charity itself became a rationalized "enterprise," and its religious significance was therefore eliminated or even transformed into the opposite significance. This was the situation in consistent ascetic and rationalized religions.

Mystical religions had necessarily to take a diametrically opposite path with regard to the rationalization of economics. The foundering of the postulate of brotherly love in its collision with the loveless realities of the economic domain once it became rationalized led to the expansion of love for one's fellow man until it came to require a completely unselective generosity. Such unselective generosity did not inquire into the reason and outcome of absolute self-surrender, into the worth of the person soliciting help, or into his capacity to help himself. It asked no questions, and quickly gave the shirt when the cloak had been asked for. In mystical religions, the individual for whom the sacrifice is made is regarded in the final analysis as unimportant and exchangeable; his individual value is negated. One's "neighbor" is simply a person whom one happens to encounter along the way; he has significance only because of his need and his solicitation. This results in a distinctively mystical flight from the world which takes the form of a non-specific and loving self-surrender, not for the sake of the man but for the sake of the surrender itself—what Baudelaire has termed "the sacred prostitution of the soul."

NOTES

1. "Do not expect anything from it" instead of "Do not deprive anybody of hope." Weber relied on the painstaking analysis of Luke 6:35 by Adalbert Merx, *Die Evangelien des Markus und Lukas* (Berlin: Reimer, 1905), 223ff. Weber mentions Merx below, ch. XV: 10:D; cf. also *Economic History*, ch. 21 and p. 274.

2. See Aloys Schulte, *Geschichte des mittelalterlichen Handels und Verkehrs zwischen Westdeutschland und Italien* (Leipzig: Dunker & Humblot, 1900), I, 263ff.

3. In the 15th century the Franciscans of the Strict Observance developed into a congregation that was privileged over the Conventuals. On these *Franziskanerobservanten* see *Religion in Geschichte und Gegenwart* (Tübingen 1910), IV. Cf. also Benjamin Nelson, "Max Weber's Sociology of Religion," *American Sociological Review*, 30:4, Aug. 1965, 596f. On the issue of usury in general, see Nelson's follow-up of Weber, *The Idea of Usury* (New York 1949).

4. The complete formulation reads: "Home mercator vix aut nunquam deo

potest placere"—"A merchant can hardly or never please God." The passage became important through the *Decretum Gratiani* (about 1150 A.D.). Cf. Weber, *Wirtschaftsgeschichte*, sec. ed., J. Winckelmann, ed. (1958), 305, and Nelson's article, *loc. cit.*

5. Cf. Weber, *Handelsgesellschaften*, ch. IV, "Pisa. Das Sozietätsrecht des Constit t m Usus," reprinted in *GAzSW*, 386–410.

6. See Hermann Levy, *Economic Liberalism* (London: Macmillan, 1913), ch. VI; first published in German in 1902.

XIII

Religious Ethics and the World: Politics

1. *From Political Subordination to the Anti-Political Rejection of the World*

Every religiously grounded unworldly love and indeed every ethical religion must, in similar measure and for similar reasons, experience tensions with the sphere of political behavior. This tension appears as soon as religion has progressed to anything like a status of equality with the sphere of political associations. To be sure, the ancient political god of the locality, even where he was an ethical and universally powerful god, existed merely for the protection of the political interests of his followers' associations.

Even the Christian God is still invoked as a god of war and as a god of our fathers, in much the same way that local gods were invoked in the ancient *polis*. One is reminded of the fact that for centuries Christian ministers have prayed along the beaches of the North Sea for a "blessing upon the strand" (i.e., for numerous shipwrecks). On its part the priesthood generally depended upon the political association, either directly or indirectly. This dependence is especially strong in those contemporary churches which derive support from governmental subvention. It was particularly noteworthy where the priests were court or patrimonial officials of rulers or landed magnates, e.g., the *purohita* of India or the Byzantine court bishops since Constantine. The same dependence also arose wherever the priests themselves were either enfeoffed feudal lords exercising secular power (e.g., as during the medieval period in the Occident), or scions of noble priestly families. Among the Chinese and Hindus as well as the Jews, the sacred bards, whose compositions were practically everywhere incorporated into the

scriptures, sang the praises of heroic death. According to the canonical books of the Brahmins, a heroic death was as much an ideal obligation of the Kshatriya caste member at the age when he had "seen the son of his son" as withdrawal from the world into the forests for meditation was an obligation of members of the Brahmin caste. Of course, magical religion had no conception of a religious war. But for magical religion, and even for the ancient religion of Yahweh, political victory and especially vengeance against the enemy constituted the real reward granted by god.

The more the priesthood attempted to organize itself as a power independent of the political authorities, and the more rationalized its ethic became, the more this position shifted. The contradiction within the priestly preaching, between brotherliness toward fellow religionists and the glorification of war against outsiders, did not as a general rule decisively stigmatize martial virtues and heroic qualities. This was so because a distinction could be drawn between just and unjust wars. However, this distinction was a product of pharisaical thought, which was unknown to the old and genuine warrior ethics.

Of far greater importance was the rise of congregational religions among politically demilitarized peoples under the control of priests, such as the Jews, and also the rise of large and increasingly important groups of people who, though comparatively unwarlike, became increasingly important for the priests' maintenance of their power position wherever they had developed into an independent organization. The priesthood unquestioningly welcomed the characteristic virtues of these classes, viz., simplicity, patient resignation to trouble, humble acceptance of existing authority, and friendly forgiveness and passivity in the face of injustice, especially since these virtues were useful in establishing the ascendancy of an ethical god and of the priests themselves. These virtues were also complementary to the special religious virtue of the powerful, namely magnanimous charity (*caritas*), since the patriarchal donors desired these virtues of resignation and humble acceptance in those who benefited from their assistance.

The more a religion became congregational, the more did political circumstances contribute to the religious transfiguration of the ethics of the subjugated. Thus, Jewish prophecy, in a realistic recognition of the external political situation, preached resignation to the domination by the great powers, as a fate apparently desired by God. The domestication of the masses was assigned to priests by foreign rulers (for the first time systematically by the Persians), and later indigenous rulers followed suit. As religion became more popularized, this domestication provided ever stronger grounds for assigning religious value to the

essentially feminine virtues of the ruled; moreover, the activities of the priests themselves were distinctively unwarlike and women had everywhere shown a particular susceptibility to religious stimuli. However, this "slave revolt" in the realm of morality, a revolt organized by priests, was not the only internal force of pacification. In addition, by its own logic, every ascetic, and especially every mystic, quest for individual salvation, took this line. Certain typical external situations also contributed to this development, e.g., the apparently senseless changes of limited and ephemeral small political power structures in contrast to universalistic religions and relatively unitary social cultures such as that of India. Two other historical processes operating in the opposite direction also contributed to the same development: universal pacification and the elimination of all struggles for power in the great world empires, and particularly the bureaucratization of all political dominion, as in the Roman Empire.

All these factors removed the ground from under the political and social interests involved in a warlike struggle for power and involved in a social class conflict, thus tending to generate an antipolitical rejection of the world and to favor the development of a religious ethic of brotherly love that renounced all violence. The power of the apolitical Christian religion of love was not derived from interests in social reform, nor from any such thing as "proletarian instincts," but rather from the complete loss of such secular concerns. The same motivation accounts for the increasing importance of all salvation religions and congregational religions from the first and second century of the [Roman] Imperial period. This transformation was carried out, not only or even primarily by the subjugated classes with their slave revolt *in ethicis*, but by educated strata which had lost interest in politics because they had lost influence or had become disgusted by politics.

The altogether universal experience that violence breeds violence, that social or economic power interests may combine with idealistic reforms and even with revolutionary movements, and that the employment of violence against some particular injustice produces as its ultimate result the victory, not of the greater justice, but of the greater power or cleverness, did not remain concealed, at least not from the intellectuals who lacked political interests. This recognition continued to evoke the most radical demands for the ethic of brotherly love, i.e., that evil should not be resisted by force, an injunction that is common to Buddhism and to the preaching of Jesus. But the ethic of brotherly love is also characteristic of mystical religions, because their peculiar quest for salvation fosters an attitude of humility and self-surrender as a result of its minimization of activity in the world and its affirmation

of the necessity of passing through the world incognito, so to speak, as the only proven method for demonstrating salvation. Indeed, from the purely psychological point of view, mystical religion must necessarily come to this conclusion by virtue of its characteristically acosmistic and non-specific experience of love. Every pure intellectualism bears within itself the possibility of such a mystical development.

On the other hand, inner-worldly asceticism can compromise with the facts of the political power structures by interpreting them as instruments for the rationalized ethical transformation of the world and for the control of sin. It must be noted, however, that the coexistence is by no means as easy in this case as in the case where economic acquisitive interests are concerned. For public political activity leads to a far greater surrender of rigorous ethical requirements than is produced by private business activity, since political activity is oriented to average human qualities, to compromises, to craft, and to the employment of other ethically suspect devices and people, and thereby oriented to the relativization of all goals. Thus, it is very striking that under the glorious regime of the Maccabees, after the first intoxication of the war of liberation had been dissipated, there arose among the most pious Jews a party which preferred alien hegemony to rule by the national kingdom. This may be compared to the preference found among some Puritan denominations for the subjection of the churches to the dominion of unbelievers, because genuineness of religion can be regarded as proven only in such churches. In both these cases two distinct motives were operative. One was that a genuine commitment in religion could be truly demonstrated only in martyrdom; the other was the theoretical insight that the political apparatus of force could not possibly provide a place for purely religious virtues, whether uncompromising rational ethics or acosmistic fraternalism. This is one source of the affinity between inner-worldly asceticism and the advocacy of the minimization of state control such as was represented by the laissez-faire doctrine of the "Manchester school."

2. *Tensions and Compromises Between Ethics and Politics*

The conflict of ascetic ethics, as well as of the mystically oriented temper of brotherly love, with the apparatus of domination which is basic to all political institutions has produced the most varied types of tension and compromise. Naturally, the polarity between religion and

politics is least wherever, as in Confucianism, religion is equivalent to a belief in spirits or simply a belief in magic, and ethics is no more than a prudent accommodation to the world on the part of the educated man. Nor does any conflict between religion and politics exist wherever, as in Islam, religion makes obligatory the violent propagation of the true prophecy which consciously eschews universal conversion and enjoins the subjugation of unbelievers under the dominion of a ruling order dedicated to the religious war as one of the basic postulates of its faith, without recognizing the salvation of the subjugated. For this is obviously no universalistic salvation religion. The practice of coercion poses no problem, as god is pleased by the forcible dominion of the faithful over the infidels, who are tolerated once they have been subjugated.

Inner-worldly asceticism reached a similar solution to the problem of the relation between religion and politics wherever, as in radical Calvinism, it represented as God's will the domination over the sinful world, for the purpose of controlling it, by religious virtuosi belonging to the "pure" church. This view was fundamental in the theocracy of New England, in practice if not explicitly, though naturally it became involved with compromises of various kinds. Another instance of the absence of any conflict between religion and politics is to be found in the intellectualistic salvation doctrines of India, such as Buddhism and Jainism, in which every relationship to the world and to action within the world is broken off, and in which the personal exercise of violence as well as resistance to violence is absolutely prohibited and is indeed without any object. Mere conflict between concrete demands of a state and concrete religious injunctions arises when a religion is the pariah faith of a group that is excluded from political equality but still believes in the religious prophecies of a divinely appointed restoration of its social level. This was the case in Judaism, which never in theory rejected the state and its coercion but, on the contrary, expected in the Messiah their own masterful political ruler, an expectation that was sustained at least until the time of the destruction of the Temple by Hadrian.

Wherever congregational religions have rejected all employment of force as an abomination to god and have sought to require their members' avoidance of all violence, without however reaching the consistent conclusion of absolute flight from the world, the conflict between religion and politics has led either to martyrdom or to passive anti-political sufferance of the coercive regime. History shows that religious anarchism has hitherto been only a short-lived phenomenon, because the intensity of faith which makes it possible is in only an ephemeral charisma. Yet there have been independent political organizations which were based,

not on a purely anarchistic foundation, but on a foundation of consistent pacifism. The most important of these was the Quaker community in Pennsylvania, which for two generations actually succeeded, in contrast to all the neighboring colonies, in existing side by side with the Indians, and indeed prospering, without recourse to violence. Such situations continued until the conflicts of the great colonial powers made a fiction of pacifism. Finally, the American War of Independence, which was waged in the name of basic principles of Quakerism (though the orthodox Quakers did not participate because of their principle of nonresistance), led to the discrediting of this principle even inwardly. Moreover, the corresponding policy of the tolerant admission of religious dissidents into Pennsylvania brought even the Quakers there to a policy of gerrymandering political wards, which caused them increasing uneasiness and ultimately led them to withdraw from co-responsibility for the government.

Typical examples of completely passive indifference to the political dimension of society, from a variety of motives, are found in such groups as the genuine Mennonites, in most Baptist communities, and in numerous other sects in various places, especially Russia. The absolute renunciation of the use of force by these groups led them into acute conflicts with the political authorities only where military service was demanded of the individuals concerned. Indeed, attitudes toward war, even of religious denominations that did not teach an absolutely antipolitical attitude, have varied in particular cases, depending upon whether the wars in question were fought to protect the religion's freedom of worship from attack by political authority or fought for purely political purposes. For these two types of war, two diametrically opposite slogans prevailed. On the one hand, there was the purely passive sufferance of alien power and the withdrawal from any personal participation in the exercise of violence, culminating ultimately in personal martyrdom. This was of course the position of mystical apoliticism, with its absolute indifference to the world, as well as the position of those types of inner-worldly asceticism which were pacifistic in principle. But even a purely personal religion of faith frequently generated political indifference and religious martyrdom, inasmuch as it recognized neither a rational order of the outer world pleasing to God, nor a rational domination of the world desired by God. Thus, Luther completely rejected religious revolutions as well as religious wars.

The other possible standpoint was that of violent resistance, at least to the employment of force against religion. The concept of a religious revolution was consistent most with a rationalism oriented to an ascetic mastery of mundane affairs which taught that sacred institutions and

institutions pleasing to God exist within this world. Within Christianity, this was true in Calvinism, which made it a religious obligation to defend the faith against tyranny by the use of force. It should be added, however, that Calvin taught that this defense might be undertaken only at the initiative of the proper authorities, in keeping with the character of an institutional church. The obligation to bring about a revolution in behalf of the faith was naturally taught by the religions that engaged in wars of missionary enterprise and by their derivative sects, like the Mahdists and other sects in Islam, including the Sikhs—a Hindu sect that was originally pacifist but passed under the influence of Islam and became eclectic.

The representatives of the two opposed viewpoints just described sometimes took virtually reverse positions toward a political war that had no religious motivation. Religions that applied ethically rationalized demands to the political realm had necessarily to take a more fundamentally negative attitude toward purely political wars than those religions that accepted the institutions of the world as "given" and relatively indifferent in value. The unvanquished Cromwellian army petitioned Parliament for the abolition of forcible conscription, on the ground that a Christian should participate only in those wars the justice of which could be affirmed by his own conscience. From this standpoint, the mercenary army might be regarded as a relatively ethical institution, inasmuch as the mercenary would have to settle with God and his conscience as to whether he would take up this calling. The employment of force by the state can have moral sanction only when the force is used for the control of sins, for the glory of God, and for combating religious evils—in short, only for religious purposes. On the other hand, the view of Luther, who absolutely rejected religious wars and revolutions as well as any active resistance, was that only the secular authority, whose domain is untouched by the rational postulates of religion, has the responsibility of determining whether political wars are just or unjust. Hence, the individual subject has no reason to burden his own conscience with this matter if only he gives active obedience to the political authority in this and in all other matters which do not destroy his relationship to God.

The position of ancient and medieval Christianity in relation to the state as a whole oscillated or, more correctly, shifted its center of gravity from one to another of several distinct points of view. At first there was a complete abomination of the existing Roman empire, whose existence until the very end of time was taken for granted in Antiquity by everyone, even Christians. The empire was regarded as the dominion of Anti-Christ. A second view was complete indifference to the state, and

hence passive sufferance of the use of force, which was deemed to be unrighteous in every case. This entailed active compliance with all the coercive obligations imposed by the state, e.g., the payment of taxes which did not directly imperil religious salvation. For the true intent of the New Testament verse about "rendering unto Caesar the things which are Caesar's" is not the meaning deduced by modern harmonizing interpretations, namely a positive recognition of the obligation to pay taxes, but rather the reverse: an absolute indifference to all the affairs of the mundane world.

Two other viewpoints were possible. One entailed withdrawal from concrete activities of the political community, such as the cult of the emperors, because and insofar as such participation necessarily led to sin. Nevertheless, the state's authority was accorded positive recognition as being somehow desired by God, even when exercised by unbelievers and even though inherently sinful. It was taught that the state's authority, like all the institutions of this world, is an ordained punishment for the sin brought upon man by Adam's fall, which the Christian must obediently take upon himself. Finally, the authority of the state, even when exercised by unbelievers, might be evaluated positively, due to our condition of sin, as an indispensable instrument, based upon the divinely implanted natural knowledge of religiously unilluminated heathens, for the social control of reprehensible sins and as a general condition for all mundane existence pleasing to God.

3. *Natural Law and Vocational Ethics*

Of these four points of view, the first two mentioned belong primarily to the period of eschatological expectation, but occasionally they come to the fore even in a later period. As far as the last of the four is concerned, ancient Christianity did not really go beyond it in principle, even after it had been recognized as the state religion. Rather, the great change in the attitude of Christianity toward the state took place in the medieval church, as the investigations of Troeltsch have brilliantly demonstrated.[1] But the problem in which Christianity found itself involved as a result, while not limited to this religion, nevertheless generated a whole complex of difficulties peculiar to Christianity alone, partly from internal religious causes and partly from the operation of non-religious factors. This critical complex of difficulties concerned the relationship of so-called "natural law" to religious revelation on the one hand, and to positive political institutions and their activities on

We shall advert again to this matter briefly, both in connection with our exposition of the forms of religious communities and in our analysis of the forms of domination [below, ch. XV:14]. But the following point may be made here regarding the theoretical solution of these problems as it affects personal ethics: the general schema according to which religion customarily solves the problem of the tension between religious ethics and the non-ethical or unethical requirements of life in the political and economic structures of power within the world is to relativize and differentiate ethics into "organic" (as contrasted to "ascetic") *ethics of vocation*. This holds true whenever a religion is dominant within a political organization or occupies a privileged status, and particularly when it is a religion of institutional grace.

Christian doctrine, as formulated by Aquinas for example, to some degree assumed the view, already common in animistic beliefs regarding souls and the world beyond, that there are purely natural differences among men, completely independent of any effects of sin, and that these natural differences determine the diversity of status destinies in this world and beyond. Troeltsch has correctly stressed the point that this formulation of Christian doctrine differs from the view found in Stoicism and earliest Christianity of an original golden age and a blissful state of anarchic equality of all human beings.[2]

At the same time, however, religion interprets the power relationships of the mundane world in a metaphysical way. Human beings are condemned—whether as a result of original sin, of an individual causality of *karma*, or of the corruption of the world deriving from a basic dualism—to suffer violence, toil, pain, hate, and above all differences in class and status position within the world. The various callings or castes have been providentially ordained, and each of them has been assigned some specific, indispensable function desired by god or determined by the impersonal world order, so that different ethical obligations devolve upon each. The diverse occupations and castes are compared to the constituent portions of an organism in this type of theory. The various relationships of power which emerge in this manner must therefore be regarded as divinely ordained relationships of authority. Accordingly, any revolt or rebellion against them, or even the raising of vital claims other than those corresponding to one's status in society, is reprehensible to god because they are expressions of creaturely self-aggrandizement and pride which are destructive of sacred tradition. The virtuosi of religion, be they of an ascetic or contemplative type, are also assigned their specific responsibility within such an organic order, just as specific functions have been allocated to princes, warriors, judges, artisans, and peasants. This allocation of responsibilities to religious

virtuosi is intended to produce a treasure of supernumerary good works which the institution of grace may thereupon distribute. By subjecting himself to the revealed truth and to the correct sentiment of love, the individual will achieve, and that within the established institutions of the world, happiness in this world and reward in the life to come.

For Islam, this organic conception and its entire complex of related problems was much more remote, since Islam rejected universalism, regarding the ideal status order as consisting of believers and unbelievers or pariah peoples, with the former dominating the latter. Accordingly, Islam left the pariah peoples entirely to themselves in all matters which were of indifference to religion. It is true that the mystical quest for salvation and ascetic virtuoso religion did conflict with institutional orthodoxy in the Muslim religion. It is also true that Islam did experience conflicts between sacred and profane law, which always arise when positive sacred norms of the law have developed. Finally, Islam did have to face certain questions of orthodoxy in the theocratic constitution. But Islam did not confront the ultimate problem of the relationship between religious ethics and secular institutions, which is a problem of religion and natural law.

On the other hand, the Hindu books of law promulgated an organic, traditionalistic ethic of vocation, similar in structure to medieval Catholicism, only more consistent, and certainly more consistent than the rather thin Lutheran doctrine regarding the *status ecclesiasticus, politicus,* and *oeconomicus.* As we have already seen, the status system in India actually combined a caste ethic with a distinctive doctrine of salvation. That is, it held that an individual's chances of an ever higher ascent in future incarnations upon earth depend on his having fulfilled the obligations of his own caste, be they ever so disesteemed socially. This belief had the effect of inducing a radical acceptance of the social order, especially among the very lowest castes, which would have most to gain in any transmigration of souls.

On the other hand, the Hindu theodicy would have regarded as absurd the medieval Christian doctrine, as set forth for example by Beatrice in the *Paradiso* of Dante, that the class differences which obtain during one's brief span of life upon earth will be perpetuated into some "permanent" existence in the world beyond. Indeed, such a view would have deprived the strict traditionalism of the Hindu organic ethic of vocation of all the infinite hopes for the future entertained by the pious Hindu who believed in the transmigration of souls and the possibility of an ever more elevated form of life upon this earth. Hence, even from the purely religious point of view, the Christian doctrine of the perpetuation of class distinctions [illegible]e next world had the effect

of providing a much less secure foundation for the traditional stratification of vocations than did the steel-like anchorage of caste to the altogether different religious promises contained in the doctrine of metempsychosis.

The medieval and the Lutheran traditionalistic ethics of vocation actually rested on a general presupposition, one that is increasingly rare, which both share with the Confucian ethic: that power relationships in both the economic and political spheres have a purely personal character. In these spheres of the execution of justice and particularly in political administration, a whole organized structure of personal relations of subordination exists which is dominated by caprice and grace, indignation and love, and most of all by the mutual piety and devotion of masters and subalterns, after the fashion of the family. Thus, these relationships of domination have a character to which one may apply ethical requirements in the same way that one applies them to every other purely personal relationship.

Yet as we shall see later, it is quite certain that the "masterless slavery" (Wagner) of the modern proletariat, and above all the whole realm of the rational institution of the state—that "rascal, the state" (*Racker von Staat*) so heartily abominated by romanticism—no longer possess this personalistic character.[8] In a personalistic status order it is quite clear that one must act differently toward persons of different status. The only problem that may arise on occasion, even for Thomas Aquinas, is how this is to be construed. Today, however, the *homo politicus*, as well as the *homo oeconomicus*, performs his duty best when he acts without regard to the person in question, *sine ira et studio*, without hate and without love, without personal predilection and therefore without grace, but sheerly in accordance with the impersonal duty imposed by his calling, and not as a result of any concrete personal relationship. He discharges his responsibility best if he acts as closely as possible in accordance with the rational regulations of the modern power system. Modern procedures of justice impose capital punishment upon the malefactor, not out of personal indignation or the need for vengeance, but with complete detachment and for the sake of objective norms and ends, simply for the working out of the rational autonomous lawfulness inherent in justice. This is comparable to the impersonal retribution of *karma*, in contrast to Yahweh's fervent quest for vengeance.

The use of force within the political community increasingly assumes the form of the *Rechtsstaat*. But from the point of view of religion, this is merely the most effective mimicry of brutality. All politics is oriented to *raison d'état*, to realism, and to the autonomous end of

maintaining the external and internal distribution of power. These goals, again, must necessarily seem completely senseless from the religious point of view. Yet only in this way does the realm of politics acquire a peculiarly rational mystique of its own, once brilliantly formulated by Napoleon, which appears as thoroughly alien to every ethic of brotherliness as do the rationalized economic institutions.

The accommodation that contemporary ecclesiastical ethics is making to this situation need not be discussed in detail here. In general the compromise takes form through reaction to each concrete situation as it arises. Above all, and particularly in the case of Catholicism, the accommodation involves the salvaging of ecclesiastical power interests, which have increasingly become objectified into a *raison d'église*, by the employment of the same modern instruments of power employed by secular institutions.

The objectification of the power structure, with the complex of problems produced by its rationalized ethical provisos, has but one psychological equivalent: the vocational ethic taught by asceticism. An increased tendency toward flight into the irrationalities of apolitical emotionalism in different degrees and forms, is one of the actual consequences of the rationalization of coercion, manifesting itself wherever the exercise of power has developed away from the personalistic orientation of heroes and wherever the entire society in question has developed in the direction of a national "state." Such apolitical emotionalism may take the form of a flight into mysticism and an acosmistic ethic of absolute goodness or into the irrationalities of non-religious emotionalism, above all eroticism. Indeed, the power of the sphere of eroticism enters into particular tensions with religions of salvation. This is particularly true of the most powerful component of eroticism, namely sexual love. For sexual love, along with the "true" or economic interest, and the social drives toward power and prestige, is among the most fundamental and universal components of the actual course of interpersonal behavior.

NOTES

1. See Ernst Troeltsch, "Das stoisch-christliche Naturrecht und das moderne profane Naturrecht" (1911), in *Aufsätze zur Geistesgeschichte und Religionssoziologie* (Tübingen: Mohr, 1924), 179. (W)

2. *Id.*, "Epochen und Typen der Sozialphilosophie des Christentums" (1911), *op. cit.*, 133.

3. The term "herrenlose Sklaverei" is attributed to the economist Adolf Wagner (1835–1917), a proponent of the Christian welfare state. "Racker von Staat" had in Weber's time become a humorous expression; it was a favorite

phrase of the romantic king Frederick William IV of Prussia (1840–61). The words were allegedly spoken by a peasant whose personal petition the king had turned down in the name of state and order; the peasant is supposed to have said: "I knew in advance that it would not be my beloved King who would confront me but that *Racker von Staat*."

XIV

Religious Ethics and the World: Sexuality and Art

1. *Orgy versus Chastity*

The relationship of religion to sexuality is extraordinarily intimate, though it is partly conscious and partly unconscious, and though it may be indirect as well as direct. We shall focus on a few traits of this relationship that have sociological relevance, leaving out of account as being rather unimportant for our purposes the innumerable relationships of sexuality to magical notions, animistic notions, and symbols. In the first place, sexual intoxication is a typical component of the orgy, the religious behavior of the laity at a primitive level. The function of sexual intoxication may be retained even in relatively systematized religions, in some cases quite directly and by calculation. This is the case in the *Shakti*-religion of India, after the pattern of the ancient phallic cults and rites of the various functional gods who control reproduction, whether of man, beast, cattle, or grains of seed. More frequently, however, the erotic orgy appears in religion as an undesired consequence of ecstasy produced by other orgiastic means, particularly the dance. Among modern sects, this was still the case in the terpsichorean orgy of the Khlysty. This provided the stimulus for the formation of the Skoptsy sect, which, as we have seen, then sought to eliminate this erotic by-product so inimical to asceticism.[1] Various institutions which have often been misinterpreted, as for example temple prostitution, are related to orgiastic cults. In practice, temple prostitution frequently fulfilled the function of a brothel for traveling traders who enjoyed the protection of the sanctuary. (In the nature of the case, the typical client of brothels to this very day remains the traveling salesman.) To attribute extraordinary sexual orgies to a primordial and endogamous promiscuity obtaining in

the everyday life of the clan or tribe as a generic primitive institution is simple nonsense.

The intoxication of the sexual orgy can, as we have seen, be sublimated explicitly or implicitly into erotic love for a god or savior. But there may also emerge from the sexual orgy, from temple prostitution, or from other magical practices the notion that sexual surrender has a religious meritoriousness. This aspect of the matter need not interest us here. Yet there can be no doubt that a considerable portion of the specifically anti-erotic religiosity, both mystical and ascetic, represents substitute satisfactions of sexually conditioned physiological needs. What concerns us in this religious hostility to sexuality is not the neurological relationships, important aspects of which are still controversial, but rather the meaning which is attributed to sex. For this meaning which underlies religious antipathy to sex in a given case may produce quite diverse results in actual conduct, even if the neurological factor remains constant. Even these consequences for action are of only partial interest here. The most limited manifestations of the religiously grounded antipathy to sexuality is cultic chastity, a temporary abstinence from sexual activity by the priests or participants in the cult prior to the administration of sacraments. A primary reason for such temporary abstinence is usually regard for the norms of taboo which for various magical and spiritualistic reasons control the sexual sphere. The details of this matter do not concern us here.

On the other hand, the permanent abstinence of charismatic priests and religious virtuosi derives primarily from the view that chastity, as a highly extraordinary type of behavior, is a symptom of charismatic qualities and a source of valuable ecstatic abilities, which qualities and abilities are necessary instruments for the magical control of the god. Later on, especially in Occidental Christianity, a major reason for priestly celibacy was the necessity that the ethical achievement of the priestly incumbents of ecclesiastical office not lag behind that of the ascetic virtuosi, the monks. Another major reason for the emphasis upon the celibacy of the clergy was the church's interest in preventing the inheritance of its benefices by the heirs of priests.

At the level of ethical religion, two other significant attitudes of antipathy to sexuality developed in place of the various types of magical motivation. One was the conception of mystical flight from the world; this conception interpreted sexual abstinence as the central and indispensable instrument of the mystical quest for salvation through contemplative withdrawal from the world, in which sexuality, the drive that most firmly binds man to the animal level, constitutes the most powerful temptation. The other basic position was that of asceticism.

Rational ascetic alertness, self-control, and methodical planning of life are threatened the most by the peculiar irrationality of the sexual act, which is ultimately and uniquely unsusceptible to rational organization. These two motivations have frequently operated together to produce hostility toward sexuality in particular religions. All genuine religious prophecies and all non-prophetic priestly systematizations of religion without exception concern themselves with sexuality from such motives as we have just discussed, generally terminating in hostility toward sexuality.

2. *The Religious Status of Marriage and of Women*

Religion primarily desires to eliminate the sexual orgy (the "whoredom" denounced by the Jewish priests), in keeping with prophetic religion's general attitude toward orgies, which we have described already. But an additional effort is made by religion to eliminate all free sexual relationships in the interest of the religious regulation and legitimation of marriage. Such an effort was even made by Muhammad, although in his personal life and in his religious preachments regarding the world beyond he permitted unlimited sexual freedom to the warrior of the faith. It will be recalled that in one of his *suras* he ordained a special dispensation regarding the maximum number of wives permitted for himself. The various forms of extra-marital love and prostitution, which were legal before the establishment of orthodox Islam, have been proscribed in that religion with a success scarcely duplicated elsewhere.

World-fleeing asceticism of the Christian and Hindu types would obviously have been expected to evince an antipathetic attitude toward sex. The mystical Hindu prophecies of absolute and contemplative world-flight naturally made the rejection of all sexual relations a prerequisite for complete salvation. But even the Confucian ethic of absolute accommodation to the world viewed irregular sexual expression as an inferior irrationality, since irregular behavior in this sphere disturbed the inner equilibrium of a gentleman and since woman was viewed as an irrational creature difficult to control. Adultery was prohibited in the Mosaic Decalogue, in the Hindu sacred law, and even in the relativistic lay ethics of the Hindu monastic prophecies. The religious preaching of Jesus, with its demand of absolute and indissoluble monogamy, went beyond all other religions in the limitations imposed upon permissible and legitimate sexuality. In the earliest period of Christianity, adultery and whoredom were almost regarded as the only absolute mortal sins. The *univira* was regarded as the hallmark of the Christian community

in the Mediterranean littoral area, which had been educated by the Greeks and the Romans to accept monogamy, but with free divorce.

Naturally, the various prophets differed widely in their personal attitudes toward woman and her place in the community, depending on the character of their prophecy, especially on the extent to which it corresponds to the distinctively feminine emotionality. The fact that a prophet such as the Buddha was glad to see bright women sitting at his feet and the fact that he employed them as propagandists and missionaries, as did Pythagoras, did not necessarily carry over into an evaluation of the whole female sex. A particular woman might be regarded as sacred, yet the entire female sex would still be considered vessels of sin. Yet practically all orgiastic and mystagogic religious propagandizing, including that of the cult of Dionysos, called for at least a temporary and relative emancipation of women, unless such preachment was blocked by other religious tendencies or by specific resistance to hysterical preaching by women, as occurred among the disciples of the Buddha and in ancient Christianity as early as Paul. The admission of women to an equality of religious status was also resisted due to monastic misogyny, which assumed extreme forms in such sexual neurasthenics as Alfonsus Liguori [1696–1787]. Women are accorded the greatest importance in sectarian spiritualist cults, be they hysterical or sacramental, of which there are numerous instances in China. Where women played no role in the missionary expansion of a religion, as was the case in Zoroastrianism and Judaism, the situation was different from the very start.

Legally regulated marriage itself was regarded by both prophetic and priestly ethics, not as an erotic value, but in keeping with the sober view of the so-called "primitive peoples," simply as an economic institution for the production and rearing of children as a labor force and subsequently as carriers of the cult of the dead. This was also the view of the Greek and Roman ethical systems, and indeed of all ethical systems the world over which have given thought to the matter. The view expressed in the ancient Hebrew scriptures that the young bridegroom was to be free of political and military obligations for a while so that he might have the joy of his young love was a very rare view. Indeed, not even Judaism made any concessions to sophisticated erotic expression divorced from sexuality's natural consequence of reproduction, as we see in the Old Testament curse upon the sin of Onan (*coitus interruptus*). Roman Catholicism adopted the same rigorous attitude toward sexuality by rejecting birth control as a mortal sin. Of course every type of religious asceticism which is oriented toward the control of this world, and above all Puritanism, limits the legitimation of sexual expres-

sion to the aforementioned rational goal of reproduction. The anomistic and semi-orgiastic types of mysticism were led by their universalistic feeling of love into only occasional deviations from the central hostility of religion toward sexuality.

Finally, the evaluation of normal and legitimate sexual intercourse, and thus the ultimate relationship between religion and biological phenomena, by prophetic ethics and even ecclesiastical rational ethics is still not uniform. Ancient Judaism and Confucianism generally taught that offspring were important. This view, also found in Vedic and Hindu ethics, was based in part on animistic notions and in part on later ideas. All such notions culminated in the direct religious obligation to beget children. In Talmudic Judaism and in Islam, on the other hand, the motivation of the comparable injunction to marry seems to have been based, in part at least, like the exclusion of unmarried ordained clergy from the lower ecclesiastical benefices in the Eastern churches, on the conception that sexual drives are absolutely irresistible for the average man, for whom it is better that a legally regulated channel of expression be made available.

These beliefs in the inevitability of sexual expression correspond to the attitude of Paul and to the relativity of lay ethics in the Hindu contemplative religions of salvation, which proscribe adultery for the *upasakas*. Paul, from mystical motivations which we need not describe here, esteemed absolute abstinence as the purely personal charisma of religious virtuosi. The lay ethic of Catholicism also followed this point of view. Further, this was the attitude of Luther, who regarded sexual expression within marriage simply as a lesser evil enjoined for the avoidance of whoredom. Luther construed marriage as a legitimate sin which God was constrained not to notice, so to speak, and which of course was a consequence of the ineluctable concupiscence resulting from original sin. This notion, similar to Muhammad's notion, partly accounts for Luther's relatively weak opposition to monasticism at first. There was to be no sexuality in Jesus' kingdom to come, that is, in some future terrestrial regime, and all official Christian theory strongly rejected the inner emotional side of sexuality as constituting concupiscence, the result of original sin.

Despite the widespread belief that hostility toward sexuality is an idiosyncracy of Christianity, it must be emphasized that no authentic religion of salvation had in principle any other point of view. There are a number of reasons for this. The first is based on the nature of the evolution that sexuality itself increasingly underwent in actual life, as a result of the rationalization of the conditions of life. At the level of the peasant, the sexual act is an everyday occurrence; primitive people do

not regard this act as containing anything unusual, and they may indeed enact it before the eyes of onlooking travelers without the slightest feeling of shame. They do not regard this act as having any significance beyond the routine of living. The decisive development, from the point of view of the problems which concern us, is the sublimation of sexual expression into an eroticism that becomes the basis of idiosyncratic sensations, hence generates its own unique values and transcends everyday life. The impediments to sexual intercourse that are increasingly produced by the economic interests of clans and by status conventions are the most important factors favoring this sublimation of sexuality into eroticism. To be sure, sexual relations were never free of religious or economic regulations at any known point in the evolutionary sequence, but originally they were far less surrounded by bonds of convention, which gradually attach themselves to the original economic restrictions until they subsequently become major restrictions on sexuality.

The influence of modern ethical limitations upon sexual relations, which is alleged to be the source of prostitution, is almost always interpreted erroneously. Professional prostitution of both the heterosexual and homosexual types (note the training of *tribades*) is found even at the most primitive levels of culture, and everywhere there is some religious, military, or economic limitation upon prostitution. However, the absolute proscription of prostitution dates only from the end of the fifteenth century. As culture becomes more complex, there is a constant growth in the requirements imposed by the clan in regard to providing security for the children of a female member, and also in the living standards of young married couples. Thereby another evolutionary factor becomes necessarily important. In the formation of ethical attitudes the emergence of a new and progressively rationalized total life pattern, changing from the organic cycle of simple peasant existence, has a far stronger influence but one less likely to be noticed.

3. *The Tensions Between Ethical Religion and Art*

Just as ethical religion, especially if it preaches brotherly love, enters into the deepest inner tensions with the strongest irrational power of personal life, namely sexuality, so also does ethical religion enter into a strong polarity with the sphere of art. Religion and art are intimately related in the beginning. That religion has been an inexhaustible spring for artistic expressions is evident from the existence of idols and icons of every variety, and from the existence of music as a device for arousing ecstasy or for accompanying exorcism and apotropaic cultic actions.

Religion has stimulated the artistic activities of magicians and sacred bards, as well as the creation of temples and churches (the greatest of artistic productions), together with the creation of religious paraments and church vessels of all sorts, the chief objects of the arts and crafts. But the more art becomes an autonomous sphere, which happens as a result of lay education, the more art tends to acquire its own set of constitutive values, which are quite different from those obtaining in the religious and ethical domain.

Every unreflectively receptive approach to art starts from the significance of the *content*, and that may induce formation of a community. But the conscious discovery of uniquely esthetic values is reserved for an intellectualist civilization. This development causes the disappearance of those elements in art which are conducive to community formation and conducive to the compatibility of art with the religious will to salvation. Indeed, religion violently rejects as sinful the type of salvation within the world which art *qua* art claims to provide. Ethical religions as well as true mysticisms regard with hostility any such salvation from the ethical irrationalities of the world. The climax of this conflict between art and religion is reached in authentic asceticism, which views any surrender to esthetic values as a serious breach in the rational systematization of the conduct of life. This tension increases with the advance of intellectualism, which may be described as quasi-esthetic. The rejection of responsibility for ethical judgment and the fear of appearing bound by tradition, which come to the fore in intellectualist periods, shift judgments whose intention was originally ethical into an esthetic key. Typical is the shift from the judgment "reprehensible" to the judgment "in poor taste." But this unappealable subjectivity of all judgments about human relationships that actually comes to the fore in the cult of estheticism, may well be regarded by religion as one of the profoundest forms of idiosyncratic lovelessness conjoined with cowardice. Clearly there is a sharp contrast between the esthetic attitude and religio-ethical norms, since even when the individual rejects ethical norms he nevertheless experiences them humanly in his knowledge of his own creatureliness. He assumes some such norm to be basic for his own conduct as well as another's conduct in the particular case which he is judging. Moreover, it is assumed in principle that the justification and consequences of a religio-ethical norm remain subject to discussion. At all events, the esthetic attitude offers no support to a consistent ethic of fraternalism, which in its turn has a clearly anti-esthetic orientation.

The religious devaluation of art, which usually parallels the religious devaluation of magical, orgiastic, ecstatic, and ritualistic elements

in favor of ascetic, spiritualistic, and mystical virtues, is intensified by the rational and literary character of both priestly and lay education in scriptural religions. But it is above all authentic prophecy that exerts an influence hostile to art, and that in two directions. First, prophecy obviously rejects orgiastic practices and usually rejects magic in general. Thus, the primal Jewish fear of images and likenesses, which originally had a magical basis, was given a spiritualistic interpretation by Hebrew prophecy and transformed in relation to a concept of an absolute and transcendental god. Second, somewhere along the line there arose the opposition of prophetic faith, which is centrally oriented to ethics and religion, to the work of human hands, which in the view of the prophets could promise only illusory salvation. The more the god proclaimed by the prophets was conceived as transcendental and sacred, the more insoluble and irreconcilable became this opposition between religion and art.

On the other hand, religion is continually brought to recognize the undeniable "divinity" of artistic achievement. Mass religion in particular is frequently and directly dependent on artistic devices for the required potency of its effects, and it is inclined to make concessions to the needs of the masses, which everywhere tend toward magic and idolatry. Apart from this, organized mass religions have frequently had connections with art resulting from economic interests, as, for instance, in the case of the traffic in icons by the Byzantine monks, the most decisive opponents of the caesaropapist Imperial power which was supported by an army that was iconoclastic because it was recruited from the marginal provinces of Islam, still strongly spiritualistic at that time. The imperial power, in turn, attempted to cut off the monks from this source of income, hoping thus to destroy the economic strength of this most dangerous opponent to its plans for domination over the church.

Subjectively too, there is an easy way back to art from every orgiastic or ritualistic religion of emotionalism, as well as from every mystic religion of love that culminates in a transcendence of individuality—despite the heterogeneity of the ultimate meanings involved. Orgiastic religion leads most readily to song and music; ritualistic religion inclines toward the pictorial arts; religions enjoining love favor the development of poetry and music. This relationship is demonstrated by all our experience of Hindu literature and art; the joyous lyricism of the Sufis, so utterly receptive to the world; the canticles of St. Francis; and the immeasurable influences of religious symbolism, particularly in mystically formed attitudes. Yet particular empirical religions hold basically different attitudes toward art, and even within any one religion diverse attitudes toward art are manifested by different strata, carriers, and

structural forms. In their attitudes toward art, prophets differ from mystagogues and priests, monks from pious laymen, and mass religions from sects of virtuosi. Sects of ascetic virtuosi are naturally more hostile to art on principle than are sects of mystical virtuosi. But these matters are not our major concern here. At all events, any real inner compromise between the religious and the esthetic attitudes in respect to their ultimate (subjectively intended) meaning is rendered increasingly difficult once the stages of magic and pure ritualism have been left behind.

In all this, the one important fact for us is the significance of the marked rejection of all distinctively esthetic devices by those religions which are rational, in our special sense. These are Judaism, ancient Christianity, and—later on—ascetic Protestantism. Their rejection of esthetics is either a symptom or an instrument of religion's increasingly rational influence upon the conduct of life. It is perhaps going too far to assert that the second commandment of the Decalogue is the decisive foundation of actual Jewish rationalism, as some representatives of influential Jewish reform movements have assumed. But there can be no question at all that the systematic prohibition in devout Jewish and Puritan circles of uninhibited surrender to the distinctive form-producing values of art has effectively controlled the degree and scope of artistic productivity in these circles, and has tended to favor the development of intellectualist and rational controls over life.

NOTE

1. The *Khlysty* ("flagellants" or, in another explanation, a derisory distortion of their self-designation as *Kristy*, "Christs" or "People of God") were a clandestine Russian sect in existence at least since the 17th century. Their services, involving ecstatic dance, were claimed by their persecutors to have culminated in sexual orgies (*svalnii grech*, a ritual of "Christian loving"); cf. K. K. Grass, *Die russischen Sekten*, I (1907), 434ff., who discounts the accusations. The *Skoptsy* ("castrators"), an offshoot of the above group founded in the 1770s, aspired to purification through various degrees of self-emasculation. See also A. Leroy-Beaulieu, *The Empire of the Tsars* (London 1896), III.

XV

The Great Religions and the World

1. *Judaism and Capitalism*

Judaism, in its postexilic and particularly its Talmudic form, belongs among those religions that are in some sense accommodated to the world. Judaism is at least oriented to the world in the sense that it does not reject the world as such but only rejects the prevailing social rank order in the world.

We have already made some observations concerning the total sociological structure and attitude of Judaism. Its religious promises, in the customary meaning of the word, apply to this world, and any notions of contemplative or ascetic world-flight are as rare in Judaism as in Chinese religion and in Protestantism. Judaism differs from Puritanism only in the relative (as always) absence of systematic asceticism. The ascetic elements of the early Christian religion did not derive from Judaism, but emerged primarily in the heathen Christian communities of the Pauline mission. The observance of the Jewish law has as little to do with asceticism as the fulfillment of any ritual or tabooistic norms.

Moreover, the relationship of the Jewish religion to both wealth and sexual indulgence is not in the least ascetic, but rather highly naturalistic. For wealth was regarded as a gift of God, and the satisfaction of the sexual impulse—naturally in the prescribed legal form—was thought to be so imperative that the Talmud actually regarded a person who had remained unmarried after a certain age as morally suspect. The interpretation of marriage as an economic institution for the production and rearing of children is universal and has nothing specifically Jewish about it. Judaism's strict prohibition of illegitimate sexual intercourse, a prohibition that was highly effective among the pious, was also found in Islam and all other prophetic religions, as well as in Hinduism. Moreover, the majority of ritualistic religions shared with Judaism the institution of periods of abstention from sexual relations for purposes of purification. For these reasons, it is not possible to speak of an idiosyncratic emphasis upon sexual asceticism in Judaism. The sexual regulations cited by Sombart do not go as far as the Catholic casuistry of the seventeenth century and in any case have analogies in many other casuistical systems of taboo.[1]

Nor did Judaism forbid the uninhibited enjoyment of life or even of luxury as such, provided that the positive prohibitions and taboos of the law were observed. The denunciation of wealth in the prophetic books, the Psalms, the Wisdom literature, and subsequent writings was evoked by the social injustices which were so frequently perpetrated against fellow Jews in connection with the acquisition of wealth and in violation of the spirit of the Mosaic law. Wealth was also condemned in response to arrogant disregard of the commandments and promises of God and in response to the rise of temptations to laxity in religious observance. To escape the temptations of wealth is not easy, but is for this reason all the more meritorious. "Hail to the man of wealth who has been found to be blameless." Moreover, since Judaism possessed no doctrine of predestination and no comparable idea producing the same ethical effects, incessant labor and success in business life could not be regarded or interpreted in the sense of certification, which appears most strongly among the Calvinist Puritans and which is found to some extent in all ascetic Protestant religions, as shown in John Wesley's remark on this point.[2] Of course a certain tendency to regard success in one's economic activity as a sign of God's gracious direction existed in the religion of the Jews, as in the religions of the Chinese and the lay Buddhists and generally in every religion that has not turned its back upon the world. This view was especially likely to be manifested by a religion like Judaism, which had before it very specific promises of a transcendental God together with very visible signs of this God's indignation against the people he had chosen. It is clear that any success achieved in one's economic activities while keeping the commandments of God could be, and indeed had to be, interpreted as a sign that one was personally acceptable to God. This actually occurred again and again.

But the situation of the pious Jew engaged in business was altogether different from that of the Puritan, and this difference remained of practical significance for the role of Judaism in the history of the economy. Let us now consider what this role has been. In the polemic against Sombart's book, one fact should not have been seriously questioned, namely that Judaism played a conspicuous role in the evolution of the modern capitalistic system. However, this thesis of Sombart's book needs to be made more precise. What were the *distinctive* economic achievements of Judaism in the Middle Ages and in modern times? We can easily list: moneylending, from pawnbroking to the financing of great states; certain types of commodity business, particularly retailing, peddling, and produce trade of a distinctively rural type; certain branches of wholesale business: and trading in securities, above all the brokerage of stocks. To this list of Jewish economic achievements should be added:

money-changing; money-forwarding or check-cashing, which normally accompanies money-changing; the financing of state agencies, wars, and the establishment of colonial enterprises; tax-farming (naturally excluding the collection of prohibited taxes such as those directed to the Romans); banking; credit; and the floating of bond issues. But of all these businesses only a few, though some very important ones, display the forms, both legal and economic, characteristic of modern Occidental capitalism (as contrasted to the capitalism of ancient times, the Middle Ages, and the earlier period in Eastern Asia). The distinctively modern legal forms include securities and capitalist associations, but these are not of specifically Jewish provenience. The Jews introduced some of these forms into the Occident; but the forms themselves have perhaps a common Oriental (probably Babylonian) origin, and their influence on the Occident was mediated through Hellenistic and Byzantine sources. In any event they were common to both the Jews and the Arabs. It is even true that the specifically modern forms of these institutions were in part Occidental and medieval creations, with some specifically Germanic infusions of influence. To adduce detailed proof of this here would take us too far afield. However, it can be said by way of example that the Exchange, as a "market of tradesmen," was created not by Jews but by Christian merchants. Again, the particular manner in which medieval legal concepts were adapted to the purposes of rationalized economic enterprise, i.e., the way in which partnerships *en commandite, maone,* privileged companies of all kinds and finally joint stock corporations were created,[3] was not at all dependent on specifically Jewish influences, no matter how large a part Jews later played in the formation of such rationalized economic enterprises. Finally, it must be noted that the characteristically modern principles of satisfying public and private credit needs first arose *in nuce* on the soil of the medieval city. These medieval legal forms of finance, which were quite un-Jewish in certain respects, were later adapted to the economic needs of modern states and other modern recipients of credit.

Above all, one element particularly characteristic of modern capitalism was strikingly—though not completely—missing from the extensive list of Jewish economic activities. This was the organization of industrial production (*gewerbliche Arbeit*) in domestic industry and in the factory system. How does one explain the fact that no pious Jew thought of establishing an industry employing pious Jewish workers of the ghetto (as so many pious Puritan entrepreneurs had done with devout Christian workers and artisans) at times when numerous proletarians were present in the ghettos, princely patents and privileges for the establishment of any sort of industry were available for a financial remuneration,

and areas of industrial activity uncontrolled by guild monopoly were open? Again, how does one explain the fact that no modern and distinctively industrial bourgeoisie of any significance emerged among the Jews to employ the Jewish workers available for home industry, despite the presence of numerous impecunious artisan groups at almost the threshold of the modern period?

All over the world, for several millennia, the characteristic forms of the capitalist employment of wealth have been state-provisioning, tax-farming, the financing of colonies, the establishment of great plantations, trade, and moneylending. One finds Jews involved in just these activities, found at all times and places but especially characteristic of Antiquity, just as Jews are involved in those legal and entrepreneurial forms evolved by the Middle Ages but not by them. On the other hand, the Jews were relatively or altogether absent from the new and distinctive forms of modern capitalism, the rational organization of labor, especially production in an industrial enterprise of the factory type. The Jews evinced the ancient and medieval business temper which had been and remained typical of all genuine traders, whether small businessmen or large-scale moneylenders, in Antiquity, the Far East, India, the Mediterranean littoral area, and the Occident of the Middle Ages: the will and the wit to employ mercilessly every chance of profit, "for the sake of profit to ride through Hell even if it singes the sails." But this temper is far from distinctive of modern capitalism, as distinguished from the capitalism of other eras. Precisely the reverse is true. Hence, neither that which is new in the modern economic *system* nor that which is distinctive of the modern economic *temper* is specifically Jewish in origin.

The ultimate theoretical reasons for this fact, that the distinctive elements of modern capitalism originated and developed quite apart from the Jews, are to be found in the peculiar character of the Jews as a pariah people and in the idiosyncracy of their religion. Their pariah status presented purely external difficulties impeding their participation in the organization of industrial labor. The legally and factually precarious position of the Jews hardly permitted continuous and rationalized industrial enterprise with fixed capital, but only trade and above all dealing in money. Also of fundamental importance was the subjective ethical situation of the Jews. As a pariah people, they retained the double standard of morals which is characteristic of primordial economic practice in all communities: what is prohibited in relation to one's brothers is permitted in relation to strangers. It is unquestionable that the Jewish ethic was thoroughly traditionalistic in demanding of Jews an attitude of sustenance toward fellow Jews. Although the rabbis made concessions in these matters, as Sombart correctly points out, even in regard to

business transactions with fellow Jews, this amounted merely to concessions to laxity, whereby those who took advantage of them remained far behind the highest standards of Jewish business ethics. In any case, it is certain that such behavior was not the realm in which a Jew could demonstrate his religious merit.

However, for the Jews the realm of economic relations with strangers, particularly economic relations prohibited in regard to fellow Jews, was an area of ethical indifference. This is of course the primordial economic ethic of all peoples everywhere. That this should have remained the Jewish economic ethic was a foregone conclusion, for even in Antiquity the stranger confronted the Jew almost always as an enemy. All the well-known admonitions of the rabbis enjoining fairness especially toward Gentiles could not change the fact that the religious law prohibited taking usury from fellow Jews but permitted it in transactions with non-Jews. Nor could the rabbinical counsels alter the fact, which again Sombart has rightly stressed, that a lesser degree of exemplary legality was required by the law in dealing with a stranger, i.e., an enemy, than in dealing with another Jew, in such a matter as taking advantage of an error made by the other party. In fine, no proof is required to establish that the pariah condition of the Jews, which we have seen resulted from the promises of Yahweh, and the resulting incessant humiliation of the Jews by Gentiles necessarily led to the Jewish people's retaining a different economic morality for its relations with strangers than with fellow Jews.

2. *Jewish Rationalism versus Puritan Asceticism*

Let us summarize the mutual relatedness in which Catholics, Jews, and Protestants found themselves in regard to economic acquisition. The devout Catholic, as he went about his economic affairs, found himself continually behaving—or on the verge of behaving—in a manner that transgressed papal injunctions. His economic behavior could be ignored in the confessional only on the principle of *rebus sic stantibus*, and it could be permissible only on the basis of a lax, probabilistic morality. To a certain extent, therefore, the life of business itself had to be regarded as reprehensible or, at best, as not positively favorable to God. The inevitable result of this Catholic situation was that pious Jews were encouraged to perform economic activities among Christians which if performed among Jews would have been regarded by the Jewish community as unequivocally contrary to the law or at least as suspect from the point of view of Jewish tradition. At best these transactions were

permissible on the basis of a lax interpretation of the Judaic religious code, and then only in economic relations with strangers. Never were they infused with positive ethical value. Thus, the Jew's economic conduct appeared to be permitted by God, in the absence of any formal contradiction with the religious law of the Jews, but ethically indifferent, in view of such conduct's correspondence with the average evils in the society's economy. This is the basis of whatever factual truth there was in the observations concerning the inferior standard of economic legality among Jews. That God crowned such economic activity with success could be a sign to the Jewish businessman that he had done nothing clearly objectionable or prohibited in this area and that indeed he had held fast to God's commandments in other areas. But it would still have been difficult for the Jew to demonstrate his ethical merit by means of characteristically modern business behavior.

But this was precisely the case with the pious Puritan. He could demonstrate his religious merit through his economic activity because he did nothing ethically reprehensible, he did not resort to any lax interpretations of religious codes or to systems of double moralities, and he did not act in a manner that could be indifferent or even reprehensible in the general realm of ethical validity. On the contrary, the Puritan could demonstrate his religious merit precisely in his economic activity. He acted in business with the best possible conscience, since through his rationalistic and legal behavior in his business activity he was factually objectifying the rational methodology of his total life pattern. He legitimated his ethical pattern in his own eyes, and indeed within the circle of his community, by the extent to which the absolute —not relativized—unassailability of his economic conduct remained beyond question. No really pious Puritan—and this is the crucial point —could have regarded as pleasing to God any profit derived from usury, exploitation of another's mistake (which was permissible to the Jew), haggling and sharp dealing, or participation in political or colonial exploitation. Quakers and Baptists believed their religious merit to be certified before all mankind by such practices as their fixed prices and their absolutely reliable business relationships with everyone, unconditionally legal and devoid of cupidity. They believed that precisely such practices promoted the irreligious to trade with them rather than with their own kind, and to entrust their money to the trust companies or limited liability enterprises of the religious sectarians rather than those of their own people—all of which made the religious sectarians wealthy, even as their business practices certified them before their God.

By contrast, the Jewish law applying to strangers, which in practice was the pariah law of the Jews, enabled them, nothwithstanding in-

numerable reservations, to engage in dealings with non-Jews which the Puritans rejected violently as showing the cupidity of the trader. Yet the pious Jew could combine such an attitude with strict legality, with complete fulfillment of the law, with all the inwardness of his religion, with the most sacrificial love for his family and community, and indeed with pity and mercy toward all God's creatures. For in view of the operation of the laws regarding strangers, Jewish piety never in actual practice regarded the realm of permitted economic behavior as one in which the genuineness of a person's obedience to God's commandments could be demonstrated. The pious Jew never gauged his inner ethical standards by what he regarded as permissible in the economic context. Just as the Confucian's authentic ideal of life was the gentleman who had undergone a comprehensive education in ceremonial esthetics and literature and who devoted lifelong study to the classics, so the Jew set up as his ethical ideal the scholar learned in law and casuistry, the intellectual who continuously immersed himself in the sacred writings and commentaries at the expense of his business, which he very frequently left to the management of his wife.

It was this intellectualist trait of authentic late Judaism, with its concern with literary scholarship, that Jesus revolted against. His criticism was not motivated by "proletarian" instincts, which some have attributed to him, but rather by his type of piety and his type of obedience to the law, both of which were appropriate to the rural artisan or the inhabitant of a small town, and constituted his basic opposition to the virtuosi of legalistic lore who had grown up on the soil of the *polis* of Jerusalem. Members of such urban legalistic circles asked "What good can come out of Nazareth?"—the kind of question that might have been posed by any dweller of a metropolis in the classical world. Jesus' knowledge of the law and his observance of it was representative of that average lawfulness which was actually demonstrated by men engaged in practical work, who could not afford to let their sheep lie in wells, even on the Sabbath. On the other hand, the knowledge of the law obligatory for the really pious Jews, as well as their legalistic education of the young, surpassed both quantitatively and qualitatively the preoccupation with the Bible characteristic of the Puritans. The scope of religious law of which knowledge was obligatory for the pious Jew may be compared only with the scope of ritual laws among the Hindus and Persians, but the Jewish law far exceeded these in its inclusion of ethical prescriptions beyond merely ritual and tabooistic norms.

The economic behavior of the Jews simply moved in the direction of least resistance which was permitted them by these legalistic ethical norms. This meant in practice that the "acquisitive drive," which is

found in varying degrees in all groups and nations, was here directed primarily to trade with strangers, who were usually regarded as enemies. Even at the time of Josiah and certainly in the post-exilic period, the pious Jew was an urban dweller, and the entire Jewish law was oriented to this urban status. Since the orthodox Jew required the services of a ritual slaughterer, he had necessarily to live in a community rather than in isolation. Even today residential clustering is characteristic of orthodox Jews when they are contrasted with Jews of the Reform group, as for example in the United States. Similarly, the Sabbatical year, which in its present form is probably a product of post-exilic urban scholars learned in the law, made it impossible for Jews to carry on systematic intensive cultivation of the land. Even at the present time, German rabbis endeavor to apply the prescription of the Sabbatical year to Zionist colonization in Palestine, which would be ruined thereby. In the age of the Pharisees a rustic Jew was of second rank, since he did not and could not observe the law strictly. Jewish law also prohibited the participation of Jews in the banquets of the guilds, in fact, all commensality with non-Jews; in Antiquity as well as in the Middle Ages commensality was the indispensable foundation for any kind of civic integration in the surrounding world. On the other hand, the Jewish institution of the dowry, common to the Orient and based originally on the exclusion of daughters from inheritance, favored the establishing of the Jewish groom at marriage as a small shopkeeper. Traces of this phenomenon are still apparent in the relatively undeveloped class consciousness of Jewish shop clerks.

In all his other dealings, as well as those we have just discussed, the Jew—like the pious Hindu—was controlled by scruples concerning his Law. As Guttmann has correctly emphasized, genuine study of the Law could be combined most easily with the occupation of moneylending, which requires relatively little continuous labor.[4] The outcome of Jewish legalism and intellectualist education was the Jew's methodical patterning of life and his rationalism. It is a prescription of the Talmud that "A man must never change a practice." Only in the realm of economic relationships with strangers, and in no other area of life, did tradition leave a sphere of behavior that was relatively indifferent ethically. Indeed, the entire domain of things relevant before God was determined by tradition and the systematic casuistry concerned with its interpretation, rather than determined by rational purposes derived from natural law and oriented without further presupposition to methodical plans of action. The "rationalizing" effect of the Jewish fear of God's Law is thoroughly pervasive but entirely indirect.

Self-control—usually accompanied by alertness, equableness, and

serenity—was found among Confucians, Puritans, Buddhist and other types of monks, Arab sheiks, and Roman senators, as well as among Jews. But the basis and significance of self-control were different in each case. The alert self-control of the Puritan flowed from the necessity of his subjugating all creaturely impulses to a rational and methodical plan of conduct, so that he might secure his certainty of his own salvation. Self-control appeared to the Confucian as a personal necessity which followed from his disesteem for plebeian irrationality, the disesteem of an educated gentleman who had received classical training and had been bred along lines of propriety and dignity. On the other hand, the self-control of the devout Jew of ancient times was a consequence of the preoccupation with the Law in which his mind had been trained, and of the necessity of his continuous concern with the Law's precise fulfillment. The pious Jew's self-control received a characteristic coloring and effect from the situation of being piously engaged in fulfilling the Law. The Jew felt that only he and his people possessed this law, for which reason the world persecuted them and imposed degradation upon them. Yet this law was binding; and one day, by an act that might come suddenly at any time but that no one could accelerate, God would transform the social structure of the world, creating a messianic realm for those who had remained faithful to His law. The pious Jew knew that innumerable generations had awaited this messianic event, despite all mockery, and were continuing to await it. This produced in the pious Jew a certain anxious wakefulness. But since it remained necessary for him to continue waiting in vain, he nurtured his feelings of self-esteem by a meticulous observance of the law for its own sake. Last but not least, the pious Jew had always to stay on guard, never permitting himself the free expression of his passions against powerful and merciless enemies. This repression was inevitably combined with the aforementioned inevitable effect of the feeling of *ressentiment* which derived from Yahweh's promises and the resulting unparalleled sufferings of this people.

These circumstances basically determined the rationalism of Judaism, but this is not "asceticism" in our sense. To be sure, there are ascetic traits in Judaism, but they are not central. Rather, they are hyproducts of the law or products of the peculiar tensions of Jewish piety. In any case, ascetic traits are of secondary importance in Judaism, as are any mystical traits developed within this religion. We need say nothing more here about Jewish mysticism, since neither cabalism, Chassidism nor any of its other forms—whatever symptomatic importance they held for Jews—produced any significant motivations toward practical behavior in the economic sphere.

The ascetic aversion of pious Jews toward everything esthetic was

originally based on the second commandment of the Decalogue, which actually prevented the once well-developed angelology of the Jews from assuming artistic form. But another important cause of aversion to things esthetic is the purely pedagogic and jussive character of the divine service in the synagogue, even as it was practiced in the Diaspora, long before the disruption of the Temple cult. Even at that time, Hebrew prophecy had virtually removed plastic elements from the cult, effectively extirpating orgiastic, orchestral, and terpsichorean activities. It is of interest that Roman religion and Puritanism pursued similar paths in regard to esthetic elements, though for reasons quite different from the Jewish reasons. Thus, among the Jews the plastic arts, painting, and drama lacked those points of contact with religion which were elsewhere quite normal. This is the reason for the marked diminution of secular lyricism and especially of the erotic sublimation of sexuality, when contrasted with the marked sensuality of the earlier Song of Solomon. The basis of all this is to be found in the naturalism of the Jewish ethical treatment of sexuality.

All these traits of Judaism are characterized by one overall theme: that the mute, faithful, and questioning expectation of a redemption from the hellish character of the life enforced upon the people who had been chosen by God (and definitely chosen, despite their present status) was ultimately refocused upon the ancient promises and laws of the religion. Conversely, it was held—there are corresponding utterances of the rabbis on this point—that any uninhibited surrender to the artistic or poetic glorification of this world is completely vain and apt to divert the Jews from the ways and purposes of God. After all, even the purpose of the creation of this world had already on occasion been problematical to the Jews of the later Maccabean period.

Above all, what was lacking in Judaism was the decisive hallmark of the inner-worldly type of asceticism: an integrated relationship to the world from the point of view of the individual's conviction of salvation (*certitudo salutis*), which nurtures all else. Again in this important matter, what was ultimately decisive for Judaism was the pariah character of the religion and the promises of Yahweh. An ascetic management of this world, such as that characteristic of Calvinism, was the very last thing of which a traditionally pious Jew would have thought. He could not think of methodically controlling the present world, which was so topsy-turvy because of Israel's sins, and which could not be set right by any human action but only by some free miracle of God that could not be hastened. He could not take as his "mission," as the sphere of his religious "vocation," the bringing of this world and its very sins under the rational norms of the revealed divine will, for the glory of God and

as an identifying mark of his own salvation. The pious Jew had a far more difficult destiny to overcome than did the Puritan, who could be certain of his election to the world beyond. It was incumbent upon the individual Jew to make peace with the fact that the world would remain recalcitrant to the promises of God as long as God permitted the world to stand as it is. The Jew's responsibility was to make peace with this recalcitrancy of the world, while finding contentment if God sent him grace and success in his dealings with the enemies of his people, toward whom he must act soberly and legalistically, in fulfillment of the injunctions of the rabbis. This meant acting toward non-Jews in an objective or impersonal manner, without love and without hate, solely in accordance with what was permissible.

The frequent assertion that Judaism required only an external observance of the Law is incorrect. Naturally, this is the average tendency; but the requirements for real religious piety stood on a much higher plane. In any case, Judaic law fostered in its adherents a tendency to compare individual actions with each other and to compute the net result of them all. This conception of man's relationship to God as a bookkeeping operation of single good and evil acts with an uncertain total (a conception which may occasionally be found among the Puritans as well) may not have been the dominant official view of Judaism. Yet it was sufficient, together with the double-standard morality of Judaism, to prevent the development within Judaism of a methodical and ascetic orientation to the conduct of life on the scale that such an orientation developed in Puritanism. It is also important that in Judaism, as in Catholicism, the individual's activities in fulfilling particular religious injunctions were tantamount to his assuring his own chances of salvation. However, in both Judaism and Catholicism, God's grace was needed to supplement human inadequacy, although this dependence upon God's grace was not as universally recognized in Judaism as in Catholicism.

The ecclesiastical provision of grace was much less developed in Judaism, after the decline of the older Palestinian confessional (*teshubah*), than in Catholicism. In practice, this resulted in the Jew's having a greater religious responsibility for himself. This responsibility for oneself and the absence of any mediating religious agency necessarily made the Jewish pattern of life more systematic and personally responsible than the corresponding Catholic pattern of life. Still, the methodical control of life was limited in Judaism by the absence of the distinctively ascetic motivation characteristic of Puritans and by the continued presence of Jewish internal morality's traditionalism, which in principle remained unbroken. To be sure, there were present in Judaism numer-

ous single stimuli toward practices that might be called ascetic, but the unifying force of a basically ascetic religious motivation was lacking. The highest form of Jewish piety is found in the religious mood (*Stimmung*) and not in active behavior. How could it be possible for the Jew to feel that by imposing a new rational order upon the world he would become the human executor of God's will, when for the Jew this world was thoroughly contradictory, hostile, and—as he had known since the time of Hadrian—impossible to change by human action? This might have been possible for the Jewish freethinker, but not for the pious Jew.

Puritanism always felt its inner similarity to Judaism, but also felt the limits of this similarity. The similarity in principle between Christianity and Judaism, despite all their differences, remained the same for the Puritans as it had been for the Christian followers of Paul. Both the Puritans and the early Christians always looked upon the Jews as the people who had once been chosen by God. But the unexampled activities of Paul had the following significant effects for early Christianity. On the one hand, Paul made the sacred book of the Jews into one of the sacred books of the Christians, and at the beginning the only one. He thereby erected a stout fence against all intrusions of Greek, especially Gnostic, intellectualism, as Wernle in particular has pointed out.[5] But on the other hand, by the aid of a dialectic that only a rabbi could possess, Paul here and there broke through what was most distinctive and effective in the Jewish law, namely the tabooistic norms and the overpowering messianic promises. Since these taboos and promises linked the whole religious worth of the Jews to their pariah position, Paul's breakthrough was fateful in its effect. Paul accomplished this breakthrough by interpreting these promises as having been partly fulfilled and partly abrogated by the birth of Christ. He triumphantly employed the highly impressive proof that the patriarchs of Israel had lived in accordance with God's will long before the issuance of the Jewish taboos and messianic promises, showing that they found blessedness through faith, which was the surety of God's election.

The dynamic power behind the incomparable missionary labors of Paul was his offer to the Jews of a tremendous release, the release provided by the consciousness of having escaped the fate of pariah status. A Jew could henceforth be a Greek among Greeks as well as a Jew among Jews, and could achieve this within the paradox of faith rather than through an enlightened hostility to religion. This was the passionate feeling of liberation brought by Paul. The Jew could actually free himself from the ancient promises of his God, by placing his faith in the new savior who had believed himself abandoned upon the cross by that very God.

Various consequences flowed from this rending of the sturdy chains that had bound the Jews firmly to their pariah position. One was the intense hatred of this one man Paul by the Jews of the Diaspora, sufficiently authenticated as fact. Among the other consequences may be mentioned the oscillations and utter uncertainty of the early Christian community; the attempt of James and the "pillar apostles" to establish an ethical minimum of law which would be valid and binding for all, in harmony with Jesus' own layman's understanding of the law; and finally, the open hostility of the Jewish Christians. In every line that Paul wrote we can feel his overpowering joy at having emerged from the hopeless "slave law" into freedom, through the blood of the Messiah. The overall consequence was the possibility of a Christian world misison.

The Puritans, like Paul, rejected the Talmudic law and even the characteristic ritual laws of the Old Testament, while taking over and considering as binding—for all their elasticity—various other expressions of God's will witnessed in the Old Testament. As the Puritans took these over, they always conjoined norms derived from the New Testament, even in matters of detail. The Jews who were actually welcomed by Puritan nations, especially the Americans, were not pious orthodox Jews but rather Reformed Jews who had abandoned orthodoxy, Jews such as those of the present time who have been trained in the Educational Alliance, and finally baptized Jews. These groups of Jews were at first welcomed without any ado whatsoever and are even now welcomed fairly readily, so that they have been absorbed to the point of the absolute loss of any trace of difference. This situation in Puritan countries contrasts with the situation in Germany, where the Jews remain—even after long generations—"assimilated Jews." These phenomena clearly manifest the actual kinship of Puritanism to Judaism. Yet precisely the non-Jewish element in Puritanism enabled Puritanism to play its special role in the creation of the modern economic temper, and also to carry through the aforementioned absorption of Jewish proselytes, which was not accomplished by nations with other than Puritan orientations.

3. *The This-Worldliness of Islam and Its Economic Ethics*

Islam, a comparatively late product of Near Eastern monotheism, in which Old Testament and Jewish-Christian elements played a very important role, "accommodated" itself to the world in a sense very different from Judaism. In the first Meccan period of Islam, the eschatological

religion of Muhammad developed in pietistic urban conventicles which displayed a tendency to withdraw from the world. But in the subsequent developments in Medina and in the evolution of the early Islamic communities, the religion was transformed from its pristine form into a national Arabic warrior religion, and even later into a religion with very strong status emphasis. Those followers whose conversion to Islam made possible the decisive success of the Prophet were consistently members of powerful families.

The religious commandments of the holy war were not directed in the first instance to the purpose of conversion. Rather, the primary purpose was war "until they (the followers of alien religions of the book) will humbly pay the tribute (*jizyah*)," i.e., until Islam should rise to the top of this world's social scale, by exacting tribute from other religions. This is not the only factor that stamps Islam as the religion of masters. Military booty is important in the ordinances, in the promises, and above all in the expectations characterizing particularly the most ancient period of the religion. Even the ultimate elements of its economic ethic were purely feudal. The most pious adherents of the religion in its first generation became the wealthiest, or more correctly, enriched themselves with military booty—in the widest sense—more than did other members of the faith.

The role played by wealth accruing from spoils of war and from political aggrandizement in Islam is diametrically opposed to the role played by wealth in the Puritan religion. The Muslim tradition depicts with pleasure the luxurious raiment, perfume, and meticulous beard-coiffure of the pious. The saying that "when god blesses a man with prosperity he likes to see the signs thereof visible upon him"—made by Muhammad, according to tradition, to well-circumstanced people who appeared before him in ragged attire—stands in extreme opposition to any Puritan economic ethic and thoroughly corresponds with feudal conceptions of status. This saying would mean, in our language, that a wealthy man is obligated "to live in keeping with his status." In the Koran, Muhammad is represented as completely rejecting every type of monasticism (*rahbaniya*), though not all asceticism, for he did accord respect to fasting, begging, and penitential mortification. Muhammad's attitude in opposition to chastity may have sprung from personal motivations similar to those apparent in Luther's famous remarks which are so expressive of his strongly sensual nature; i.e., in the conviction, also found in the Talmud, that whoever has not married by a certain age must be a sinner. But we would have to regard as unique in the hagiology of an ethical religion of salvation Muhammad's dictum expressing doubt about the ethical character of a person who has abstained from eating

meat for forty days; as well as the reply of a renowned pillar of ancient Islam, celebrated by some as a Mahdi, to the question why he, unlike his father Ali, had used cosmetics for his hair: "In order to be more successful with women."

But Islam was never really a religion of salvation; the ethical concept of salvation was actually alien to Islam. The god it taught was a lord of unlimited power, although merciful, the fulfillment of whose commandments was not beyond human power. An essentially political character marked all the chief ordinances of Islam: the elimination of private feuds in the interest of increasing the group's striking power against external foes; the proscription of illegitimate forms of sexual behavior and the regulation of legitimate sexual relations along strongly patriarchal lines (actually creating sexual privileges only for the wealthy, in view of the facility of divorce and the maintenance of concubinage with female slaves); the prohibition of usury; the prescription of taxes for war; and the injunction to support the poor. Equally political in character is the distinctive religious obligation in Islam, its only required dogma: the recognition of Allah as the one god and of Muhammad as his prophet. In addition, there were the obligations to journey to Mecca once during a lifetime, to fast by day during the month of fasting, to attend services once a week, and to observe the obligation of daily prayers. Finally, Islam imposed such requirements for everyday living as the wearing of distinctive clothing (a requirement that even today has important economic consequences whenever savage tribes are converted to Islam) and the avoidance of certain unclean foods, of wine, and of gambling. The restriction against gambling obviously had important consequences for the religion's attitude toward speculative business enterprises.

There was nothing in ancient Islam like an individual quest for salvation, nor was there any mysticism. The religious promises in the earliest period of Islam pertained to this world. Wealth, power, and glory were all martial promises, and even the world beyond is pictured in Islam as a soldier's sensual paradise. Moreover, the original Islamic conception of sin has a similar feudal orientation. The depiction of the prophet of Islam as devoid of sin is a late theological construction, scarcely consistent with the actual nature of Muhammad's strong sensual passions and his explosions of wrath over very small provocations. Indeed, such a picture is strange even to the Koran, just as after Muhammad's transfer to Medina he lacked any sort of tragic sense of sin. The original feudal conception of sin remained dominant in orthodox Islam, for which sin is a composite of ritual impurity, ritual sacrilege (*shirk*, i.e., polytheism), disobedience to the positive injunctions of the prophet;

and the violation of status prescriptions by infractions of convention or etiquette. Islam displays other characteristics of a distinctively feudal spirit: the obviously unquestioned acceptance of slavery, serfdom, and polygamy; the disesteem for and subjection of women; the essentially ritualistic character of religious obligations; and finally, the great simplicity of religious requirements and the even greater simplicity of the modest ethical requirements.

Islam was not brought any closer to Judaism and to Christianity in decisive matters by such Islamic developments as the achievement of great scope through the rise of theological and juristic casuistry, the appearance of both pietistic and enlightenment schools of philosophy (following the intrusion of Persian Sufism, derived from India), and the formation of the order of dervishes (still today strongly under Indian influence). Judaism and Christianity were specifically bourgeois-urban religions, whereas for Islam the city had only political importance. A certain sobriety in the conduct of life might also be produced by the nature of the official cult in Islam and by its sexual and ritual commandments. The petty-bourgeois stratum was largely the carrier of the dervish religion, which was disseminated practically everywhere and gradually grew in power, finally surpassing the official ecclesiastical religion. This type of religion, with its orgiastic and mystical elements, with its essentially irrational and extraordinary character, and with its official and thoroughly traditionalistic ethic of everyday life, became influential in Islam's missionary enterprise because of its great simplicity. It directed the conduct of life into paths whose effect was plainly opposite to the methodical control of life found among Puritans, and indeed, found in every type of asceticism oriented toward the control of the world.

Islam, in contrast to Judaism, lacked the requirement of a comprehensive knowledge of the law and lacked that intellectual training in casuistry which nurtured the rationalism of Judaism. The ideal personality type in the religion of Islam was not the scholarly scribe (*Literat*), but the warrior. Moreover, Islam lacked all those promises of a messianic realm upon earth which in Israel were linked with meticulous fidelity to the law, and which—together with the priestly doctrine of the history, election, sin and dispersion of the Jews—determined the fateful pariah character of the Jewish religion.

To be sure, there were ascetic sects among the Muslims. Large groups of ancient Islamic warriors were characterized by a trend toward simplicity; this prompted them from the outset to oppose the rule of the Umayyads. The latter's merry enjoyment of the world presented the strongest contrast to the rigid discipline of the encampment fortresses in which Umar had concentrated Islamic warriors in the conquered do-

mains; in their stead there now arose a feudal aristocracy. But this was the asceticism of a military caste, of a martial order of knights, not of monks. Certainly it was not a middle-class ascetic systematization of the conduct of life. Moreover, it was effective only periodically, and even then it tended to merge into fatalism. We have already spoken of the quite different effect which is engendered in such circumstances by a belief in providence. Islam was diverted completely from any really methodical control of life by the advent of the cult of saints, and finally by magic.

4. *The Other-Worldliness of Buddhism and Its Economic Consequences*

At the opposite extreme from systems of religious ethics preoccupied with the control of economic affairs within the world stands the ultimate ethic of world-rejection, the mystical illuminative concentration of authentic ancient Buddhism (naturally not the completely altered manifestations Buddhism assumed in Tibetan, Chinese, and Japanese popular religions). Even this most world-rejecting ethic is "rational," in the sense that it produces a constantly alert control of all natural instinctive drives, though for purposes entirely different from those of inner-worldly asceticism. Salvation is sought, not from sin and suffering alone, but also from ephemeralness as such; escape from the wheel of *karma*-causality into eternal rest is the goal pursued. This search is, and can only be, the highly individualized task of a particular person. There is no predestination, but neither is there any divine grace, any prayer, or any religious service. Rewards and punishments for every good and every evil deed are automatically established by the *karma*-causality of the cosmic mechanism of compensation. This retribution is always proportional, and hence always limited in time. So long as the individual is driven to action by the thirst for life, he must experience in full measure the fruits of his behavior in ever-new human existences. Whether his momentary situation is animal, heavenly, or hellish, he necessarily creates new chances for himself in the future. The most noble enthusiasm and the most sordid sensuality lead equally into new existence in this chain of individuation (it is quite incorrect to term this process transmigration of souls, since Buddhist metaphysics knows nothing of a soul). This process of individuation continues on as long as the thirst for life, in this world or in the world beyond, is not absolutely extinguished. The process is but perpetuated by the individual's impotent struggle for his

personal existence with all its illusions, above all the illusion of a distinctive soul or personality.

All rational purposive activity is regarded as leading away from salvation, except of course the subjective activity of concentrated contemplation, which empties the soul of the passion for life and every connection with worldly interests. The achievement of salvation is possible for only a few, even of those who have resolved to live in poverty, chastity, and unemployment (for labor is purposive action), and hence in mendicancy. These chosen few are required to wander ceaselessly—except at the time of the heavy rains—freed from all personal ties to family and world, pursuing the goal of mystical illumination by fulfilling the injunctions relating to the correct path (*dharma*). When such salvation is gained, the deep joy and tender, undifferentiated love characterizing such illumination provides the highest blessing possible in this existence, short of absorption into the eternal dreamless sleep of *Nirvana*, the only state in which no change occurs. All other human beings may improve their situations in future existences by approximating the prescriptions of the rule of life and by avoiding major sins in this existence. Such future existences are inevitable, according to the *karma* doctrine of causality, because the ethical account has not been straightened out, the thirst for life has not been "abreacted," so to speak. For most people, therefore, some new individuation is inevitable when the present life has ended, and truly eternal salvation remains inaccessible.

There is no path leading from this only really consistent position of world-flight to any economic ethic or to any rational social ethic. The universal mood of pity, extending to all creatures, cannot be the carrier of any rational behavior and in fact leads away from it. This mood of pity is the logical consequence of contemplative mysticism's position regarding the solidarity of all living, and hence transitory, beings. This solidarity follows from the common *karma*-causality which overarches all living beings. In Buddhism, the psychological basis for this universal pity is the religion's mystical, euphoric, universal, and acosmistic love.

Buddhism is the most consistent of the salvation doctrines produced before and after by the intellectualism of educated Indian strata. Its cool and proud emancipation of the individual from life as such, which in effect stood the individual on his own feet, could never become a popular salvation faith. Buddhism's influence beyond the circle of the educated was due to the tremendous prestige traditionally enjoyed by the *shramana*, i.e., the ascetic, which possessed magical and anthropolatric traits. As soon as Buddhism became a missionizing popular religion, it duly transformed itself into a savior religion based on *karma* compensation, with hopes for the world beyond guaranteed by devotional techniques,

cultic and sacramental grace, and deeds of mercy. Naturally, Buddhism also tended to welcome purely magical notions.

In India itself, Buddhism succumbed, among the upper classes, to a renascent philosophy of salvation based on the Vedas; and it met competition from Hinduistic salvation religions, especially the various forms of Vishnuism, from Tantristic magic, and from orgiastic mystery religions, notably the *bhakti* piety (love of god). In Lamaism, Buddhism became the purely monastic religion of a theocracy which controlled the laity by ecclesiastical powers of a thoroughly magical nature. Wherever Buddhism was diffused in the Orient, its idiosyncratic character underwent striking transformation as it competed and entered into diverse combinations with Chinese Taoism, hus becoming the region's typical mass religion, which pointed beyond this world and t e ancestral cult and which distributed grace and salvation.

At all events, no motivation toward a rational system for the met odical control of life flowed from Buddhist, Taoist, or Hindu piety. Hindu piety in particular, as we have already suggested, maintained the strongest possible power of tradition, since the presuppositions of Hinduism constituted the most consistent religious expression of the organic view of society. The existing order of the world was provided absolutely unconditional justification, in terms of the mechanical operation of a proportional retribution in the distribution of power and happiness to individuals on the basis of their merits and failures in their earlier existences.

All these popular religions of Asia left room for the acquisitive drive of the tradesman, the interest of the artisan in sustenance (*Nahrungs-Interesse*), and the traditionalism of the peasant. These popular religions also left undisturbed both philosophical speculation and the conventional status-oriented life patterns of privileged groups. These status-oriented patterns of the privileged evinced feudal characteristics in Japan; patrimonial-bureaucratic, and hence strongly utili arian fea ures in China; and a mixture of knightly, patrimonial, and intellectualistic traits in India. None of these mass religions of Asia, however, provided the motives or orientations for a rationalized ethical transformation of a creaturely world in accordance with divine commandments. Rather, they all accepted this world as eternally given, and so the best of all possible worlds. The only choice open to the sages, who possessed the highest type of piety, was whether to accommodate themselves to the Tao, the impersonal order of the world and the only thing specifically divine, or to save themselves from the inexorable chain of causality by passing in o the only eternal being, the dreamless sleep of Nirvana.

"Capitalism" existed among all these religions, of the same kind as

in Occidental Antiquity and the medieval period. But there was no development toward modern capitalism, nor even any stirrings in that direction. Above all, there evolved no "capitalist spirit," in the sense that is distinctive of ascetic Protestantism. But to assume that the Hindu, Chinese, or Muslim merchant, trader, artisan, or coolie was animated by a weaker "acquisitive drive" than the ascetic Protestant is to fly in the face of the facts. Indeed, the reverse would seem to be true, for what is distinctive of Puritanism is the rational and ethical limitation of the quest for profit. There is no proof whatever that a weaker natural "endowment" for technical economic rationalism was responsible for the actual difference in this respect. At the present time, all these people import this "commodity" as the most important Occidental product, and whatever impediments exist result from rigid traditions, such as existed among us in the Middle Ages, not from any lack of ability or will. Such impediments to rational economic development must be sought primarily in the domain of religion, insofar as they must not be located in the purely political conditions, the structures of domination, with which we shall deal later.

Only ascetic Protestantism completely eliminated magic and the supernatural quest for salvation, of which the highest form was intellectualist, contemplative illumination. It alone created the religious motivations for seeking salvation primarily through immersion in one's worldly vocation (*Beruf*). This Protestant stress upon the methodically rationalized fulfillment of one's vocational responsibility was diametrically opposite to Hinduism's strongly traditionalistic concept of vocations. For the various popular religions of Asia, in contrast to ascetic Protestantism, the world remained a great enchanted garden, in which the practical way to orient oneself, or to find security in this world or the next, was to revere or coerce the spirits and seek salvation through ritualistic, idolatrous, or sacramental procedures. No path led from the magical religiosity of the non-intellectual strata of Asia to a rational, methodical control of life. Nor did any path lead to that methodical control from the world accommodation of Confucianism, from the world-rejection of Buddhism, from the world-conquest of Islam, or from the messianic expectations and economic pariah law of Judaism.

5. *Jesus' Indifference Toward the World*

The second great religion of world-rejection, in our special sense of the term, was early Christianity, at the cradle of which magic and belief in demons were also present. Its Savior was primarily a magician

whose magical charisma was an ineluctable source of his unique feeling of individuality. But the absolutely unique religious promises of Judaism contributed to the determination of the distinctive character of early Christianity. It will be recalled that Jesus appeared during the period of the most intensive messianic expectations. Still another factor contributing to the distinctive message of Christianity was its reaction to the unique concern for erudition in the Law characteristic of Jewish piety. The Christian evangel arose in opposition to this legalistic erudition, as a non-intellectual's proclamation directed to non-intellectuals, to the "poor in spirit." Jesus understood and interpreted the "law," from which he desired to remove not even a letter, in a fashion common to the lowly and the unlearned, the pious folk of the countryside and the small towns who understood the Law in their own way and in accordance with the needs of their own occupations, in contrast to the Hellenized, wealthy and upper-class people and to the erudite scholars and Pharisees trained in casuistry. Jesus' interpretation of the Jewish law was milder than theirs in regard to ritual prescriptions, particularly in regard to the keeping of the Sabbath, but stricter than theirs in other respects, e.g., in regard to the grounds for divorce. There already appears to have been an anticipation of the Pauline view that the requirements of the Mosaic law were conditioned by the sinfulness of the superficially pious. There were, in any case, instances in which Jesus squarely opposed specific injunctions of the ancient tradition.

Jesus' distinctive self-esteem did not come from anything like a "proletarian instinct" but from the knowledge that the way to God necessarily led through him, because of his oneness with the Godly patriarch. His self-esteem was grounded in the knowledge that he, the non-scholar, possessed both the charisma requisite for the control of demons and a tremendous preaching ability, far surpassing that of any scholar or Pharisee. This self-esteem involved the conviction that his power to exorcise demons was operative only among the people who believed in him, even if they be heathens, not in his home town and his own family and among the wealthy and high-born of the land, the scholars, and the legalistic virtuosi—among none of these did he find the faith that gave him his magical power to work miracles. He did find such a faith among the poor and the oppressed, among publicans and sinners, and even among Roman soldiers. It should never be forgotten that these charismatic powers were the absolutely decisive components in Jesus' feelings concerning his messiahship. These powers were the fundamental issue in his denunciation of the Galilean cities and in his angry curse upon the recalcitrant fig tree. His feeling about his own powers also explains why the election of Israel became ever more problematical to him and

the importance of the Temple ever more dubious, while the rejection of the Pharisees and the scholars became increasingly certain to him.

Jesus recognized two absolutely mortal sins. One was the "sin against the spirit" committed by the scriptural scholar who disesteemed charisma and its bearers. The other was unbrotherly arrogance, such as the arrogance of the intellectual toward the poor in spirit, when the intellectual hurls at his brother the exclamation "Thou fool!" This anti-intellectualist rejection of scholarly arrogance and of Hellenic and rabbinic wisdom is the only "status element" of Jesus' message, though it is very distinctive. In general, Jesus' message is far from being a simple proclamation for every Tom, Dick, and Harry, for all the weak of the world. True, the yoke is light, but only for those who can once again become as little children. In truth, Jesus set up the most tremendous requirements for salvation; his doctrine has real aristocratic qualities.

Nothing was further from Jesus' mind than the notion of the universalism of divine grace. On the contrary, he directed his whole preaching against this notion. Few are chosen to pass through the narrow gate, to repent and to believe in Jesus. God himself impedes the salvation of the others and hardens their hearts, and naturally it is the proud and the rich who are most overtaken by this fate. Of course this element is not new, since it can be found in the older prophecies. The older Jewish prophets had taught that, in view of the arrogant behavior of the highly placed, the Messiah would be a king who would enter Jerusalem upon the beast of burden used by the poor. This implies no "social equalitarianism." Jesus lodged with the wealthy, which was ritually reprehensible in the eyes of the virtuosi of the law, and when he bade the rich young man give away his wealth, Jesus expressly enjoined this act only if the young man wished to be "perfect," i.e., a disciple. Complete emancipation from all ties of the world, from family as well as possessions, such as we find in the teachings of the Buddha and similar prophets, was required only of disciples. Yet, although all things are possible for God, continued attachment to Mammon constitutes one of the most difficult impediments to salvation into the Kingdom of God —for attachment to Mammon diverts the individual from religious salvation, the most important thing in the world.

Jesus nowhere explicitly states that preoccupation with wealth leads to unbrotherliness, but this notion is at the heart of the matter, for the prescribed injunctions definitely contain the primordial ethic of mutual help which is characteristic of neighborhood associations of poorer people. The chief difference is that in Jesus' message acts of mutual help have been systematized into *Gesinnungsethik* involving a fraternalistic sentiment of love. The injunction of mutual help was also construed

universalistically, extended to everyone. The "neighbor" is the one nearest at hand. Indeed, the notion of mutual help was enlarged into an acosmistic paradox, based on the axiom that God alone can and will reward. Unconditional forgiveness, unconditional charity, unconditional love even of enemies, unconditional suffering of injustice without requiting evil by force—these demands for religious heroism could have been products of a mystically conditioned acosmism of love. But it must not be overlooked, as it so often has been, that Jesus combined acosmistic love with the Jewish notion of retribution. God alone will one day compensate, avenge, and reward. Man must not boast of his virtue in having performed any of the aforementioned deeds of love, since his boasting would preempt his subsequent reward. To amass treasures in heaven one must in this world lend money to those from whom no repayment can be expected; otherwise, there is no merit in the deed. A strong emphasis upon the just equalization of destinies was expressed by Jesus in the legend of Lazarus and elsewhere. From this perspective alone, wealth is already a dangerous gift.

But Jesus held in general that what is most decisive for salvation is an absolute indifference to the world and its concerns. The kingdom of heaven, a realm of joy upon earth, utterly without suffering and sin, is at hand; indeed, this generation will not die before seeing it. It will come like a thief at night; it is already in the process of appearing among mankind. Let man be free with the wealth of Mammon, instead of clutching it fast; let man render unto Caesar that which is Caesar's—for what profit is there in such matters? Let man pray to God for daily bread and remain unconcerned for the morrow. No human action can accelerate the coming of the kingdom, but man should prepare himself for its coming. Although this message did not formally abrogate the law, it did place the emphasis throughout upon religious sentiment. The entire content of the law and the prophets was condensed into the simple commandment to love God and one's fellow man, to which was added the one far-reaching conception that the true religious mood is to be judged by its fruits, by its faithful demonstration (*Bewährung*).

The visions of the resurrection, doubtless under the influence of the widely diffused soteriological myths, generated a tremendous growth in pneumatic manifestations of charisma; in the formation of communities, beginning with Jesus' own family, which originally had not shared Jesus' faith; and in missionary activity among the heathens. Nascent Christianity maintained continuity with the older Jewish prophecies even after the fateful conversion of Paul had resulted in a breaking away from the pariah religion. As a result of these developments, two new attitudes toward the world became decisive in the Christian mis-

sionary communities. One was the expectation of the Second Coming, and the other was the recognition of the tremendous importance of charismatic gifts of the spirit. The world would remain as it was until the master would come. So too the individual was required to abide in his position and in his calling (κλῆσις), subordinate to the authorities, save where they demanded of him that he perpetrate a sinful deed.[6]

NOTES

1. See Werner Sombart, *The Jews and Modern Capitalism* (London: Fischer Unwin, 1913), 230ff.

2. Cf. Weber, *Protestant Ethic*, 175.

3. On the *commenda* and the *commandite*, see Weber, *Handelsgesellschaften* (1889), 1924 reprint in *GAzSW*, 339ff, and *Economic History*, ch. 17, "Forms of Commercial Enterprise." The *maona* comprised various types of associations employed in Italian cities for the running of a fleet or the exploitation of an overseas colony.

4. See Julius Guttmann, "Die Juden und das Wirtschaftsleben," *AfS*, vol. 36, 1913, 149ff. This is a critique of Sombart's book. (W)

5. Paul Wernle, *The Beginnings of Christianity* (New York: Putnam, 1904), vol. II, ch. IX, esp. 192f.

6. According to notes in the manuscript, this section was to have been expanded further. (W)

CHAPTER VII

THE MARKET: ITS IMPERSONALITY AND ETHIC *(Fragment)*[1]

Up to this point we have discussed group formations that rationalized their social action only in part, but for the rest had the most diverse structures—more amorphous or more rationally organized, more continuous or more intermittent, more open or more closed. In contrast to all of them stands, as the archetype of all rational social action (*rationales Gesellschaftshandeln*), consociation (*Vergesellschaftung*) through exchange in the *market*.

A market may be said to exist wherever there is competition, even if only unilateral, for opportunities of exchange among a plurality of potential parties. Their physical assemblage in one place, as in the local market square, the fair (the "long distance market"), or the exchange (the merchants' market), only constitutes the most consistent kind of market formation. It is, however, only this physical assemblage which allows the full emergence of the market's most distinctive feature, viz., dickering. Since the discussion of the market phenomena constitutes essentially the content of economics (*Sozialökonomik*), it will not be presented here. From a sociological point of view, the market represents a coexistence and sequence of rational consociations, each of which is specifically ephemeral insofar as it ceases to exist with the act of exchanging the goods, unless a norm has been promulgated which imposes upon the transferors of the exchangeable goods the guaranty of their lawful acquisition as warranty of title or of quiet enjoyment. The completed barter constitutes a consociation only with the immediate partner. The

preparatory dickering, however, is always a social action (*Gemeinschaftshandeln*) insofar as the potential partners are guided in their offers by the potential action of an indeterminately large group of real or imaginary competitors rather than by their own actions alone. The more this is true, the more does the market constitute social action. Furthermore, any act of exchange involving the use of money (sale) is a social action simply because the money used derives its value from its relation to the potential action of others. Its acceptability rests exclusively on the expectation that it will continue to be desirable and can be further used as a means of payment. Group formation (*Vergemeinschaftung*) through the use of money is the exact counterpart to any consociation through rationally agreed or imposed norms.

Money creates a group by virtue of material interest relations between actual and potential participants in the market and its payments. At the fully developed stage, the so-called money economy, the resulting situation looks as if it had been created by a set of norms established for the very purpose of bringing it into being. The explanation lies in this: Within the market community every act of exchange, especially monetary exchange, is not directed, in isolation, by the action of the individual partner to the particular transaction, but the more rationally it is considered, the more it is directed by the actions of all parties potentially interested in the exchange. The market community as such is the most impersonal relationship of practical life into which humans can enter with one another. This is not due to that potentiality of struggle among the interested parties which is inherent in the market relationship. Any human relationship, even the most intimate, and even though it be marked by the most unqualified personal devotion, is in some sense relative and may involve a struggle with the partner, for instance, over the salvation of his soul. The reason for the impersonality of the market is its matter-of-factness, its orientation to the commodity and only to that. Where the market is allowed to follow its own autonomous tendencies, its participants do not look toward the persons of each other but only toward the commodity; there are no obligations of brotherliness or reverence, and none of those spontaneous human relations that are sustained by personal unions. They all would just obstruct the free development of the bare market relationship, and its specific interests serve, in their turn, to weaken the sentiments on which these obstructions rest. Market behavior is influenced by rational, purposeful pursuit of interests. The partner to a transaction is expected to behave according to rational legality and, quite particularly, to respect the formal inviolability of a promise once given. These are the qualities which form the content of market ethics. In this latter respect the market inculcates, indeed, particularly rigorous conceptions. Violations

of agreements, even though they may be concluded by mere signs, entirely unrecorded, and devoid of evidence, are almost unheard of in the annals of the stock exchange. Such absolute depersonalization is contrary to all the elementary forms of human relationship. Sombart has pointed out this contrast repeatedly and brilliantly.[2]

The "free" market, that is, the market which is not bound by ethical norms, with its exploitation of constellations of interests and monopoly positions and its dickering, is an abomination to every system of fraternal ethics. In sharp contrast to all other groups which always presuppose some measure of personal fraternization or even blood kinship, the market is fundamentally alien to any type of fraternal relationship.

At first, free exchange does not occur but with the world outside of the neighborhood or the personal association. The market is a relationship which transcends the boundaries of neighborhood, kinship group, or tribe. Originally, it is indeed the only peaceful relationship of such kind. At first, fellow members did not trade with one another with the intention of obtaining profit. There was, indeed, no need for such transactions in an age of self-sufficient agrarian units. One of the most characteristic forms of primitive trade, the "silent" trade [cf. ch. VIII:ii:2], dramatically represents the contrast between the market community and the fraternal community. The silent trade is a form of exchange which avoids all face-to-face contact and in which the supply takes the form of a deposit of the commodity at a customary place; the counteroffer takes the same form, and dickering is effected through the increase in the number of objects being offered from both sides, until one party either withdraws dissatisfied or, satisfied, takes the goods left by the other party and departs.

It is normally assumed by both partners to an exchange that each will be interested in the future continuation of the exchange relationship, be it with this particular partner or with some other, and that he will adhere to his promises for this reason and avoid at least striking infringements of the rules of good faith and fair dealing. It is only this assumption which guarantees the law-abidingness of the exchange partners. Insofar as that interest exists, "honesty is the best policy." This proposition, however, is by no means universally applicable, and its empirical validity is irregular; naturally, it is highest in the case of rational enterprises with a stable clientele. For, on the basis of such a stable relationship, which generates the possibility of mutual personal appraisal with regard to market ethics, trading may free itself most successfully from illimited dickering and return, in the interest of the parties, to a relative limitation of fluctuation in prices and exploitation of momentary interest constellations. The consequences, though they are important for price formation, are not relevant here in detail. The

fixed price, without preference for any particular buyer, and strict business honesty are highly peculiar features of the regulated local neighborhood markets of the medieval Occident, in contrast to the Near and Far East. They are, moreover, a condition as well as a product of that particular stage of capitalistic economy which is known as Early Capitalism. They are absent where this stage no longer exists. Nor are they practiced by those status and other groups which are not engaged in exchange except occasionally and passively rather than regularly and actively. The maxim of *caveat emptor* obtains, as experience shows, mostly in transactions involving feudal strata or, as every cavalry officer knows, in horse trading among comrades. The specific ethics of the market place is alien to them. Once and for all they conceive of commerce, as does any rural community of neighbors, as an activity in which the sole question is: who will cheat whom.

The freedom of the market is typically limited by sacred taboos or through monopolistic consociations of status groups which render exchange with outsiders impossible. Directed against these limitations we find the continuous onslaught of the market community, whose very existence constitutes a temptation to share in the opportunities for gain. The process of appropriation in a monopolistic group may advance to the point at which it becomes closed toward outsiders, i.e., the land, or the right to share in the commons, may have become vested definitively and hereditarily. As the money economy expands and, with it, both the growing differentiation of needs capable of being satisfied by indirect barter, and the independence from land ownership, such a situation of fixed, hereditary appropriation normally creates a steadily increasing interest of individual parties in the possibility of using their vested property rights for exchange with the highest bidder, even though he be an outsider. This development is quite analogous to that which causes the co-heirs of an industrial enterprise in the long run to establish a corporation so as to be able to sell their shares more freely. In turn, an emerging capitalistic economy, the stronger it becomes, the greater will be its efforts to obtain the means of production and labor services in the market without limitations by sacred or status bonds, and to emancipate the opportunities to sell its products from the restrictions imposed by the sales monopolies of status groups. Capitalistic interests thus favor the continuous extension of the free market, but only up to the point at which some of them succeed, through the purchase of privileges from the political authority or simply through the power of capital, in obtaining for themselves a monopoly for the sale of their products or the acquisition of their means of production, and in thus closing the market on their own part.

The breakup of the monopolies of status groups is thus the typical

immediate sequence to the full appropriation of all the material means of production. It occurs where those having a stake in the capitalistic system are in a position to influence, for their own advantage, those communities by which the ownership of goods and the mode of their use are regulated; or where, within a monopolistic status group, the upper hand is gained by those who are interested in the use of their vested property interests in the market. Another consequence is that the scope of those rights which are guaranteed as acquired or acquirable by the coercive apparatus of the property-regulating community becomes limited to rights in material goods and to contractual claims, including claims to contractual labor. All other appropriations, especially those of customers or those of monopolies by status groups, are destroyed. This state of affairs, which we call free competition, lasts until it is replaced by new, this time capitalistic, monopolies which are acquired in the market through the power of property. These capitalistic monopolies differ from monopolies of status groups[3] by their purely economic and rational character. By restricting either the scope of possible sales or the permissible terms, the monopolies of status groups excluded from their field of action the mechanism of the market with its dickering and rational calculation. Those monopolies, on the other hand, which are based solely upon the power of property, rest, on the contrary, upon an entirely rationally calculated mastery of market conditions which may, however, remain formally as free as ever. The sacred, status, and merely traditional bonds, which have gradually come to be eliminated, constituted restrictions on the formation of rational market prices; the purely economically conditioned monopolies are, on the other hand, their ultimate consequence. The beneficiary of a monopoly by a status group restricts, and maintains his power against, the market, while the rational-economic monopolist rules through the market. We shall designate those interest groups which are enabled by formal market freedom to achieve power, as market-interest groups.

A particular market may be subject to a body of norms autonomously agreed upon by the participants or imposed by any one of a great variety of different groups, especially political or religious organizations. Such norms may involve limitations of market freedom, restrictions of dickering or of competition, or they may establish guaranties for the observance of market legality, especially the modes or means of payment or, in periods of interlocal insecurity, the norms may be aimed at guaranteeing the market peace. Since the market was originally a consociation of persons who are not members of the same group and who are, therefore, "enemies," the guaranty of peace, like that of restrictions of permissible modes of warfare, was ordinarily left to divine powers.[4] Very often the peace of the market was placed under the protection of a temple;

later on it tended to be made into a source of revenue for the chief or prince. However, while exchange is the specifically peaceful form of acquiring economic power, it can, obviously, be associated with the use of force. The seafarer of Antiquity and the Middle Ages was pleased to take without pay whatever he could acquire by force and had recourse to peaceful dickering only where he was confronted with a power equal to his own or where he regarded it as shrewd to do so for the sake of future exchange opportunities which might be endangered otherwise. But the intensive expansion of exchange relations has always gone together with a process of relative pacification. All of the "public peace" arrangements of the Middle Ages were meant to serve the interests of exchange.[5] The appropriation of goods through free, purely economically rational exchange, as Oppenheimer has said time and again, is the conceptual opposite of appropriation of goods by coercion of any kind, but especially physical coercion, the regulated exercise of which is the very constitutive element of the political community.

NOTES

1. The title is by the present editor; all notes are by Rheinstein. (R)

2. Die Juden und das Wirtschaftsleben (1911, Epstein tr. 1913, 1951, s.t. The Jews and Modern Capitalism); Der Bourgeois (1913); Händler und Helden (1915); Der moderne Kapitalismus, vol. III, Part I, p. 6; see also Deutscher Sozialismus (1934) (Geiser tr. s.t. A New Social Philosophy, 1937). Revulsion against the so-called "de-humanization" of relationships has constituted an important element in the German neo-romanticism of such groups and movements as the circle around the poet Stefan George, the youth movement, the Christian Socialists, etc. Through the tendency to ascribe this capitalistic spirit to the Jews and to hold them responsible for its rise and spread, these sentiments became highly influential in the growth of organized anti-Semitism and, especially, National-Socialism.

3. Such as the monopoly of guild members to sell certain goods within the city, or the monopoly of the lord of a manor to grind the grain of all peasants of the district, or the monopoly of the members of the bar to give legal advice, a monopoly which was abolished in most Continental countries in the nineteenth century.

4. On market peace, cf. S. Rietschel, Markt und Stadt (1897); H. Pirenne, Villes, marchés et marchands au moyen âge (1898).

5. On such medieval peace arrangements (*Landfrieden*), which were aimed at the elimination of feuds and private wars and which occurred either as non-aggression pacts concluded, often with ecclesiastical or royal coöperation, between barons, cities, and other potentates, or were sought to be imposed on his unruly subjects by the king, see Quidde, *Histoire de la paix publique en Allemagne au moyen âge* (1929), 28 Recueil des cours de l'Académie de droit international 449.

CHAPTER VIII

ECONOMY AND LAW (SOCIOLOGY OF LAW)[1]

i

Fields of Substantive Law

1. *Public Law and Private Law*

One of the most important distinctions in modern legal theory and practice is that between "public" and "private" law.[2] But the exact criteria of this distinction are surrounded by controversy.

(a) Sociologically, one might define public law as the total body of those norms which regulate state-oriented action, that is, those activities which serve the maintenance, development, and the direct pursuit of the objectives, of the state (*Staatsanstalt*), objectives which must themselves be valid by virtue of enactment or consensus. Correspondingly, private law would be defined as the totality of those norms which, while issuing from the state, regulate conduct other than state-oriented conduct. This kind of definition is rather non-technical and, therefore, difficult to apply. But it seems nevertheless to constitute the basis of almost all other attempted distinctions of the two great branches of the law.

(b) The distinction just stated is often intertwined with another one. Public law might be regarded as identical with the total body of the

"reglementations," i.e., those norms which only embody instructions to state officials as regards their duties, but, in contradistinction to what may be called "claim norms," do not establish any "rights" of individuals. This distinction, however, must be correctly understood. For the norms of public law can establish rights of individuals, for instance, the right to vote as established in a law on presidential elections. Such a law nonetheless falls within the domain of public law.

But today such a "public right" belonging to an individual is not regarded as a vested right in the same sense as a property right, which the legislator himself views as in principle inviolable. From a legal point of view, the public rights of individuals are but those spheres of activity in which he acts as an agent of the state for specifically delimited purposes. Thus, in spite of the fact that they formally appear as rights, they may still be regarded as but another aspect, a "reflex," of a "reglementation" rather than as the result of a "claim-norm." Furthermore, by no means all claims which exist in a legal system and which belong to private-law, as previously defined, are vested rights.[3]

Indeed, even those incidents of ownership which are fully recognized at any given time, may be looked upon as being but reflexes of the legal order. As a matter of fact, the question as to whether a given right is "vested" means frequently no more than whether or not it is liable to expropriation without compensation. Thus one might assert that all public law is in the legal sense no more than a body of reglementations, without asserting that reglementations belong exclusively to the sphere of public law. But not even such a definition would be correct. For in some legal systems the governmental power itself may be regarded as a patrimonial right belonging to the monarch, and in some others certain constitutional rights belonging to the citizen may be regarded as inalienable and, therefore, as vested rights.

(c) Finally, private law might be contrasted with public law as the law of coördination as distinguished from that of subordination. Private law would then be concerned with those legal affairs in which several parties are confronting each other so that the law treats them as being coördinated and that their legal spheres are to be "properly" defined against each other by the legislature, the judiciary or, by means of legal transactions, by the parties themselves. In the domain of public law, however, a holder of preëminent power, having authoritative power of command, is confronting those persons who are his subjects by virtue of the legal meaning of the norms. Yet not every functionary of the state has authority to command and not all those activities of the organs of the state which are regulated by public law are commands. Furthermore, the regulation of the relations among the various public organs,

i.e., among power holders of equal status, belongs to the proper sphere of "public law." Besides, one must include within the field of public law not only the relations between the organs of the state and those subject to them but also those activities of the subjects by which they create and control those organs. Once this is admitted, the definition here discussed leads us back to the one previously presented, i.e., the definition that does not regard as falling within the field of public law every regulation of the power to exercise authority or of the relations between those who exercise authority and those who are subject to it. For example, an employer's exercise of power would obviously be excluded because it originates in a contract between parties of equal legal status. Again, the authority of the head of a family will be regarded as falling within the sphere of private law—for no other reason than the fact that public law is only concerned with those activities within a given legal system which are directed toward the maintenance of the state as well as toward the realization of those objectives of the state which are its prime concern. Of course, the question as to what these particular objectives should be is answered in varying ways even today. Lastly, certain public activities may be intentionally regulated in such a way that, with respect to the same subject matter, rights vested in individuals and powers conferred upon state agencies coexist and compete with each other.

As we have seen, the delimitation of the spheres of public and private law is even today not entirely free from difficulty. It was even less clear in the past, and there was once a situation in which such a distinction was not made at all. Such was the case when all law, all jurisdictions, and particularly all powers of exercising authority were personal privileges, such as, especially, the "prerogatives" of the head of the state. In that case the authority to judge, or to call a person into military service, or to require obedience in some other respect was vested right in exactly the same way as the authority to use a piece of land; and just like the latter, it could constitute the subject matter of a conveyance or of inheritance. Under this condition of "patrimonialism," political authority was not organized as a compulsory association (*Anstalt*), but was represented by the concrete consociation (*Vergesellschaftung*) and compromises of individual power-holders, or persons claiming powers, and by the concrete arrangements made between them. It was a kind of political authority which was not essentially different from that of the head of a household, or a landlord, or a master of serfs. Such a state of affairs has never existed as a complete system, but, in so far as it did exist, everything which we legally characterize as falling within the sphere of "public law" constituted the subject mat-

ter of the private rights of individual power-holders and was in this respect in no way different from a "right" in private law.

2. *Right-Granting Law and Reglementation*

A legal system may also assume a character exactly opposite to the one just described, that is to say, "private law," of the kind defined above, may be completely absent in wide areas of social life which would today fall within its sphere. This occurs where there exist no norms having the character of right-granting laws. In such a situation, the entire body of norms consists exclusively of "reglementations." In other words, all private interests enjoy protection, not as guaranteed rights, but only as the obverse aspect of the effectiveness of these regulations. This situation, too, has never prevailed anywhere in its pure form, but in so far as it obtains, all forms of law become absorbed within "administration" and become part and parcel of "government."*

3. *"Government" and "Administration"*

"Administration" is not a concept of public law exclusively. For we must recognize the existence of private administration, as in the case of a household or a business enterprise, alongside the kind of administration carried on either by the state or by other public institutions (i.e., either institutional organs of the state itself, or heteronomous institutions deriving their powers from the state).

In its widest sense, the expression "public administration" includes not only legislation and adjudication but also those other residuary activities which here we want to call "government." "Government" can be bound by legal norms and limited by vested rights. In these respects it resembles legislation and adjudication. But there are two aspects to be distinguished. First, and in a positive sense, government must have a legitimate basis for its own jurisdiction; a modern government exercises its functions as a "legitimate" jurisdiction, which means legally that it is regarded as resting on authorization by the constitutional norms of the state. Secondly, and in a negative sense, the limitations on the power of the state by law and vested rights create those restraints upon its freedom of action to which it must adjust itself. One specific characteristic of government, however, resides in the fact that it aims not only at acknowledging and enforcing the law simply because the law exists and constitutes the basis of vested rights, but also in that it pursues

other concrete objectives of a political, ethical, utilitarian, or some other kind. To the government, the individual and his interests are in the legal sense objects rather than bearers of rights.

In the modern state, it is true, there exists a trend formally to assimilate adjudication to "administration" (in the sense of "government"). A judge is frequently instructed, either by the positive law or by legal theory, to render his decision on the basis of ethics, equity, or expediency. In the administrative field, on the other hand, the modern state has provided for the citizen, who, on principle, is only its object, a possibility of protecting his interests by granting remedies which are formally identical with those existing in the field of the administration of justice, namely, the right to resort to administrative tribunals.[5] But none of these guaranties can eliminate the basic contradiction between adjudication and "government." Law creation, too, is approximated by government wherever government promulgates general rules dealing with typical situations rather than merely intervening in specific cases —and, to a certain extent, even when it does not feel bound by them. After all, observance by the government of the rules is regarded as the normal thing and a total disregard of them would ordinarily be disapproved as "arbitrary" conduct.

The primeval form of "administration" is represented by patriarchal power, i.e., the rule of the household. In its primitive form, the authority of the master of the household is unlimited. Those subordinated to his power have no rights as against him, and norms regulating his behavior toward them exist only as indirect effects of heteronomous religious checks on his conduct. Originally, we are confronted with the coexistence of the theoretically unrestrained administrative power of the master and arbitration proceedings which originate in arrangements made between kinship groups and relate to the proof and composition of alleged injury. Only in the latter are "claims," i.e., rights, at issue and are verdicts rendered; and only in relations between kinship groups do we find established formalities, limitations as to time, rules of evidence, etc., that is, the beginnings of "judicial" procedure. None of these exist within the sphere of patriarchal power, which represents the primitive form of "government," in the same way as the inter-group arrangements represent the primitive form of adjudication. The two are distinct from one another also with regard to the spheres in which they operate. Even such a relatively late phenomenon as the ancient Roman administration of justice stopped at the threshold of the household.[6] We shall later see how domestic authority came to be diffused beyond its original sphere and was carried over into certain forms of political power, viz., patrimonial monarchy, thereby also entering into the administration of justice.

Whenever this happened, the distinctions between legislation, adjudication, and government were broken down. The consequences have been one or the other of the following:

In the first place, adjudication assumed the character of "administration," both formally and materially, and was operated simply through decrees or commands issued by the lord to his subjects according to considerations of mere expediency or equity, and without fixed forms and at arbitrary times. This situation, however, never obtained with full force except in extreme cases; but approximations to it have occurred in "inquisitorial" procedures as well as in all those systems of procedure in which the conduct of trial and proof is dominated by the judge.[7] The other, rather different, possible consequence of the diffusion of the pattern of domestic authority into extra-household spheres consists in "administration" assuming the form of judicial procedure, as happened to a large extent, and in some sense still happens today, to be the case in England. Parliament deals with "private bills," i.e., with such purely administrative acts as licensing, etc., in exactly the same way that it treats public bills. The failure to distinguish between the two types of legislation has been a general feature of older parliamentary procedure; for the English Parliament it was, indeed, a decisive factor in the establishment of its position.[8] Parliament arose originally as a judicial body, and, in France, it became such to the exclusion of all other activities. This confusion between legislative and judicial functions was conditioned by political circumstances. In Germany, too, the budget, which is a purely administrative matter,[9] is treated as a legislative act, in adherence to the English pattern as well as for political reasons.

The distinction between "administration" and "private law" becomes fluid where the official actions of the organs of official bodies assume the same form as agreements between individuals. This is the case when officials in the course of their official duties make contractual arrangements for exchange of goods or services either with members of the organization or with other individuals. Frequently such relationships are withdrawn from the norms of private law, are arranged in some way different from the general legal norms as to substance or as to the mode of enforcement, and are thus declared to belong to the sphere of "administration."[10] As long as claims treated in this way are guaranteed by some possibility of enforcement, they do not cease to be "rights," and the distinction is no more than a technical one. However, even as such, the distinction may be of considerable practical significance. But the total structure of (ancient) Roman "private law" is completely misunderstood if one regards as belonging to its sphere only those claims which were enforced in a regular jury trial and on the basis of a *lex*, and excludes from it all those rights which were enforced solely through the

magistrate's *cognitio* and which, at times, were of preponderant economic significance.[11]

4. *Criminal Law and Private Law*

The authority of magi and prophets and, under certain conditions, the powers of the priesthood, can, to the extent that they have their source in concrete revelation, be as unrestrained by rights and norms as the primitive power of the master of a household. Belief in magic is also one of the original sources of criminal law, as distinguished from "private law."[12] The modern view of criminal justice, broadly, is that public concern with morality or expediency decrees expiation for the violation of a norm; this concern finds expression in the infliction of punishment upon the evil doer by agents of the state, the evil doer, however, enjoying the protection of a regular procedure. The redress of the violation of private rights, on the other hand, is left to the injured party, and action by the latter leads not to punishment, but to the restoration of a situation which the law has guaranteed. But even today this distinction is not always applied in clear-cut fashion. It was certainly unknown in primitive administration of justice. Even in the late stages of otherwise complex legal developments, every action was simply looked upon as sounding in tort and the notions of "contract" and *obligatio* were completely unknown.[13] Indeed, Chinese law still manifests some traces of this situation,[14] which in the history of civilization has been of such great importance in legal development. Every infringement by an outsider upon a member of a kinship group or his property calls for either revenge or composition, the pursuit of which is left to the injured party, supported by his kin.

The procedure for obtaining composition either shows no trace at all or at most the mere beginnings of the distinction between felony that calls for vengeance, and tort that merely requires restitution. Furthermore, the absence of a distinction between actions for what we call "civil" redress and criminal prosecution aiming at punishment, and the subsumption of both under the single category of atonement for wrong imparted, is connected with two peculiarities of primitive law and procedure. There is a complete unconcern with a notion of guilt, and, consequently, with the idea of degrees of guilt reflecting inner motivations and psychological attitudes. He who thirsts for vengeance is not interested in motives; he is concerned only with the objective happening of the event by which his desire for vengeance has been aroused. His anger expresses itself equally against inanimate objects, by which he has been unexpectedly hurt, against animals by which he

has been unexpectedly injured, and against human beings who have harmed him unknowingly, negligently, or intentionally. This, for example, was the original sense of the Roman *actio de pauperie*, i.e., that an animal had behaved in a way other than it should have, as well as of the *noxae datio*, i.e., the surrender of the animal for vengeance.[15] Every wrong is, therefore, a "tort" that requires expiation, and no tort is more than a wrong that requires expiation.

The primitive indistinctiveness of crime and tort also found expression in the ways in which "judgments" were "enforced." Procedure did not vary, whether the suit was about a piece of land or about homicide. But even when that stage was reached when fairly well-established compositions began to be imposed, there was still a lack of "official" machinery for the enforcement of these judgments. It was rather believed that a judgment which had been arrived at by the interpretation of oracles or other magical devices, or the invocation of magical or divine powers, carried with it sufficient magical authority to enforce itself, since disobedience constituted a kind of serious blasphemy. Where, as a result of certain developments connected with military organization (to be dealt with shortly),[16] the trial took place before an assembly of the whole community, with all members participating in the making of the judgment (as was the case, for instance, in early Germanic recorded history), it might be expected that as a consequence of such coöperation in the rendering of a judgment, none of its members would obstruct its enforcement, provided it had not been publicly challenged in the assembly. Nevertheless, the victorious litigant could not depend on anything more than mere passivity on the part of those outside of his own kinship group. It was entirely incumbent upon him, by way of self-help, to enforce the judgment with the assistance of his kinfolk unless, of course, the unsuccessful party obeyed the judgment. Both in Rome and among the Germanic tribes, this self-help usually consisted in the capture of the condemned to remain as hostage for the payment of the composition, the amount of which was either fixed by the judgment itself or was to be agreed on by the litigants themselves. Nor did this self-help vary for different types of litigation: self-help was resorted to whether the suit had been about a piece of land or whether it had been about homicide. An official *machinery* for the enforcement of judgments did not become available until princes or magistrates saw the necessity, for political reasons and in the interest of public order, to use their *imperium* against persons interfering with the enforcement of a judgment and to threaten such persons with legal sanctions, especially outlawry.[17] All this, however, took place without any distinction between civil and criminal proceedings. In those legal systems in which under the influence of certain legal *honoratiores*[18] there remained some con-

tinuity with the ancient forms of expiatory justice, and in which there was a lesser degree of "bureaucratization," i.e., those of Rome and England, this original state of complete nondifferentiation continued to show itself in the rejection of specific performance for the restoration of concrete objects. Even in an action concerning title to land, the judgment was ordinarily rendered in terms of money.[19] This was not due at all to a highly developed market economy which would evaluate everything in terms of money. Rather was it a consequence of the primitive principle that every wrong, including the wrongful possession of property, demanded satisfaction and nothing but satisfaction, and that this liability attached to the culprit's own person. On the Continent, specific performance emerged relatively early in the early Middle Ages, owing to the rapidly growing power of the *imperium* of the princes.[20] English procedure, on the other hand, even down to recent times, had to resort to peculiar fictions in order to introduce the possibility of specific performance in actions concerning real property.[21] In Rome the persistence of condemnation to money damages instead of specific performance was the result of the general tendency to keep official activities to a minimum, which, in turn, was due to the system of rule by *honoratiores*.

5. *Tort and Crime*

Substantive law too was deeply influenced by the notion that litigation implied a wrong committed by the accused and not just the existence of a state of affairs objectively regarded as unlawful. Originally, all "obligations" were, without exception, obligations *ex delicto;* hence, contractual obligations were, as we shall see,[22] at first conceived as arising out of tort. In England, as late as the Middle Ages, a contractual action was formally connected with a fictitious tort.[23] The abatement of the debts upon the death of the debtor was as much because of this concept as of the absence of any notion of a "law of succession."[24] The heirs' liability for contractual debts was, as we shall see,[25] developed with varying results by means of the joint liability for wrongful acts, first of the kindred and later of the fellow members of the household or of the participants in a power relation as either subordinates or superiors. Even the principle of protection of bona fide purchasers, a principle allegedly indispensable for modern commerce,[26] has its origin in the ancient idea that no lawsuit could be anything but one *ex delicto* against a thief or his accessory. Only later, in consequence of the development of actions *ex contractu* and the distinction between "real" and "personal" actions, did the old rule undergo divergent developments in different

legal systems. Thus its place came to be occupied by the owner's action against every possessor (*rei vindicatio*)[27] in ancient Roman[28] and in English law[29] as well as in Hindu law,[30] which, in contrast to Chinese law, was relatively highly rationalized. Still later the protection of the bona fide purchaser was revived again in the case of purchasers in market overt in English[31] and Hindu law[32] on the rational grounds of providing security for business dealings. The absence of general protection of bona fide purchasers in English and Roman law, as contrasted with German law, is yet another instance of the adaptability of commercial interest to the most diverse systems of substantive law. It illustrates, moreover, the high degree of independence which characterizes the development of law. Perhaps another example of this delictual conception of legal obligation can be found in the expression *malo ordine tenes*[33] that occurs in the Frankish action for the restitution of land, although the correct interpretation of these words is a debatable matter.

It is quite possible, however, that entirely different ideas may have been at work in such legal institutions as the bilateral Roman *vindicatio*, the Hellenic *diadikasia*,[34] or the Germanic actions for land.[35] In all these cases one may conclude that they were originally regarded as *actiones de recursu*, i.e., actions tending to ascertain a person's full membership in a certain community as based upon his title to a certain piece of land.[36] After all, *fundus* involves "membership," and κλῆρος the "member's share." Again, originally, the regular *ex officio* prosecution for a delict was as nonexistent as the official enforcement of a judgment. Within the household, chastisement derived from the patriarch's authority over his household. Disputes among members of a kinship group were settled by the elders. However, in all these situations, the decision whether punishment was to be meted out or not, and, if it was, in what form and to what degree, was an entirely discretionary matter, for "criminal law" was nonexistent. A primitive form of criminal law did develop outside the boundaries of the household, particularly in situations in which the conduct of an individual endangered *all* the members of his neighborhood, kinship, or political association. Such situations could be brought about by two types of misconduct: religious blasphemy or military disobedience. The whole group was endangered when a magical norm, e.g., a taboo, was infringed and, in consequence, the wrath of magical forces, spirits or deities, threatened to descend with evil consequences not merely upon the blasphemer (or criminal) himself but upon the whole community which suffered him to exist within their midst. Stimulated by magi or priests, the members of the community would outlaw the culprit or lynch him, as for instance through stoning among the Jews. Or else they might conduct an expiatory reli-

gious trial. Blasphemous acts were thus the main source of what may be called "intra-group punishment" as distinguished from "inter-group vengeance." The second source for such punishment was political or, originally, military. Anyone endangering by treachery or cowardice the security of the collective fighting forces or, after disciplined combat had come into being, by disobedience, had to reckon with the punitive reactions of the war lord or the army.[37] And although, of course, a person's military misbehavior had first to be established as a fact, the procedure for the finding of this fact was very summary indeed.

6. *Imperium*

From the predominance of vengeance to the formation of a firmly fixed and formalized criminal procedure a direct line of development can be traced; the reasons will become clear below. The punitive reactions of the master of a domestic group, or of the religious or military authorities, were at first free from procedural formality or rule. It is true that the punitive powers of the master of a household became to some extent restricted by the intervention of the elders of his own kinship group or the religious or military authorities in charge of certain intra-group relations, but by and large the master remained a law unto himself within his sphere and he was bound by legal rules only in very special cases.

A slow, and in its result varying, subjection to rules occurred, however, as to the primitive nondomestic powers, i.e., the householdlike power exercised by patrimonial monarchy in relations quite different from those of a household, or, in other words, as to those powers which are contained in the concept of *imperium*. We shall not discuss here the origin of the process by which definite rules became established. Nor shall we discuss at present, whether the holder of *imperium* imposed them on himself in his own interest, or whether he had to do so in view of the factual limits within which he would find obedience, or whether they were imposed upon him by other powers. All these questions will be dealt with in our analysis of domination. *Imperium* has always included, however—and in the past to an even greater extent than today—the power to punish and, in particular, the power to crush disobedience not merely through the direct application of force but through the threat of detriment as well. The power to punish could be directed against certain subordinate "officials" who exercised *imperium* or against those who were subjected to its power. In the former case, we speak of *disciplinary power*, and in the latter, of the *power to inflict punishment*. In this context, "public law" is directly connected with

criminal law; at any rate, public law, criminal law, criminal procedure and sacred law do not begin to be systematically treated unless there are at least some rules which are recognized as factually binding.

7. *Limitation of Power and Separation of Powers*

Such norms as those just mentioned always act as restraints upon the *imperium* within the sphere in which they obtain. On the other hand, not every restraint possesses "normative" character. Now there are two kinds of restraints, viz., (1) limitations of power, and (2) separation of powers. Limitation of power exists where, due to sacred tradition or enactment, a particular *imperium* is restrained by the rights of its subjects. The power-holder may issue only commands of a certain type, or he may issue all sorts of commands except in certain cases or subject to certain conditions. Whether these limitations possess "legal," "conventional," or merely "customary" status, is to be answered in each case by ascertaining whether the maintenance of the limitations is guaranteed by a coercive organization (whose coercive means may be more or less effective) or whether they are maintained only by conventional disapproval or whether in the last analysis there is no *agreed* limitation at all. The other kind of restraint ("separation of powers") exists where one *imperium* conflicts with another *imperium*, either equal or in certain respects superior to it, but the legitimate validity of which is fully recognized as limiting the extent of its authority. Both limitation of power and separation of powers may exist together, and it is this coexistence which so distinctively characterizes the modern state with its distribution of competence among its various organs. Indeed, this modern state is essentially characterized by the following criteria: It is a consociation (*anstaltsmässige Vergesellschaftung*) of bearers of certain defined *imperia;* these bearers are selected according to established rules; their *imperia* are delimitated from each other by general rules of separation of powers; and internally each of them finds the legitimacy of its power of command defined by set rules of limitation of power.

Both separation of powers and limitation of power may assume structural forms quite different from those in which they appear in the modern state. Especially is this true of the separation of powers. Its structure was different in the ancient Roman law of intercession of *par majorve potestas*[38] as well as in the patrimonial, the estate-type, the feudal and the political organization. Nonetheless, there is truth in Montesquieu's assertion that it was only through the separation of powers that the very concept of public law was made possible.[39] But this proposition must be understood correctly in the sense that the

separation of powers need not necessarily be of the sort that he thought he had found in England. On the other hand, not every kind of separation of powers leads to the idea of a public law, but only that type which is peculiar to the idea of the state as a rationally organized institution. The reason why a systematic theory of public law was developed only in the Occident is simply that only in these countries had the political organization assumed the form of an institution with rationally dovetailed jurisdictions and a separation of powers. As far as Antiquity is concerned, it had a systematic theory of the state precisely to the extent that there existed a rational separation of powers: the doctrine of the *imperia* of the several Roman magistrates was elaborated in a systematic manner.[40] Everything else was essentially political philosophy rather than constitutional law. In the Middle Ages, separation of powers appeared only in the competition among privileges, feudal claims, and other rights; consequently, there was no separate treatment of constitutional law. Whatever there was of it was contained in feudal and manorial law. The decisive legal conceptions of modern public law owe their origin to a peculiar combination of several factors. As a matter of historical fact, they owe it to the consociation of privileged persons in public corporations of the *Ständestaat*, which increasingly combined both separation and limitation of powers with institutional structure. As a matter of legal theory, they owe it to the Roman concept of the corporation, the ideas of natural law, and, finally, French legal theory. We shall deal with this development of modern public law in our analysis of domination. In the following sections we shall deal mainly with lawmaking and lawfinding, but only in connection with those economically relevant spheres which today are left to private law and civil procedure.

8. *Substantive Law and Procedure*

According to our contemporary modes of legal thought, the activities of political organizations fall, as regards "law," into two categories, viz., lawmaking and lawfinding, the latter involving "execution" as a technical matter. Today we understand by lawmaking the establishment of general norms which in the lawyers' thought assume the character of rational rules of law. Lawfinding, as we understand it, is the "application" of such established norms and the legal propositions deduced therefrom by legal thinking, to concrete "facts" which are "subsumed" under these norms. However, this mode of thought has by no means been common to all periods of history. The distinction between lawmaking as creation of general norms and lawfinding as application of these

norms to particular cases does not exist where adjudication is "administration" in the sense of free decision from case to case. In such a situation, it is not only the legal norm that is lacking, but also the idea of a party's right to have it applied to his case. The same is true where law appears as "privilege" and where, accordingly, the idea of an "application" of legal norms as the foundation of a legal claim could not have arisen. Again, the distinction between lawmaking and lawfinding is absent wherever lawfinding is not conceived as an application of general norms to concrete cases. In other words, the distinction is absent in all cases of irrational adjudication, which has been not only the primitive form of adjudication but which, as we shall see [in sec. *iii*, below], has also prevailed, either in its pure or in some modified form, throughout all history in all parts of the world except those in which Roman law came to obtain. Similarly, the distinction between rules of law to be applied in the process of lawfinding, and rules regarding that process itself, has not always been drawn as clearly as that which is drawn today between substantive and procedural law. Where legal procedure rested upon the *imperium's* influence upon the pleadings, as, for instance, in early Roman law, or, in a technically quite different way, in English law, it is easy to hold the notion that substantive legal claims are identical with the right to make use of procedural forms of action such as the Roman *actio*[41] or the English writ.[42] In older Roman legal doctrine the line of demarcation between procedural and private law was thus not drawn in the way it is drawn by us. For quite different reasons, a similar mixture of problems which we would respectively call procedural and substantive was apt to arise where adjudication was based on irrational modes of proof, such as the oath or wager of law in their original magical significance, or upon ordeals. The right or duty to resort, or submit, to such significant acts of magic was then a component of a substantive legal claim or even identical with it. Nevertheless, the distinction between rules of procedural and of substantive law was inherent in the distinction made in the Middle Ages between *Richtsteige*, on the one hand, and "mirrors of law,"[43] on the other. This distinction was no less clear than that which was made in the Romans' early efforts at systematization,[44] although it was made in a somewhat different way.

9. *The Categories of Legal Thought*

As we have already pointed out, the mode in which the current basic conceptions of the various fields of law have been differentiated from each other has depended largely upon factors of legal technique and of political organization. Economic factors can therefore be said to have

had an indirect influence only. To be sure, economic influences have played their part, but only to this extent: that certain rationalizations of economic behavior, based upon such phenomena as a market economy or freedom of contract, and the resulting awareness of underlying, and increasingly complex conflicts of interests to be resolved by legal machinery, have influenced the systematization of the law or have intensified the institutionalization of the polity. We shall have occasion to observe this time and again. All other purely economic influences merely occur as concrete instances and cannot be formulated in general rules. On the other hand, we shall frequently see that those aspects of law which are conditioned by political factors and by the internal structure of legal thought have exercised a strong influence on economic organization. In the following paragraphs, we shall deal briefly with the most important conditions by which the formal characteristics of law, i.e., lawmaking and lawfinding, have been influenced. We shall be especially interested in observing the extent and the nature of the rationality of the law and, quite particularly, of that branch of it which is relevant to economic life, viz., private law.

A body of law can be "rational" in several different senses, depending on which of several possible courses legal thinking takes toward rationalization. Let us begin with the seemingly most elementary thought process, viz., generalization, i.e., in our case, the reduction of the reasons relevant in the decision of concrete individual cases to one or more "principles," i.e., legal propositions. This process of reduction is normally conditional upon a prior or concurrent analysis of the facts of the case as to those ultimate components which are regarded as relevant in the juristic valuation. Conversely, the elaboration of ever more "legal propositions" reacts upon the specification and delimitation of the potentially relevant characteristics of the facts. The process both depends upon, and promotes, casuistry. However, not every well-developed method of casuistry has resulted in, or run parallel to, the development of legal propositions of high logical sublimation. Highly comprehensive schemes of legal casuistry have grown up upon the basis of a merely paratactic association, that is, of the analogy of extrinsic elements. In our legal system the analytical derivation of "legal propositions" from specific cases goes hand in hand with the synthetic work of "construction" of "legal relations" and "legal institutions," i.e., the determination of which aspects of a typical kind of social or consensual action are to be regarded as *legally* relevant, and in which logically consistent way these relevant components are to be regarded as *legally* coördinated, i.e., as being in "legal relationships." Although this latter process is closely related to the one previously described, it is nonetheless possible for a very high degree of sublimation in analysis to be correlated with a very

low degree of constructional conceptualization of the legally relevant social relations. Conversely, the synthesis of a "legal relationship" may be achieved in a relatively satisfactory way despite a low degree of analysis, or occasionally just because of its limited cultivation. This contradiction is a result of the fact that analysis gives rise to a further logical task which, while it is compatible with synthetic construction, often turns out to be incompatible with it in fact. We refer to "systematization," which has never appeared but in late stages of legal modes of thought. To a youthful law, it is unknown. According to present modes of thought it represents an integration of all analytically derived legal propositions in such a way that they constitute a logically clear, internally consistent, and, at least in theory, gapless system of rules, under which, it is implied, all conceivable fact situations must be capable of being logically subsumed lest their order lack an effective guaranty. Even today not every body of law (e.g., English law) claims that it possesses the features of a system as defined above and, of course, the claim was even less frequently made by the legal systems of the past; where it was put forward at all, the degree of logical abstraction was often extremely low. In the main, the "system" has predominantly been an external scheme for the ordering of legal data and has been of only minor significance in the analytical derivation of legal propositions and in the construction of legal relationships. The specifically modern form of systematization, which developed out of Roman law, has its point of departure in the logical analysis of the meaning of the legal propositions as well as of the social actions.[48] The "legal relationships" and casuistry, on the other hand, often resist this kind of manipulation, as they have grown out of concrete factual characteristics.

In addition to the diversities discussed so far, we must also consider the differences existing as to the technical apparatus of legal practice; these differences to some extent associate with, but to some extent also overlap, those discussed so far. The following are the simplest possible type situations:

Both lawmaking and lawfinding may be either rational or irrational. They are *formally* irrational when one applies in lawmaking or lawfinding means which cannot be controlled by the intellect, for instance when recourse is had to oracles or substitutes therefor. Lawmaking and lawfinding are *substantively* irrational on the other hand to the extent that decision is influenced by concrete factors of the particular case as evaluated upon an ethical, emotional, or political basis rather than by general norms. "Rational" lawmaking and lawfinding may be rational in a formal or a substantive way. All formal law is, formally at least, relatively rational. Law, however, is "formal" to the extent that, in both substantive and procedural matters, only unambiguous general char-

acteristics of the facts of the case are taken into account. This formalism can, again, be of two different kinds. It is possible that the legally relevant characteristics are of a tangible nature, i.e., that they are perceptible as sense data. This adherence to external characteristics of the facts, for instance, the utterance of certain words, the execution of a signature, or the performance of a certain symbolic act with a fixed meaning, represents the most rigorous type of legal formalism. The other type of formalistic law is found where the legally relevant characteristics of the facts are disclosed through the logical analysis of meaning and where, accordingly, definitely fixed legal concepts in the form of highly abstract rules are formulated and applied. This process of "logical rationality" diminishes the significance of extrinsic elements and thus softens the rigidity of concrete formalism. But the contrast to "substantive rationality" is sharpened, because the latter means that the decision of legal problems is influenced by norms different from those obtained through logical generalization of abstract interpretations of meaning. The norms to which substantive rationality accords predominance include ethical imperatives, utilitarian and other expediential rules, and political maxims, all of which diverge from the formalism of the "external characteristics" variety as well as from that which uses logical abstraction. However, the peculiarly professional, legalistic, and abstract approach to law in the modern sense is possible only in the measure that the law is formal in character. In so far as the absolute formalism of classification according to "sense-data characteristics" prevails, it exhausts itself in casuistry. Only that abstract method which employs the logical interpretation of meaning allows the execution of the specifically systematic task, i.e., the collection and rationalization by logical means of all the several rules recognized as legally valid into an internally consistent complex of abstract legal propositions.

Our task is now to find out how the various influences which have participated in the formation of the law have influenced the development of its formal qualities. Present-day legal science, at least in those forms which have achieved the highest measure of methodological and logical rationality, i.e., those which have been produced through the legal science of the Pandectists' Civil Law, proceeds from the following five postulates: viz., first, that every concrete legal decision be the "application" of an abstract legal proposition to a concrete "fact situation"; second, that it must be possible in every concrete case to derive the decision from abstract legal propositions by means of legal logic; third, that the law must actually or virtually constitute a "gapless" system of legal propositions, or must, at least, be treated as if it were such a gapless system; fourth, that whatever cannot be "construed" rationally in legal terms is also legally irrelevant; and fifth, that every social action

of human beings must always be visualized as either an "application" or "execution" of legal propositions, or as an "infringement" thereof, since the "gaplessness" of the legal system must result in a gapless "legal ordering" of all social conduct. (This conclusion has been drawn particularly by Stammler, although not explicitly.)[46]

However, for the moment we shall not concern ourselves with these theoretical postulates, but shall rather investigate certain general formal qualities of the law which are important for its functioning.

NOTES

1. The Sociology of Law, edited by Max Rheinstein, is the most thoroughly annotated part of the manuscript. Much of the literature used by Weber in other chapters, too, is cited here. The English edition of the Sociology of Law was a group effort. In addition to Shils and Rheinstein, Mrs. Elizabeth Mann Borgese and Mr. Samuel Stoljar participated in the translation; the latter also worked on the annotations, together with Dr. Alise Vagelis and Dr. Stoyan Bayitch. Unless otherwise indicated, all notes in this chapter are by this group.

On the following pages we reproduce Rheinstein's list of books cited in abbreviated form in the annotation. Books marked by an asterisk appear to have been used extensively by Weber. For further guidance to the contemporary literature used by Weber or closely related to the thoughts developed in this chapter, see Part 2 of the bibliography compiled by Johannes Winckelmann for his latest German edition, RECHTSSOZIOLOGIE (2nd rev. ed.; Neuwied: Luchterhand, 1967), 404–423.

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2. Weber refers here to Continental, and especially German, legal theory, where the distinction between public law and private law is given particular emphasis. The distinction was familiar to the Roman jurists and well known especially in Ulpian's definition (DIGEST 1.1.4.) of public law as that which "is concerned with the Roman state" (*quod ad statum rei Romanae spectat*) and of private law as that which "is concerned with the interest of individuals" (*quod ad singulorum utilitatem pertinet*). The distinction has been of practical significance where a government, although being prepared to guarantee a firm legal order with regard to the private relations among the citizens themselves, yet remained unwilling to fix those relations between them in hard and fast rules. This situation was typical of the late Roman Empire as well as of the absolute monarchies of the modern age. To the degree to which the organs of the state became subject to rules of law, the distinction between public and private law lost importance, ultimately to become no more than a convenient classification of certain legal rules, especially for the purposes of legal writing and education.

3. Cf. *infra*, sec. ii:1.

4. This description of the "ideal type" of the totalitarian state was written before it emerged in its modern form.—Weber's term "government" has been re-

tained here, although the term "executive" might bette correspond to American parlance.

5. An Anglo-American lawyer would regard this right as an ordinary instance of the "right" of access to the courts. But as a continental lawyer, Weber thinks of the protection of this right as that entrusted to the specially established administrative tribunals of either the French or the German type. This kind of protection of the citizen against abuses of governmental powers is organized on lines different from those known in the countries of the Common Law, ut it should not be regarded as less effective. *Cf.* E. Freund, *Administrative Law*, 1 Encyc. Soc. Sci. (1930) 452, and Garner, *Anglo-American and Continental European Administrative Law* (1929), 7 N.Y.U.L.Q. Rev. 387.

6. M. Kaser, *Zur altrömischen Hausgewalt* (1950), 67 Sav. Z. Rom. 474.

7. German, and generally continental, theory of procedure distinguishes between two types of trial: (1) the trial according to the *Offizialmaxime*, and (2) the trial according to the *Verhandlungsmaxime*. Under (1), the trial is dominated by the presiding judge whose function it is to ascertain what has really happened and who is, therefore, alone or primarily entitled to call and examine the witnesses and to require such proof as he thinks necessary. Under (2), the judge only assumes the ole of umpire in a trial mainly conducted by the parties; each party decides upon the witnesses he wishes to call, the questions he wishes to ask in examination and cross-examination, and the kind of evidence he wishes to submit. Actually, neither type of trial has in practice eve existed in a pure form. Continental procedure, both civil and criminal, follows today mainly the *Verhandlungsmaxime*, although the latter is modified, especially in criminal p ocedure, by certain concessions to the *Offizialmaxime*. Cf. Engelmann and Millar, 11; Millar, *Formative Principles of Civil Procedure* (1923) 18 Ill. L. Rev. 1, 94, 150; and his article on P ocedure in 12 Encyc. Soc. Sci. 439 (with list of further literature). Concerning modern continental procedure see also Schlesinger, Comparative Law (1950) 197, 510, 523; and Hamson, *Civil Procedure in France and England* (1950), 10 Camb. L.J. 411.

8. Cf. Jellinek, System 3; R. Gneist, History of the English Constitution (Ashwo th's tr. 1891) 338; Hatschek, 503; J. E. A. Joliffe, Constitutional History of Mediaeval England (1937) 337; also Anson, Law and Custom and the Constitution (1892) 262; on the present p actice, see Wade and Phillips, Constitutional Law (1950) 111.

9. Weber's classification of private bills and the budget as "purely administrative matte s" derives from German legal and constitutional theory, which distinguishes between laws in the *formal* and the *substantive* sense. A law in the substantive sense means an enactment authorizing interference by the state with the life, libe ty, or property of the citizens. A law in the formal sense is simply an act issuing from the legislature, irrespective of its contents. One of the postulates of the "rule of law" as understood on the Continent is that the state is not allowed to interfere with life, liberty, or property without the consent of the people or their duly elected representatives. Hence, any law in the substantive sense must be, or at least have its basis in, an act of the legislature, *i.e.*, a law in the formal sense. It is this political theory of the rule of law which constitutes the basis of the principle so firmly held in the continental countries, which requires that all law be expressed in a code or statute, and which thus excludes the recognition as legitimate of any "common law" which would not be based on statute ut solely on judicial p ecedent. The notion that law could be made or applied y courts without approval of the legislature expressly given in a statute, so that there could be a government y the judiciary rather than y the people's duly elected

representatives, appears repugnant to the traditional continental notions of the rule of law and democracy.

On the other hand, measures which do not constitute public interference with the life, liberty, or property of the subjects are classified as "administrative acts" which generally do not require for their validity a law in the formal sense. But modern constitutional law often requires that even an "administrative act" be embodied in a formal law, that is, be properly passed by the legislature. As regards the budget, it is, in theoretical analysis, only a program of public revenue and expenditure, and thus an administrative act. This analysis does not, of course, apply to the tax and customs provisions which constitute interferences with property. But even for the budget as such, positive constitutional law requires that it be embodied in an act of the legislature. The budget, therefore, albeit an administrative act, constitutes also a law in the formal sense. Cf. JELLINEK, SYSTEM 226; also KELSEN 123, 131; JELLINEK, VERWALTUNGSRECHT (1949) 8, 385; FLEINER, INSTITUTIONEN DES DEUTSCHEN VERWALTUNGSRECHTS (1922) 17; LABAND, DEUTSCHES REICHSSTAATSRECHT (1912) 130.

10. Cf. the special rules applying in this country to government contracts and the enforcement of contractual claims against the government. The special status of government contracts is even more pronounced in France, where they are subject to a body of special rules to a large extent judicially elaborated, not by the ordinary courts, but by the Council of State and the administrative tribunals subordinate to it. Cf. GOODNOW, COMPARATIVE ADMINISTRATIVE LAW (1893) I, 86, 107; II, 217; WALINE, LA NOTION JUDICIAIRE DE L'EXCÈS DU POUVOIR (1926) 7–10, 76 *et seq.*; F. A. OGG, EUROPEAN GOVERNMENTS AND POLITICS (2nd ed. 1943) 572, 768. On the other hand, under the fisc theory, which prevails in Germany and the other countries following the German system, government contracts are treated like contracts concluded between private parties and are subject to the jurisdiction of the ordinary courts. The same treatment applies to torts committed by public officials in the course of their official duties. Cf. E. Borchard, *State Liability*, 14 ENCYC. SOC. SCI. 338, with bibliography; also 2 GOODNOW, *op. cit.* 240, 258–261; as to government contracts in England, see Wade and Phillips, *op. cit. supra* n. 8 at p. 309.

11. Following GAIUS IV. 103, 105, it has become customary to distinguish between *iudicium legitimum* and the *iudicia quae imperio continentur*. The former is the regular civil procedure in which the issue is defined before the praetor, formally stated in the *formula*, and then tried before and decided by the lay judge (*iudex*). The latter term covers a variety of special proceedings in which, as a common feature, the issue is not only formulated by the magistrate but also tried before and decided by him or, under his authority, by a substitute (*subrogatus*, surrogate). One of these procedures was the so-called bureaucratic *cognitio*, which applied to the litigation concerning the lands owned by the state as *ager publicus*. This procedure differed from the ordinary civil procedure not only through the absence of a *iudex*, but also through the fact that judgment could be rendered not only for money damages but also for specific performance. As Weber indicates, its significance has been commonly neglected in the literature on Roman law. For further information on the legal aspects of the bureaucratic *cognitio*, see WENGER, 28, 62 *et seq.*, 239, 250, 255 *et seq.*; as to its significance in connection with the *ager publicus*, see WEBER, RÖMISCHE AGRARGESCHICHTE (1891), 167 *et seq.*; *cf.* also MOMMSEN, 290.

12. On the role of magic in legal development, see G. Gurvitch, *Magic and Law* (1942), 9 SOCIAL RESEARCH 104, and same, ESSAIS DE SOCIOLOGIE (1939) 204. For a general account of the role of magic in primitive societies as regards

the criminal law and the peculiar nature of private or civil law, see MALINOWSKI, CRIME AND CUSTOM IN SAVAGE SOCIETY (1926) 50–59, 67–68, 98–99, 119–121. See also HOEBEL, LAW AND ORDER IN POLYNESIA (1934) and Malinowski's introduction thereto, especially pp. xvii–lxxii; LOWIE, PRIMITIVE RELIGION (1925); TYLOR, PRIMITIVE CULTURE (6th ed. 1920); RADCLIFFE-BROWN, THE ANDAMAN ISLANDERS (1922); WESTERMARCK, RITUAL AND BELIEF IN MOROCCO (1926). Usually regarded as the basic work is SIR JAMES FRAZER, THE GOLDEN BOUGH, vols. I and II; THE MAGIC ART (3rd ed. 1911, abridged ed. 1925). For a short introduction to the problem, see ROBSON, CIVILISATION AND THE GROWTH OF LAW (1935) 74 *et seq.*

13. See on all this in general: ENGELMANN AND MILLAR, 118, 129, 211, 652; R. DE LA GRASSERIE, THE EVOLUTION OF CIVIL LAW (1918) 609; DIAMOND 301, 307; LOWIE, PRIMITIVE SOCIETY (1920) 397, 425. See also as regards:

(a) Roman law: NOYES 201–207; A. HÄGERSTRÖM, DER RÖMISCHE OBLIGATIONSBEGRIFF (1927) 600; KASER 308–316, 322–336.
(b) Greek law: P. Vinogradoff, *Greek Law*, in COLLECTED PAPERS, vol. 2 (JURISPRUDENCE, 1928) 43, 44.
(c) Oriental law: Articles "law" in 9 ENCYC. SOC. SCI. (1933) and literature there cited, especially the articles by Seidl on Egyptian Law, p. 109; Koschaker on Cuneiform Law, p. 211; and Gulak on Jewish Law, p. 219.
(d) Slavic law: L. J. STRACHOVSKY, A HANDBOOK OF SLAVIC STUDIES (1949); R. DARESTE, ÉTUDES D'HISTOIRE DU DROIT (1889) 198–222 (L'ANCIEN DROIT SLAVE).
(e) Germanic law: AMIRA 280–282; 2 BRUNNER, RECHTSGESCHICHTE 328.

In English law the distinction between tort and contract developed at a rather late stage. Cf. MAITLAND, FORMS 8, 48, 53 *et seq.*; HOLDSWORTH, II, 43 *et seq.*, III, 375 *et seq.*, 412 *et seq.*; PLUCKNETT.

14. The reference is to Chinese law as it existed before the reforms following the revolution of 1912; see J. H. WIGMORE, WORLD'S LEGAL SYSTEMS (1928) 141; W. S. H. HUNG, OUTLINES OF MODERN CHINESE LAW (1934) 5, 249; ALABASTER.

15. On the *actio de pauperie* and *noxae datio* see SOHM 280, 331 (*actio de pauperie*); and 191, 194, 280, 331 (*noxae datio*); WENGER 153, where further literature is cited.

16. See *infra*, sec. *iii*:6, under (c).

17. As to Rome, see WENGER 8 *et seq.*; as to Germanic law, see HUEBNER, 427, 477, 478. Cf. also the source materials collected in SONE AND SIMPSON, LAW AND SOCIETY (1948) 132 *et seq.*, 284 *et seq.*

18. *Honoratiores* (Lat. "those of higher honor"). In German the word *Honoratioren* is used, often with a slight implication of friendly ridicule, to mean the more respectable citizens of a town. In the present context Weber means by "legal *honoratiores*" (*Rechtshonoratioren*), those classes of persons who have (1) in some way made the occupation with legal problems a kind of specialized expert knowledge, and (2) enjoy among their group such a prestige that they are able to impress some peculiar characteristics upon the legal system of their respective societies. The context makes it clear, however, that persons of this kind can be *honoratiores* even though they receive a more than nominal remuneration for their activities. As to the role of legal *honoratiores* in general, see *infra*, sec. *iv*.

19. As to the Roman rule that *omnis condemnatio est pecuniaria*, see WENGER 143 *et seq.*

20. Cf. ENGELMANN AND MILLAR 166–168; also, M. Esmein, *L'origine et la logique de la jurisprudence en matière d'astreintes* (1903), 2 REVUE TRIMESTRIELLE DE DROIT CIVIL 5.

21. Here Weber seems to be mistaken. What he may have had in mind are the fictions resorted to in the action of ejectment; cf. MAITLAND, FORMS. For the doctrine of specific performance in English law, see MAITLAND, EQUITY (1936) 301–317; H. HAZELTINE, *Early History of Specific Performance of Contract in English Law* (FESTGABE FÜR KOHLER, 1913) 68–69.

22. *Infra*, sec. *ii*:2, point 4.

23. This statement is too broad. It applies to the action of assumpsit, but not to the actions of covenant, debt, and detinue.

24. See Goudy, *Two Ancient Brocards*, in P. VINOGRADOFF, ESSAYS OF LEGAL HISTORY (1913) 216–227; HOLDSWORTH, III, 576 *et seq.*

25. Cf. *infra*, sec. *ii*:6.

26. Weber cites here the ancient German maxim of *Hand muss Hand wahren* ("hand must warrant hand"). It means that where a bailee has transferred the chattel to a third party, the bailor has an action only against the bailee. See HUEBNER, 407, 421, 448; 2 BRUNNER, RECHTSGESCHICHTE 512; (1928), 668; HOLMES, COMMON LAW (1951), 164; 2 POLLOCK AND MAITLAND (1899) 155. As to the alleged indispensability for modern business of the protection of bona fide purchasers far beyond the modest scope of protection existing in American law, see 3 MOTIVE ZU DEM ENTWURFE EINES BÜRGERLICHEN GESETZBUCHES FÜR DAS DEUTSCHE REICH (1888) 344.

27. The action which Weber means here is, as indicated by his reference to the *rei vindicatio*, that action which has been developed in all more elaborate systems and which is now constituted in American law by the action of replevin. It is the remedy by which the owner as such, and without reference to any contract or tort, can obtain restitution of a chattel to which he has the title, but which he finds in the hands of another person to whom he has not given a special permission or right to hold or to use it.

28. As to the Roman *rei vindicatio*, see WENGER 127; SOHM 189, 248, 269; BUCKLAND, MANUAL 139–142; JOLOWICZ 142–144.

29. Cf. MAITLAND, FORMS, 22 *et seq.*; POLLOCK AND MAITLAND, 107, 137, 146–148, 166; HOLDSWORTH, III, 318 *et seq.*

30. Cf. Jolly, *Recht und Sitte*, in BÜHLERS, GRUNDRISS DER INDO-ARISCHEN PHILOLOGIE (1896) 8.

31. On the history of market overt in English law see HOLDSWORTH V, 98, 105, 110–111.

32. See 1 MILL AND WILSON, HISTORY OF BRITISH INDIA (1858) 160.

33. Lat.—literally: "You are holding by bad order," i.e., "unlawfully."

34. *Diadikasia* is a dispute between two claimants aiming at a judicial declaration as to who is "really" the holder of the title. It is thus not an action for damages brought by an alleged title holder against an alleged wrongdoer. Cf. MEIER UND SCHOEMANN, DER ATTISCHE PROCESS (1824) 367; 2 BONNER AND SMITH 79, 101.

35. These, as Weber adds, "are of a totally different structure." As to these actions, see AMIRA 192–199, 266; GIERKE, GENOSSENSCHAFTSRECHT II, 268–325; R. Sohm, *Fränkisches Recht und römisches Recht* (1880), 1 SAV. Z. GERM. 27.

36. See also WEBER'S GENERAL ECONOMIC HISTORY (1950), c. I. [WIRTSCHAFTSGESCHICHTE (1923) 17, 19] and literature there cited.

37. For the military punishment imposed by the Roman *comitia centuriata*

see MAINE 374–382; LOWIE, ORIGIN OF THE STATE (1927) 102–108; and the same author's PRIMITIVE SOCIETY (1920) 385, 394–396.

38. An official of equal or higher power (*par maiorve potestas*) could, through his "stepping in" (*intercessio*), stop the activities of other officials; cf. MOMMSEN 22; L. HOMO, ROMAN POLITICAL INSTITUTIONS (1929) 29, 45, 221–223; JOLOWICZ II, 43, 45, 47, 337.

39. MONTESQUIEU, SPIRIT OF THE LAWS (Nugent transl. 1949) 151.

40. Cf. HOMO, *op. cit., sub tit.* "imperium" (index), esp. pp. 206–235; 1 MOMMSEN 76–191; W. HEITLAND, ROMAN REPUBLIC (1909) vol. I, *sub tit.* "Imperium."

41. KASER 174; NOYES 146.

42. See MAITLAND, FORMS 78.

43. RICHTSTEIG—a book containing advice as to how to initiate and prosecute a lawsuit. RECHTSBUCH (*Spiegel*, "Mirror of Law")—a handbook of law, especially of substantive law. As to both, see STOBBE I, 286 *et. seq.*, 390 *et seq.*, II; 143 *et seq.*

44. GAIUS' INSTITUTES (ca. 161 A.D.) is the oldest work accessible to us in which we find that arrangement of the materials in the three parts of Persons, Things, and Actions, which was traditionally followed until the 18th century.

45. The elaboration of this modern form of "systematization" was particularly the work of the eighteenth-century scholars of Natural Law and the German Pandectists of the nineteenth century; as to their work, see EHRLICH, c. 14; v. HIPPEL, GUSTAV HUGOS JURISTISCHER ARBEITSPLAN (1931); same author, ZUR GESETZMÄSSIGKEIT JURISTISCHER SYSTEMBILDUNG (1930); WIEACKER, VOM RÖMISCHEN RECHT (1944) 256; for further bibliographical references see 20th Century Legal Philosophy Series, THE JURISPRUDENCE OF INTERESTS (1948) 200.

46. See RUDOLF STAMMLER, WIRTSCHAFT UND RECHT NACH DER MATERIALISTISCHEN GESCHICHTSAUFFASSUNG (5th ed., 1924), 541.

ii

Forms of Creation of Rights

1. *Logical Categories of "Legal Propositions"—Liberties and Powers—Freedom of Contract*

The fusion of all those organizations which had respectively engendered their own bodies of law into the *one* compulsory association of the state, now claiming to be the sole source of all "legitimate" law, is characteristically reflected in the formal mode in which the law serves the interests, especially the economic interests, of the parties concerned. We have previously defined the existence of a right as being no more than an increase of the probability that a certain expectation of the one

to whom the law grants the right will not be disappointed. We shall continue to consider the creation of a right as the normal method of increasing such probability, but we must recognize that, in a sociological analysis, there is but a gradual transition from this normal case to the situation where the legally secured interest of a party is but the "reflex" of a "regulation" and where the party does not possess a "right" in the strict sense.[1]

To the person who finds himself actually in possession of the power to control an object or a person the legal guaranty gives a specific certainty of the durability of such power. To the person to whom something has been promised the legal guaranty gives a higher degree of certainty that the promise will be kept. These are indeed the most elementary relationships between law and economic life. But they are not the only possible ones. Law can also function in such a manner that, in sociological terms, the prevailing norms controlling the operation of the coercive apparatus have such a structure as to induce, in their turn, the emergence of certain economic relations which may be either a certain order of economic control or a certain agreement based on economic expectations. This occurs when law is expressly created for a particular purpose. Such a situation presupposes, of course, a specific stage of legal development about which it will be appropriate to make some observations.

From the juridical point of view, modern law consists of "legal propositions," i.e., abstract norms the content of which asserts that a certain factual situation is to have certain legal consequences. The most usual classification of legal propositions distinguishes, as in the case of all norms, between prescriptive, prohibitory, and permissive ones; they respectively give rise to the rights of individuals to prescribe, or prohibit, or allow, an action vis-à-vis another person.[2] Sociologically, such legally guaranteed and limited power over the action of others corresponds to the expectation that other persons will either engage in, or refrain from, certain conduct or that one may himself engage, or fail to engage, in certain conduct without interference from a third party. The first two expectations constitute claims, the latter constitutes a privilege.[3] Every right is thus a source of power of which even a hitherto entirely powerless person may become possessed. In this way he becomes the source of completely novel situations within the community. Nevertheless, we are not at present concerned with this phenomenon, but rather wish to deal with the qualitative effect of legal propositions of a *certain* type inasmuch as they expand an individual right-holder's power of control. This type with which we shall deal is constituted by the third kind of legally guaranteed expectations previously mentioned, i.e., the

privileges. In the development of the present economic order they are of particularly great importance. Privileges are of two main kinds: The *first* is constituted by the so-called freedoms, i.e., situations of simple protection against certain types of interference by third parties, especially state officials, within the sphere of legally permitted conduct; instances are freedom of movement, freedom of conscience or freedom of disposition over property. The *second* type of privilege is that which grants to an individual *autonomy* to *regulate* his *relations with others* by his own transactions. Freedom of contract, for example, exists exactly to the extent to which such autonomy is recognized by the legal order. There exists, of course, an intimate connection between the expansion of the market and the expanding measure of contractual freedom or, in other words, the scope of arrangements which are guaranteed as valid by the legal order or, in again different terms, the relative significance within the total legal order of those rules which authorize such transactional dispositions. In an economy where self-sufficiency prevails and exchange is lacking, the function of the law will naturally be otherwise: it will mainly define and delimit a person's non-economic relations and privileges with regard to other persons in accordance, not with economic considerations, but with the person's origin, education, or social status.

2. *Development of Freedom of Contract—"Status Contracts" and "Purposive Contracts"—The Historical Origin of the Purposive Contracts*

1. "Freedom" in the legal sense means the possession of rights, actual and potential, which, however, in a marketless community naturally do not rest predominantly upon legal transactions but rather directly upon the prescriptive and prohibitory propositions of the law itself. Exchange, on the other hand, is, within the framework of a legal order, a "legal transaction," viz., the acquisition, the transfer, the relinquishment, or the fulfillment of a legal claim. With every extension of the market, these legal transactions become more numerous and more complex. However, in no legal order is freedom of contract unlimited in the sense that the law would place its guaranty of coercion at the disposal of all and every agreement regardless of its terms. A legal order can indeed be characterized by the agreements which it does or does not enforce. In this respect a decisive influence is exercised by diverse interest groups, which varies in accordance with differences in

the economic structure. In an increasingly expanding market, those who have market interests constitute the most important group. Their influence predominates in determining which legal transactions the law should regulate by means of power-granting norms.

That extensive contractual freedom which generally obtains today has, of course, not always existed; and even where freedom of contract did exist, it did not always prevail in the spheres in which it prevails today. Freedom of contract once existed indeed in spheres in which it is no longer prevalent or in which it is far less prevalent than it used to be. We shall survey the main stages of development in the following brief sketch.

In contrast to the older law, the most essential feature of modern substantive law, especially private law, is the greatly increased significance of legal *transactions*, particularly *contracts*, as a source of claims guaranteed by legal coercion. So very characteristic is this feature of private law that one can *a potiori* designate the contemporary type of society, to the extent that private law obtains, as a "contractual" one.

a. From the legal point of view, the juridico-economic position of the individual, i.e., the totality of his legitimately acquired rights and valid obligations, is determined on the one hand by *inheritance* based upon a legally recognized family relationship, and, on the other hand, by contracts concluded by him or for him in his name. The law of inheritance constitutes in contemporary society the most important survival of that mode of acquisition of legitimate rights which was once, especially in the economic sphere, the exclusive or almost exclusive one. In the case of inheritance the operative facts generally occur independently of the interested individual's own conduct. These facts constitute the starting-point for his further legally relevant activities; a person's membership in such a group as a given family is based upon natural relationship, which is socially and economically regarded as a special and intrinsic quality and is attributed to him by the law independently of his own acts of consociation.

Obviously the contrast is only relative, for claims of inheritance may also be based on contract;[4] and in testate succession the legal basis of acquisition is not the membership in the kinship circle but rather the unilateral disposition of the testator. However, contracts to devise or bequeath are infrequent nowadays. The normal and, in many systems of law, for example, the Austrian, the only possible case is that of the marriage settlement.[5] Mostly such a settlement is made before marriage in order simultaneously to regulate succession upon death and marital property rights *inter vivos*. In other words, the contract regulates the property incidents of a family relationship about to be created. As re-

gards wills, the great majority of them nowadays aim, in addition to munificence regarded as an obligation of decency, at the balancing of interests among family members in view of special economic needs created either by the peculiar nature of the assets of the estate or by peculiar circumstances of the persons concerned. Besides, at least outside of the area of Anglo-American law, freedom of testation is narrowly limited by the rights of certain near relatives to indefeasible portions.[6] The significance of the wider freedom of testation in certain ancient and modern systems of law and the greater significance of contractual family agreements in the past, as well as the causes of their decline, are discussed in another place.[7] At the present time, legal transactions with freely chosen content and freely concluded according to the free choice of the parties are of but limited importance in the sphere of family and inheritance law.

b. In *public law* the role of contractual transactions is, quantitatively at any rate, by no means slight. Every appointment of an official is made by contract and some important phenomena of constitutional government, especially the determinations of the budget, presuppose in substance, if not formally, a free agreement among a number of independent organs of the state, none of which can legally coerce the other. Yet, in the legal sense, the public official's legally fixed obligations are not regarded as flowing from a contract of appointment, as would happen in the case of a freely made contract of private law, but from his act of submission to the authority of the state as a public servant.[8] Similarly a freely arrived at agreement preceding the budget is not treated as a "contract"; nor is the agreement as such treated as a legally essential event. The reason is that, for good juristic reasons, "sovereignty" is accepted as the essential attribute of the modern state, conceived as a "unity," while the acts of its organs are looked upon as instances of the exercise of public duties. Thus, in the sphere of public law the domain of free contract is essentially found in international law. This conception, however, has historically not always been the prevailing one and it would not accurately describe political organizations in the past. Formerly the position of a public official was less based upon a free contract than it is today; indeed, as we shall see, it rested rather upon his entire submission to the personal, quasi-familial, authority of a lord.[9] But other political acts, for instance those intended to provide means for public purposes as well as many other administrative acts, were, under the conditions of the corporately organized political structure, nothing but contracts between the prince and the estates, who, as the owners of their powers and prerogatives, constituted the political community. Legally, their joint acts were looked upon in precisely this

manner.[10] The feudal bond, too, was in its innermost essence based upon contract, and the expression "*pactus*" was applied with all seriousness to such a collection of existing laws as the *leges barbarorum*, which at the present time we would call statutory codifications.[11] Real "innovations" in the law could at that time indeed by brought about only by freely made agreement between the official authorities and the whole community assembled in the "thing."

The last example we may give of the use of the contract concept is the primitive political associations which, at any rate as far as their legal form was concerned, were based on freely concluded agreements between autonomous groups, such as, e.g., the "houses" of the Iroquois.[12] The so-called "men's houses," too, were in the first place voluntary associations which were intended, however, to be of permanent duration, and differed in this respect from those earlier voluntary associations established for the purpose of adventure and entirely based upon free agreement.[13] The phenomenon of free agreement also appears at quite primitive levels in the field of *adjudication*. Indeed, it marks its very beginnings. The arbitration agreement which developed out of the agreement for composition between kinship groups, i.e., the voluntary submission to a verdict or an ordeal, is not only the source of all procedural law but also the point of departure to which even the oldest contracts of private law can, very broadly speaking, be traced.[14] Furthermore, most of the important technical advances of procedure have, at least formally, been products of voluntary agreement among the parties. Thus the intervention of the sovereign authorities, e.g., the Lord Chancellor or *praetor*, took the very characteristic form of compelling the parties to make certain agreements designed to facilitate the progress of the cause.[15] They therefore are but instances of the "compulsory contract" (*Rechtszwang zum Kontrahieren*); the compulsory feoffment, too, played a considerable role in the sphere of feudal, i.e., political, law.

2. The "contract," in the sense of a voluntary agreement constituting the legal foundation of claims and obligations, has thus been widely diffused even in the earliest periods and stages of legal history. What is more, it can also be found in spheres of law in which the significance of voluntary agreement has either disappeared altogether or has greatly diminished, i.e., in public law, procedural law, family law, and the law of decedents' estates. On the other hand, however, the farther we go back in legal history, the less significant becomes contract as a device of economic acquisition in fields other than the law of the family and inheritance. The situation is vastly different today. The present-day significance of contract is primarily the result of the high degree to which our economic system is market-oriented and of the role played

by money. The increased importance of the private law contract in general is thus the legal reflex of the market orientation of our society. But contracts propagated by the market society are completely different from those contracts which in the spheres of public and family law once played a greater role than they do today. In accordance with this fundamental transformation of the general character of the voluntary agreement we shall call the more primitive type "status contract" and that which is peculiar to the exchange or market economy "purposive contract" (*Zweck-Kontrakt*).

The distinction is based on the fact that all those primitive contracts by which political or other personal associations, permanent or temporary, or family relations are created involve a change in what may be called the total legal situation (the universal position) and the social status of the persons involved. To have this effect these contracts were originally either straightforward magical acts or at least acts having a magical significance. For a long time their symbolism retained traces of that character, and the majority of these contracts are "fraternization contracts." By means of such a contract a person was to become somebody's child, father, wife, brother, master, slave, kin, comrade-in-arms, protector, client, follower, vassal, subject, friend, or, quite generally, comrade (*Genosse*). To "fraternize" with another person did not, however, mean that a certain performance of the contract, contributing to the attainment of some specific object, was reciprocally guaranteed or expected. Nor did it mean merely that the making of a promise to another would, as we might put it, have ushered in a new orientation in the relationship between the parties. The contract rather meant that the person would "become" something different in quality (or status) from the quality he possessed before. For unless a person voluntarily assumed that new quality, his future conduct in his new role could hardly be believed to be possible at all. Each party must thus make a new "soul" enter his body. At a rather late stage the symbolism required the mixing and imbibing of blood or spittle or the creation of a new soul by some animistic process or by some other magical rite.[14]

One whose thinking is embedded in magic cannot imagine any other than a magical guaranty for the parties to conform, in their total behavior, to the intention of the "fraternization" they contracted. But as the notion of the divinity gradually replaces animism, it is found necessary to place each party under the dominion of a supernatural power, which power constitutes not only their collective protection but also jointly and severally threatens them in case of antifraternal conduct. The *oath*, which originally appears as a person's conditional self-surrender to evil magical forces, subsequently assumes the character of a conditional self-

curse, calling for the divine wrath to strike.[17] Thus the oath remains even in later times one of the most universal forms of all fraternization pacts. But its use is not so limited.

3. In contrast to the true magical forms of fraternization, the oath is also technically suited to serve as a guaranty for "purposive" contracts, i.e., contracts neither affecting the status of the parties nor giving rise to new qualities of comradeship but aiming solely, as, for instance, barter, at some specific (especially economic) performance or result. This type of contract, however, does not appear in the most primitive society. In earliest times, *barter*, the archetype of all merely instrumental contracts, would seem to have been a general phenomenon among the comrades of an economic or political community only in the noneconomic sphere, particularly as barter of women between exogamous sibs whose members seem to confront each other in the strange dual role of being partly comrades and partly strangers. In the state of exogamy barter appears also as an act of fraternization; however much the women may be regarded as a mere object, there will rarely be missing the concurrent idea of a change of status to be brought about by magical means.[18] The peculiar duality in the relations between the exogamously cartelized sibs, created by the rise of regulated exogamy, may perhaps help to explain a much discussed phenomenon, namely, the phenomenon that certain formalities were sometimes required for the marriage with secondary wives while the marriage with the chief wife might be entered into without any formalities. It may be that the latter remained formless because it was the original and pre-exogamous type of marriage, and barter in pre-exogamous times did not yet have anything to do with fraternization. It is more plausible, however, that fixed contractual formalities were necessitated by the need for special arrangements regarding the economic security of the secondary wives who lacked the generally fixed economic status of the chief wife.

Economic barter was always confined to transactions with persons who were not members of one's own "house," especially with outsiders in the sense of non-kinsmen, non-"brothers"; in short, non-comrades. For precisely this reason barter also lacked in the form of "silent" trade any trace of magical formalism. Only gradually did it acquire religious protection through the law of the market. Such protection, however, would not arise as a set of settled forms until a belief in gods had taken its place alongside those magical conceptions which had provided appropriate means of direct guaranty only for status contracts.[19] Occasionally it would also happen that a barter transaction might be placed under the guaranty of the status-contract through some special act of fraternization or some equivalent. This would not generally happen, however,

unless land were involved. Normally, barter enjoyed practically no guaranty, and the conception was nonexistent that barter could mean the assumption of an "obligation" which would not be the product of a natural or artificial all-inclusive fraternal relationship. As a result, barter at first took effect exclusively as a set of two simultaneous and reciprocal acts of immediate delivery of possession. Possession, however, is protected by the claim for vengeance on, and expiation by, the thief. Thus, the kind of "legal protection" accorded to barter was not the protection of an obligation, but of possession. Where, at a later time, the obligation of warranty of title came to develop at all, it was protected only indirectly in the form of an action for theft against the seller who lacked title.[20]

Formal legal construction of barter does not begin until certain goods, especially metals, have acquired a monetary function, i.e., where sale has arisen. This development does not depend upon the existence of chartal or even state money,[21] but, as shown especially in Roman law, on mere pensatory means of payment. The transactions *per aes et libram* constitute one of the two original forms of legal transaction in ancient Roman *ius civile*. Under Roman city law this form of cash purchase acquired an almost universal function for the most diverse classes of private legal transactions, regardless of whether they involved questions of family or inheritance law or of exchange proper.[22] The agreements of fraternization as well as other forms of status contract were oriented toward the total social status of the individual and his integration into an association comprehending his total personality. This form of contract with its all-inclusive rights and duties and the special attitudinal qualities based thereon thus appears in contrast to the money contract, which, as a specific, quantitatively delimited, qualityless, abstract, and usually economically conditioned agreement, represents the archetype of the purposive contract.[23] As a non-ethical purposive contract the money contract was the appropriate means for the elimination of the magical and sacramental elements from legal transactions and for the secularization of the law. In Roman law, for example, the civil marriage form of *coemptio* thus came to confront the sacred marriage form of *confarreatio*.[24] The money contract was, it is true, not the only suitable means, but it was the most suitable. Indeed, as a specific cash transaction it was of a rather conservative nature since, originally at least, it was completely devoid of any promissory elements oriented towards the future. For the effect of this transaction, too, was solely to provide secure possession as well as a guaranty that the goods were properly acquired; however, at any rate originally, the transaction did not constitute a guaranty that the promises involved in it would be fulfilled.

4. The concept of obligation[25] through contract was entirely alien to primitive law; it knew but one form of obligation and claim, viz., that arising *ex delicto*. The amount of the claim of an injured party was rigorously fixed by the practice of composition and its attendant conventions. The *wergilt* debt as set by the judge was the most ancient true debt and all other forms of obligation have derived from it.[26] Conversely it can be said that only such actions were cognizable by the courts as arose from an obligation. As regards disputes between members of different kinship groups, no formal procedure existed for the restitution of chattels or the surrender of immovables. Every complaint was necessarily based upon the argument that the defendant had personally done the plaintiff a personal wrong which would have to be expiated. Hence there was no place for an action *ex contractu* or for the recovery of a chattel or a piece of land or for actions to determine personal status.

a. The problem of whether a person was properly a member of a household, a kinship group, or a political association could, as an internal affair, be decided solely by the group itself. But things underwent a change in this very respect. It was the basic norm of every type of brotherhood or loyalty-bound relationship that a brother should neither summon into court, nor bear witness against, his brother, nor kinsman against kinsman, nor guild brother against guild brother, nor patron against client, and vice versa, in the same way as there was no possibility of blood vengeance in any of these relationships. Vengeance for felony amongst them was a matter for the spirits or gods, the priestly power of excommunication, the master of the household, or the lynching procedures of the group. But when political association had come to constitute the military community, and when military duty and political rights had become intertwined with birth in legitimate wedlock, so that unfree persons or those born in inferior station were to have no military rights and thus no rights to share in booty, there had to be a legal procedure for the determination of a person's disputed status.

The emergence of actions concerning land was closely connected with this situation. Power over certain areas of usable land became, as scarcity increased, an increasingly important element in the life of every corporate body, both political associations and house communities. The right of full membership in the group provided a claim to a share in the land and, conversely, only the landholder was a full member of the group. Disputes between the groups about land thus always meant that the victorious group would receive the disputed land. As the individual appropriation of the land developed, the role of plaintiff devolved from the group to the individual member who would sue another, both plaintiff and defendant claiming the land by virtue of their right of member-

ship. In any such dispute concerning membership right in land the subject matter had of necessity to be found to belong to one party or the other, as it constituted the very basis of his entire political and social existence. Only one of the two could as a group member be legitimately entitled thereto, just as a person could only be a member or a non-member, a freeman or unfree. Especially in militarist associations, like the ancient *polis*, the litigation about the *fundus* or *kleros* had to assume the form of a bilateral dispute. Instead of one party's being charged by an allegedly injured person as a wrongdoer, who would then have to seek to establish his innocence, each of the parties had to claim to be in the right at the risk of being in default. Thus, where the dispute turned about a membership right as such, the pattern of the tort action was inapplicable. Nobody could steal a *fundus*, not just because of natural obstacles, but because one could not steal from a person his status as a member of the group. Hence, there developed for disputes about status or land, alongside the unilateral tort action, the bilateral action, such as the Hellenic *diadikasia*, or the Roman *vindicatio* with necessary cross-action of the defendant against the claim of the plaintiff.[27] In this litigation involving status, which included the conflict over a group member's right to his share in the land, we have to find the root of the distinction between rights *in rem* and rights *in personam*. This distinction was the product of a development and appeared only with the disintegration of the old personal groups, especially the decline of the strict dominion of the kinship group over property. One might locate it approximately at the developmental stage of the *Mark* association[28] and the "hide" system or a corresponding stage of property organization. Primitive legal thought was characterized not by the distinction between rights *in rem* and rights *in personam* but by two types of fundamental facts. The first was that an individual would say: By virtue of having been born or brought up in the house of *X*, by marriage, adoption, fraternization, military consociation, or initiation I am a member of the *Y* group and am entitled thereby to claim the use of the piece of property called *Z*. Or, secondly, one would say *X*, a member of Group *Y*, has committed against me, *A*, or my fellow group member, *B*, a wrong of the type of *C*, and for this reason he and his comrades owe expiation to us, the fellow members of *A*. (In Arabic legal parlance one does not say: "the blood of *A* has been shed," but "*our* blood has been shed.") With the increasing individual appropriation of property the former configuration developed into the claim of a right *in rem* against everyone, especially actions of the type of the *hereditatis petitio*[29] and the *rei vindicatio*. The latter fact-situation developed into the right *in personam* against a particular person, viz., that one is held to be bound to perform

a certain duty toward the obligee; and the duty exists only toward the obligee. The clarity of the original situation and the directness of the line of development are blurred by the dualism of legal relations within the kinship group and between different kinship groups. Among kinship members, we have seen, there could be neither vengeance nor litigation but only arbitration by the group elders; against those who resisted, only the sanction of boycott or ostracism could be applied. All the magical formalities of procedure were lacking; arbitration of disputes within the kinship group was an administrative matter. Legal procedure and law in the sense of claims guaranteed by judicial decision and the coercive power attached thereto existed only between those different kinship groups and their members who belonged to the same political community.

When the kinship group disintegrated and gave place to a combination of house communities, neighborhood bodies, and the political association, the question arose as to how far the legal procedure of the political association would intrude into the relations among members of the same kinship group or even the same community. To the extent that this was the case, individual claims to land also became the object of litigation before the judge even between group members, at first, in the above-mentioned form of the bilateral vindication. On the other hand, the political power could assume patriarchal form, and the method of dispute settlement would then more or less generally become a case of "administration," a procedure formerly applicable only to internal disputes. Then this type could also influence the characteristics of the legal procedure of the political association. As a result, the clearcut classification of the old as well as the newer conception of the distinction between the two categories of claims was blurred. The technical form of the distinction shall not concern us here, however. We shall rather return to the question of how the personal responsibility for delicts produced the contractual obligation, and how the delictual fault as a cause of action gave rise to the obligation *ex contractu*. The connecting link consisted in the liability for composition as determined by, or acknowledged in, the legal procedure.

h. One of the earliest type situations in which the acknowledgment of an *obligation* from a purposive contract had to become an economic need is the debt arising out of a *loan*. It is in this very situation, moreover, that we can perceive the gradualness of the process of emancipation from the original stage of exclusive liability of the debtor's person. The loan originally was an interest-free form of emergency aid among brothers, as we have seen. Hence it could not be actionable, as no action at all would be admissible among brothers, i.e., between members of a

kinship group or a guild, or as between patron and client, or within any other type of relationship of personal loyalty. A loan made to someone outside the fraternal group, if it occurred at all, was in itself not legally subject to the prohibition of taking interest. But within the scheme of personal liability it was at first not actionable. As means of enforcement the disappointed creditor had only available to him magical procedures, sometimes of a rather grotesque character, remnants of which have survived for long periods. In China the creditor would threaten suicide and sometimes even commit it in the expectation of pursuing his debtor after death.[30] In India the creditor would seat himself in front of the debtor's house and there either starve or hang himself; in this way he could compel his sib to revenge him against the debtor; and where the creditor was a Brahmin, the debtor, as the murderer of a Brahmin, would even become subject to the intervention of the judge.[31] In Rome, the *improbitas* of the XII Tables and the later *infamia*, incurred in cases of severe breaches of the *fides*, were probably survivals of the social boycott which had served as a substitute for the lacking actionability in case of disrespect for the rules of good faith and fair dealing.

c. The development of a unified law of obligations was certainly derived from the action of tort. The delictual liability of the entire kinship group was, for instance, the source of the widespread joint liability of all kin or house community members for the performance of the contract made by one of them.[32] However, the development of the various actionable contracts largely proceeded along its own ways. The entry of money into economic life often played the decisive role. Both primitive forms of contract in Roman *ius civile*, viz., *nexum*, the debt contracted *per aes et libram*, and *stipulatio*, the debt contracted by symbolic pledge,[33] were money contracts. This fact, which is clear for the *nexum*, seems also to be certain for the *stipulatio*. As to both, the connections with the precontractual stage are clear. They were rigorously formal oral transactions and they required that the necessary acts be performed by the parties themselves. Both have the same origin. As to the *stipulatio* we may agree with Mitteis[33a] who, on the basis of analogies in Germanic law, regards it as having originated in procedure, outside of which it originally played only a very modest role, essentially in connection with agreements on such collateral terms as interest and similar matters. In addition to barter, the composition agreement, which formed the basis of the trial, also constituted a step on the way to the purposive contract in the sense that, being a contract among enemies rather than one of fraternization, it required a precise formulation of the issue and, quite particularly, of the point or points to be proved. As the trial formalities became more and more fixed, increasingly numerous occasions

occurred for incidental transactions creating contractual obligations. The giving of security by one party to the other is one of the most important of these transactions. In many legal systems the very procedure which was intended to eliminate self-help had to be initiated by some act of self-help. The plaintiff would drag the defendant into court and would not release him unless he received security that the defendant, if found guilty, would not evade the payment of the composition. Such self-help was always directed against the body of the adversary, as the action was based upon the allegation that a felony had been committed by the defendant against the plaintiff, for which the defendant had to answer with his person, rather than on a complaint that the defendant's conduct constituted an objective wrong. The security which the defendant had to give in order to remain unmolested until the time of judgment was provided through sureties or by way of pledge.[34]

It is thus in the course of procedure that these two legal institutions appear for the first time as compulsorily enforceable transactions. Later on, in the place of a third party surety, the defendant himself was allowed to warrant the fulfillment of the judgment. The legal view was that the defendant was his own surety, just as the oldest juridical form of the free labor contract was everywhere the sale of oneself into temporary slavery taking the place of the formerly normal sale by father or master. The most ancient contractual obligations consisted in the transposition of certain procedural arrangements into the common legal life. In Germanic law the giving of a pledge or a hostage was the most ancient means of contracting debts, not only economically but also as far as legal formalities are concerned. However, suretyship, from which the pledging of oneself was derived in both Roman and German law, was in the latter undoubtedly connected in legal thought with the solidary personal liability of the members of the kinship group and the house community. The second form of security for future obligation, i.e., the pledge, was both in Roman and in Germanic law[35] at first either taken as a distress or given to avoid the personal liability of being sued and taken in execution; hence it was not, as it is today, a security for a claim existing separately. The giving of the pledge rather constituted a transfer of possession of goods which, as long as the debt remained unpaid, were to be in the creditor's possession lawfully, while upon timely payment of the debt his possession was to become unlawful and thus to constitute a wrong towards the former debtor. It thus easily fitted in with the usual pattern of the most ancient causes of action, viz., actual injury to the person or to his possessions. The very widespread legal transaction of the conditional self-sale into slavery for debt also attached itself in part directly to the possible modes of execution and partly to

the giving of a hostage, which, as we have seen, was also connected with procedure. The body of the debtor was to constitute the creditor's pledge and was to be forfeited into his lawful possession if the debt was not properly paid. Originally the liability for contracted debt, like liability for vengeance and composition, from which it derived, was not a personal liability with one's assets but a liability of the debtor's physical body and of it alone. Originally there was no execution upon the debtor's assets at all. In the event of nonpayment, the creditor's only resort was execution upon the person, whom he could kill or imprison as a hostage or hold as a bond-servant or sell as a slave; where there were several creditors, they could, as the Twelve Tables show, cut him into pieces.[36] The creditor could also establish himself in the home of the debtor, and the latter would have to serve and provide for him (*Einleger*);[37] hut this already marks the transition to liability of the debtor's assets. Yet, the transition proceeded but slowly, and liability of the person for nonpayment of debt disappeared in Rome only in the course of the status conflicts,[38] while in Germany it did not disappear until the nineteenth century.[39] The most ancient purely obligatory contracts, i.e., *nexum* and *stipulatio*, and, among the Germans, *vadiatio*,[40] obviously signified the voluntary submission to a [conditional liability of the person as security for the] delivery of goods promised for the future.[41] Immediate liability of the person was thus avoided. But if the promise remained unfulfilled, the only recourse possible was again that of resorting to the debtor's person.

Originally all contracts were contracts relating to a change in the possession of goods. Hence, all those legal transactions which really represented old forms of contractual liability, especially those particularly rigid and formal ones which were universally required for the creation of a money debt, were symbolically connected with the legal forms of transfer of possession.[42] Some of these symbolic forms undoubtedly rested upon magical conceptions. Of permanent influence, however, was the fact that legal thought did not at first recognize as relevant any such intangible phenomena as simple promises but was interested only in wrong, i.e., a misdeed against the gods or a violation of life or limb or visible possession. A contract, to be legally relevant, had thus to contain a disposition over tangible goods, or had at least to be susceptible of such an interpretation.[43] If this was the case, it could, in the course of development, come to incorporate the most diverse contents. A transaction, on the other hand, which could not be formulated in this way could not become legally effective except as a transaction against cash or, at least, against the deposit of a part payment which would preclude a change of mind on the part of the promisor. Thus arose the principle which is basic in many legal systems, namely, that only purposive contracts in-

volving payments can be binding. This attitude was so effective that even at the end of the Middle Ages the English doctrine of "consideration" was derived from it: where a consideration, even though it be only a nominal one, was actually paid the contract could assume any content which was not legally frowned upon; it would be valid even where, without that fact, there would be no legal pigeonhole into which it would fit. The provision in the Twelve Tables on *mancipatio*, the meaning of which has been much disputed,[44] probably constituted a more primitive method of sanctioning a kind of freedom of disposition; while its possibilities of development were more limited, the underlying formal concept was essentially similar.

In addition to the patterns developed from the formalistic monetary transactions on the one hand, and procedural suretyship on the other, the law has evolved a third possibility for making purposive contracts legally enforceable: the artificial creation of new contractual actions out of actions *ex delicto*. This method was resorted to even in a legal system so highly developed technically as the English of the late Middle Ages. The economic rationalization of the law favored the rise of the conception that the liability for composition was not so much, as it had been conceived originally, a buying off of vengeance but rather a compensation for the harm suffered. Thus nonperformance of a contract could now be characterized as a harm requiring compensation. Since the thirteenth century the lawyers and judges of the royal courts of England declared in an ever increasing number of contractual situations that nonperformance constituted a "trespass" and thus provided legal protection, especially by means of the *writ of assumpsit*,[45] just as in a technically quite different manner the praetorian practice of the Romans extended the sphere of legal protection first through the extensive application of delictual actions and then through the concept of *dolus*.[46]

3. *Institutions Auxiliary to Actionable Contract: Agency; Assignment; Negotiable Instruments*

Even after the creation of actionable contractual claims capable of assuming any content we are still far from that legal state of affairs which is required by advanced and completely commercial social intercourse.

Every rational business organization needs the possibility of acquiring contractual rights and of assuming obligations through temporary or permanent agents. Advanced trade, moreover, needs not only the possibility of transferring legal claims but also, and quite particularly, a method by which transfers can be made legally secure and which elimi-

nates the need of constantly testing the title of the transferor. The development of those legal institutions, indispensable for a modern capitalistic society, will be discussed elsewhere.[47] In the present connection we shall do no more than briefly touch upon the developments of early times. In contrast to Greek law, where direct representation was well known in the creation of obligations, "agency" was almost impossible in Roman law.[48] It seems that this legal situation, which was related to the formalism of the civil actions, made possible the use of slaves in those really capitalistic enterprises for which representation was widely acknowledged in practice. Again, as a result of the highly personal character of the debt-relationship, assignment of choses in action was unknown in both ancient Roman and Germanic law.[49] At a rather late time Roman law created a substitute by means of indirect representation and also ultimately arrived at a law of assignment, the utility of which for business transactions was impaired, however, by the substantive ethical tendencies of the later Imperial legislation.[50] As a matter of fact, up to the beginning of modern times, no strong practical demand existed for the assignability of choses in action, except for those which were the subject matter of regular trade or which directly served the purpose of transferring claims to third parties. To meet these needs commercialization was achieved through instruments payable to the order of the payee or to the bearer, which served for the transfer both of claims, especially monetary claims, and of powers of disposition over commercial goods and membership rights in commercial enterprises. They had been utterly unknown in Roman law, and it is still uncertain whether, as Goldschmidt believed, the Hellenistic, or, as Kohler thinks, the Babylonian instruments which go back as far as Hammurabi and were payable to the bearer, were really genuine negotiable instruments.[51] At any rate, however, they facilitated payment to and through third parties in a way which was possible only indirectly under official Roman law. True right-creative instruments are completely unknown to Roman law, unless one considers as such the *contractus literalis*, i.e., the book entry by a banker.[52] In Hellenistic and late Roman law the use of instruments in writing, which had been so highly developed in the Orient even in the most ancient times, was developed into the compulsory documentation of certain transactions and the use of certain quasi-negotiable instruments, perhaps through the state's insistence upon recordation, which at first had been meant essentially to serve fiscal purposes.[53] In the Hellenic and Hellenistic cities the technique of documentation was carried on, for the sake of publicity, by two officials who had been unknown to the Romans, viz., the courts' remembrancer and the notary.[54] The institution of the notary was taken over from the Eastern part of the Empire by the West. But in the Occident the late Roman practice of using instru-

ments in writing was not really promoted before the seventh century and in connection with post-Roman practices, possibly through the strong influx of Oriental, especially Syrian, traders. Then, however, the instrument in writing, both as the instrument payable to the order of the payee and to the bearer, developed very rapidly,[56] a fact which is surprising in a period whose intensity of commerce we have to visualize as extremely limited in comparison to classical Antiquity. As has been the case so often, the particular legal techniques adopted seem also in this connection to have followed their own paths. Probably the decisive factor was that, after the disappearance of legal unity, developments were determined by the centers of commerce and their merely technically trained notaries and that the notariat constituted the only remaining bearer of the commercial traditions of Antiquity and thus was the only creative force. However, with respect to the very use of instruments, the development was favored also by the irrational modes of thought of Germanic law. In popular ideas the instrument appeared as a sort of fetish, by the formal delivery of which, at first made before witnesses, specific legal effects were produced, just as by other, originally quasi-magical symbols such as the throwing of the spear or the *festuka* of Germanic, or the corresponding *bukannu* of Babylonian law.[56a] Originally one did not deliver, as the symbol, the instrument with the writing upon it but the parchment without writing, and only afterwards was the record entered upon it.[57] But while in Italian law, owing to the concomitance of German legal symbolism and the practices of the notaries, the development of documentary evidence was greatly favored even in the early Middle Ages,[58] it remained unknown for a long time in English law, where the decisive legally constitutive role was played by the seal.[59] The development of the types of commercial paper characteristic of modern commerce took place in the Middle Ages to a large extent, however, under Arabic influence, as a result of partly administrative and partly commercial needs.[60] Ancient Roman commerce apparently could and had to get along without these technical devices, which today seem to us to be indispensable.

4. *Limitations of Freedom of Contract*

1. IN GENERAL. Today it is fundamentally established that any content whatsoever of a contract, in so far as it is not excluded by limitations on the freedom of contract, creates law among the parties and that particular forms are necessary only to the extent that they are prescribed for reasons of expediency, especially for the sake of the unambiguous demonstrability of rights, and thus of legal security. This stage was

reached only quite late: in Rome, by means of the gradual internationalization of the law and in modern times under the influence of the Civil Law doctrine and the needs of trade. Yet, despite this generally existing freedom of contract, modern legislation does not content itself with the general rule that parties to a contract may agree to whatever they please, provided they do not violate certain specially established restrictions. Instead, it rather regulates various types of agreements by certain special rules of *ius dispositivum*, i.e., rules which are to be operative only where the parties have not provided otherwise.[61] However, this phenomenon is, in general, due to considerations of mere expediency. As a rule, the parties do not think of really taking care of all the possibly relevant points, and it is also convenient to be able to stick to tried and well-known types. Without these, modern commercial intercourse would scarcely be possible. But the significance of the enabling norms and of freedom of contract are by no means exhausted in this respect. They can have an even more fundamental significance.

In certain situations the normative control through enabling rules necessarily extends beyond the task of the mere delimitation of the range of the parties' individual spheres of freedom. As a general rule, the permitted legal transactions include a power of the parties to the transaction to affect even third parties. In some sense and to some degree almost every legal transaction between two persons, inasmuch as it modifies the mode of the distribution of disposition over legally guaranteed powers of control, affects relations with an indeterminately large body of outsiders. This effect takes place in many different ways. To the extent that, from a purely formalistic point of view, the agreement creates claims and obligations only between the immediate parties, no external effects at all seem to result, as in that case nothing appears legally guaranteed except the prospect that the promise will be fulfilled. Again, to the extent that the transaction only concerns legal transfer of possession from one hand to another, as is usually the case, the interest of third parties seems to be hardly affected. The goods remain as inaccessible to them as they were before and all they have to do is to recognize a new person as the proprietor. In truth, however, this lack of effect on third parties' interests is never more than relative. The interests of every creditor of a person contracting a debt are affected by the latter's increased liabilities, and the interests of the neighbors are affected by every sale of land, for instance, through the changes in its use which the new owner may, or may not, be economically able to introduce. These are empirically possible repercussions of rights that are generally admitted and guaranteed by law. These repercussions are by no means always ignored by a legal system; for an illustration we may refer to the prohibition of the assign-

ment of claims to "a more powerful creditor" as existed in late Roman law.[62]

There are, moreover, cases in which the interests of third parties can be affected in still another way through the utilization of freedom of contract. When, for example, someone sells himself into slavery, or a woman through contracting marriage, submits to the marital power of her husband, or when a parcel of land is subjected to a family settlement (*fidei commissum*), or when a corporation is formed by a number of individuals, interests of third persons are thereby affected in a way which is qualitatively different from that in which they are affected in the cases stated earlier, although the actual degree of affectedness may be quantitatively lesser and its actual manner may greatly vary from case to case. In the second group of cases there is created for the benefit of the contracting parties an entirely new *special law* which binds every third person's claims and expectations to the extent to which legal validity and coercive guaranty are ascribed to the arrangements of the contracting parties. This situation is thus different from the former, since the rules of the new special law take the place of the hitherto prevailing general rules—e.g., on matters such as the validity of agreements, or a creditor's power to seize assets of property. The entirely new rules of a special law now apply not only to all new but often also to the already existing contracts of the person who has become a slave, a married woman, or an estate owner under a family entailment, and, in the case of the persons who have become stockholders of a corporation, a new special law applies to at least some of their contracts. The peculiar technique of juridical expression may frequently obscure the meaning of the situation and the way in which the interests of third parties are affected by it. A corporation, for example, must legally possess a certain declared capital, which may be reduced, under certain precautions, by a decision of a stockholders' meeting. In practice this means that the persons who have combined to form a corporation are compelled by the law to declare a certain surplus of the common property in goods and claims over and above the "debts" to be permanently available for creditors and members acquiring stock at a later date. When they compute the profits annually to be distributed, the managers and members of the corporation are bound to this declaration by the threat of criminal prosecution for the infringement of the rule which provides that no profits may be distributed unless the fund, which has been declared as "capital," remains covered by the value of tangible goods or claims computed under the rules of proper evaluation and accounting. Provided that certain precautions are observed, the members of the corporation are allowed, however, to withdraw their declaration and thus to reduce

the corresponding guaranty for the creditors and later stockholders. In other words, they may henceforth distribute profits despite the fact that the originally declared amount is not covered. It is obvious that the possibility of creating a corporation as it is provided by such enabling special rules of law affects the interests of third parties who are not at the moment members of the corporation, viz., creditors and later purchasers of stock. The same is true of the significance for third parties of the limitations of contractual freedom which arise from a person's voluntary entry into slavery, or of the creation of the mortgage in favor of the wife on all the assets of the husband as it arises under several legal systems where, upon marriage, the wife becomes a mortgagee even with priority over older mortgages.[63] It is clear that this mode of influencing the legal situation of third parties, which deviates from the otherwise valid legal rules, goes beyond those "repercussions" which can arise outside the circle of the immediate participants from almost any legal transaction. We shall not discuss here the various transitional stages by which these two classes of phenomena are connected with one another. In the sense in which we discuss it now, "freedom of contract" means the power to participate effectively in such legal transactions as extend beyond the immediate circle of the participants not only by indirect repercussions but by the creation of special law. Even where this power is subject to some restrictions protecting interests of third parties, it means more than the mere concession of a "right of freedom" in the sense of a simple empowerment to perform, or to abstain from the performance of, certain concrete acts.

On the other hand, the law can refuse legal validity to agreements which do not appear at all directly to affect the interests of outsiders, or which at least do not involve any sort of special law apart from the generally valid law, and which even seem to confer upon third parties advantages rather than harm. The reasons for such *limitations of contractual freedom* may be very diverse. Thus classical Roman law did not admit the creation of a corporation or resort to any other device which would amount to affecting the interests of third parties through the establishment of special law, it refused to admit that in the establishment of a partnership the general law could be modified through the creation of a special partnership fund or the assumption of joint and several liability by the partners. It also refused validity to the creation of permanent rent charges through rent purchase or emphyteusis even though they would affect third parties only indirectly. The use of the last named institution was denied, at least to private persons, as the institution of the *ager vectigalis* was originally available only to the municipalities and only later became available to the owners of landed

estates.[64] Classical Roman law also did not know negotiable instruments and originally did not even allow the assignment of choses in action. Modern law not only prevents the creation of special law through a contract by which an individual would subject himself to a relationship of slavery but, like Roman law, also for a long time excluded the encumbering of landed property with perpetual rent charges; only quite recently and under strictly limited conditions did the latter become permissible in Germany.[65] Modern law, furthermore, regards many agreements which were regarded as quite normal in Antiquity as violating good morals and thus invalid, even though they affect third parties neither through the creation of special law nor by indirect repercussion. Excluded are, in particular, individual agreements as to sexual relations for which full freedom of contract existed in ancient Egypt,[66] since legitimate marriage is the only form today. The same observation obtains for other family arrangements, such as the major part of those agreements on paternal and domestic authority which were common in Antiquity.[67]

The reasons for these differences in the ways of limiting freedom of contract are of many different kinds. Certain empowerments may be lacking simply because the legal recognition of the particular commercial institutions was not felt at the time as a real need. This would probably explain the absence of negotiable instruments in ancient law, or, more exactly, in the official law of the Roman empire; instruments of an at least externally similar sort were not altogether unknown in Antiquity; they occur, for instance, as early as in Old Babylonian times.[68] The same explanation may hold true of the absence of modern capitalistic forms of association, for which Antiquity had no parallels other than the various forms of state capitalist associations, as ancient capitalism was essentially living off the state. But the absence of an economic need is by no means the only explanation of the lack of certain legal institutions in the past. Like the technological methods of industry, the rational patterns of legal technique to which the law is to give its guaranty must first be "invented" before they can serve an existing economic interest. Hence the specific type of techniques used in a legal system or, in other words, its modes of thought are of far greater significance for the likelihood that a certain legal institution will be invented in its context than is ordinarily believed.

Economic situations do not automatically give birth to new legal forms; they merely provide the opportunity for the actual spread of a legal technique if it is invented. Many of our specifically capitalistic legal institutions are of medieval rather than Roman origin, although Roman law was much more rationalized in a logical sense than medieval

law. While this fact has certain economic reasons, it is also due to a variety of reasons deriving entirely from differences of legal technique. The modes of thought of western medieval law were in many respects "backward." Thus it was not logic but a sort of legal animism or magic when the instrument in writing was conceived as a tangible embodiment of "rights" rather than as a rational mode of proof. Not logical either was the customary practice, derived from legal particularism, of imposing upon all sorts of groups solidary responsibility towards outsiders for all their members; or the readiness to recognize separate funds in the most diverse spheres,[69] a phenomenon which, like the one mentioned just before, is explicable only in the light of purely political conditions. These very elements of "backwardness" in the logical and governmental aspects of legal development enabled business to produce a far greater wealth of practically useful legal devices than had been available under the more logical and technically more highly rationalized Roman law. Quite generally one may observe that those special institutions which, like those of medieval commercial law, were particularly well suited for the emerging modern capitalism, could arise more easily in the context of a society which, for political reasons, produced a variety of bodies of law corresponding to the needs of different concrete interest groups. However, it was also important that the "scientific" treatment of law could not then exist, that is, that for a principle to have legal validity it had to be "construed" out of a system of given concepts, and that nothing outside such logical construction could juristically even be "conceived." Under certain circumstances, legal rationalism may indeed imply an impairment of creative ability, although this point should not be so exaggerated as it has occasionally been done in recent times [see sec. *viii*]. Predominantly ethical or political interests and considerations are responsible for such other limitations on the freedom of contract as its exclusion or restriction in family matters, such as is characteristic of most modern legal systems, or the prohibition of contractual submission to slavery.

2. CONTRACT AND THE ORIGIN OF MARRIAGE.[70] Freedom of contract in sexual affairs is not primitive. Those tribes which are most backward technologically and are least differentiated economically and socially live in *de facto* lifelong patriarchal polygamy. The disgustful rejection of endogamy obviously began in the narrowest circle, within the household community, in connection with the relative diminution of the sexual urge through common upbringing. The exchange of one's own sister for the sister of another is probably the oldest kind of sexual contract. From this then developed the barter of the woman by her kinship group in return for commodities and ultimately the normal form of

marriage, namely, wife purchase,[71] which both in India and in Rome continued to exist as the specifically plebeian fonn of marriage together with the aristocratic forms of marriage, i.e., abduction or sacramental ceremony.[72] However, both marriage by abduction and by sacramental ceremony are products of the formation of certain social organizations. The former arose as a result of the formation of military consociations, which not only tore the young men from their families but also consolidated the women and their children into maternal groups. In the men's house, abduction was the heroic way of obtaining a wife, but the men who lived in such a community might also purchase wives from outside. Combined with the custom of abduction, these practices led to the formation of cartels for the exchange of women and thus apparently to the emergence of exogamy. It came to be regulated totemistically where animistic conceptions of a certain sort became established, especially and originally among peoples whose phratries were also hunting groups and subsequently became magical cult-communities with sacramental rites. The less developed the phratries were, or the more they disintegrated, the more prominent became patriarchal marriage, especially among the chiefs and *honoratiores*. In their case it easily resulted in polygyny with full control of the master of the household over its members, whom he could use at will for his own purposes; or, where the kinship groups remained strong, the chief could at least use them for barter, but he had to give a share of the yield to the members of the kin group. Limits to this use of the members of the household were first imposed upon the headman by the sib of his wife. A family of high status would not sell its daughters as beasts of burden or for unlimited exploitation; they would be given to outsiders only upon reassurances as to their personal status and as to a preferred status for their children vis-à-vis the children of other wives or female slaves. In consideration of such assurances, the daughter would be endowed, upon being given away, with a dowry. It was in these ways that there arose the notion of the legitimate principal wife and legitimate children, i.e., the legal characteristics of legitimate marriage. Dowry and agreement in writing concerning continuous support for the wife, her dower, the payment to be made to her upon abandonment, and the legal position of her children became the test by which full marriage was to be distinguished from all other sexual relationships.

Simultaneously, however, the freedom of the sexual contract unfolded in many different forms and degrees. Service marriage (*Dienstehe*),[73] trial marriage, and temporary companionate marriage[74] can be found, and daughters of noble families in particular were anxious to avoid the subjection to the patriarchal power of the husband. Con-

currently there existed all the forms of prostitution, i.e., the rendering of sexual services for a tangible return as distinguished from the continuous support specifically provided by marriage.[76] Prostitution, both heterosexual and homosexual, is as old as the possibility of obtaining a return for it. On the other hand, there has hardly ever existed any community in which this way of earning a living would not have been regarded as dishonorable. This discrimination was not so much created as fortified by the specifically ethical and political evaluation of formal marriage for the sake of the militarily and religiously important purpose of procreating legitimate children. Halfway between marriage and prostitution there was, especially among the nobility, the institution of concubinage, i.e., a permanent sexual relation with a maid servant, a co-wife, a hetaera, a *bayadère*[76a] or some other kind of woman living outside of marriage or in "free" marriage of the common or the refined type. The status of the children of such a union was mostly left to the discretion of the father, limited only by the monopoly rights of the children of the principal wife. Greater restrictions were established, however, by those who wielded the monopoly of citizenship, the politico-economic privileges of citizenship being reserved to the sons of male and female citizens. This principle was observed with peculiar force by the democracies of Antiquity. Other limitations were imposed by prophetic religion, for reasons previously discussed [ch. VI:xiv]. In contrast to the freedom of the sexual contract of ancient Egypt, which had its cause in the absence of all political rights of the populace, the oldest Roman law disapproved as *causae turpes* of all sexual contracts except marriage and concubinage, which was recognized as a kind of marriage of lower legal status for certain special situations.[77] But the latter was finally proscribed in the Occident by the Lateran Council [1215/16] and the Reformation. The father's right of disposition over the children was seriously limited first by sacred law, then subjected to additional limitations, and finally abolished for military, political, and ethical reasons.

Today the chances of a return to freedom of sexual contract are more remote than ever. The great mass of women would be opposed to sexual competition for the males which, as we can conclude from the Egyptian sources, strongly increases the economic opportunities of the women of superior sex appeal at the expense of the less attractive; it would also be opposed by all traditional ethical powers, especially the churches. Yet, while such absolute freedom seems impossible, a similar state of affairs may be produced within the framework of legitimate marriage by a system of easy or completely free divorce combined with a system whereby the position of the wife remains both free and secure with respect to property rights. Such relative freedom has obtained, in

varying degrees, in late Roman, Islamic, Jewish, as well as modern American law; it also obtained, though only for a limited period, in those legislations of the eighteenth century which were influenced not only by the contract theory of the rationalist Natural Law but also by considerations of population policy.[78] The results have varied greatly. Only in Rome and in the United States has the legal freedom of divorce been actually accompanied, for a time, by a high divorce rate.[79] As once in Rome, both economic freedom and freedom of divorce are strongly desired by the women in the United States where their position in the home as well as in society has come to be secure. The majority of Italian women, on the other hand, who are strongly bound by tradition, have rejected freedom of divorce even in recent times, probably because they are afraid that female competition for the male would become more acute and certainly because they do not wish to jeopardize their economic security, especially in old age, just as an aging worker would be afraid of losing his daily bread. Generally both men and women seem to favor a formally rigid or even indissoluble type of marriage where loose sexual behavior is regarded as permissible for the members of one's own sex; men may also be content with such kind of marriage where, because of weakness or opportunism, they are apt to condone a certain female license. But the decisive reason for the repudiation of freedom of divorce by bourgeois public opinion is the real or imagined danger to the children's educational chances; besides, authoritarian instincts on the part of the men have also played their part, especially where women have become economically emancipated to such a degree that the men are concerned about their position in the family and their male vanity is thus aroused. There are, furthermore, the authoritarian interests of the political and hierocratic powers, strengthened by the idea which has become powerful through the very rationalization of life in the contractual society, that is to say, the idea that the formal integrity of the family is a source of certain vaguely specified irrational values or is the supporting supra-individual bond for needful and weak individuals. In the last generation all t ese heterogenous motives have resulted in a backward movement away from freedom of divorce and in some respects even from economic freedom within marriage.

3. FREEDOM OF TESTATION, i.e., freedom of economic and normally intra-familial disposition, has also met in modern times with restrictive tendencies. But we shall not try to trace here the formal course of legal history of testamentary disposition. Evidence of complete or almost complete substantive freedom of testation can be found only twice in history, viz., in Republican Rome and in England, i.e., among two peoples both of which were strongly expansive and governed by a stratum of land-

owning *honoratiores*. Today its principal area of application is the United States, i.e., the area of optimal economic opportunities. In Rome freedom of testation increased with the policy of military expansion which offered to disinherited sons the prospect of material well-being in the conquered territories, while it was cut down through the practice of breaking "unnatural" wills taken over from Hellenic law as the age of colonization was coming to an end.[80] In English law freedom of testation aimed at the stabilization of the fortunes of the great families, which was also served by the very opposite institutions of feudal succession to real estate, primogeniture, and entailed estate (*fidei commissum*).[81] In modern democratic legislations the restriction or elimination of freedom of testation by means of generous indefeasible shares, or the prevention of primogeniture in the French Code through compulsory physical partition has been and still is largely politically determined. In the case of Napoleon, the intention of destroying the old aristocracy by compulsory partition of their estates was accompanied by the desire to establish fiefs as bearers of the new aristocracy which he was trying to create; this latter institution was referred to in his famous assertion that the introduction of the *Code* would place in the hands of the government the distribution of social power.[82]

4. CONTRACTUAL CONSTITUTION OF SLAVERY. The suppression of *slavery*[83] by the prohibition of even a voluntary submission to formally slavelike relations was the product of the shift of the center of gravity of world economic rule into areas where several elements happened to coincide: slave labor was unprofitable because of high maintenance costs; the wage system with its threat of dismissal and unemployment had come to provide indirect coercion to work; and direct coercion was regarded as less effective than indirect pressure to obtain work of high quality and to extort labor from the dependent strata without the great risks involved in large investments in slave labor. The religious communities, especially Christianity, played a very slight role in the suppression of slavery in Antiquity, less, for example, than the Stoa; in the Middle Ages and in modern times, its role was somewhat greater but by no means decisive. In Antiquity, it was rather with the pacification of the foreign relations of the Empire, which left peaceful slave trade as the only major source of slave import for the West, that capitalistic slavery came to decline. The capitalistic slavery of the Southern United States was doomed once the supply of free land was exhausted and the cessation of the importation of slaves had raised slave prices to monopolistic levels. Its elimination through the Civil War was accelerated by the purely political and social antagonism of the democratic farmers and the Northern plutocratic bourgeoisie against the Southern planter aristoc-

racy. In Europe it was the purely economic evolution of the medieval organization of work and labor, especially the growth of the guild system, which resulted in keeping the crafts free of slave labor even though slavery never completely disappeared from southern Europe during the Middle Ages. As far as agriculture was concerned, more intensive production for export led even in modern times at first to greater servitude in the status of the agricultural laborer; but unfree labor was finally found to be unprofitable with the emergence of modern techniques of production. However, for the final and complete elimination of personal servitude, strong ideological conceptions of natural law were ultimately decisive everywhere. The patriarchal slavery of the Near East, the ancient seat of this institution which was much less intensively spread in East Asia and India, is on the verge of extinction as a result of the suppression of the African slave trade. Once its military significance, which was great in ancient Egypt as well as in the late Middle Ages, was rendered obsolete by the military technique of the mercenary armies, its economic significance, which had never been very great, also began to decline rapidly. As a matter of fact, in the Orient slavery never enjoyed a role corresponding to that played by the plantation slavery on the estates of Carthage and of late Republican Rome. In the Orient most of the slaves were domestic servants just as they had been in the Hellenic and Hellenistic regions. Some, on the other hand, constituted a sort of interest-bearing capital investment in industrial workers, as had also been the case in Babylonia, Persia, or Athens. In the Near East, and still more in Central Africa, this patriarchal slavery approximated a free labor relationship more closely than the legal form would lead one to suppose. Yet, Snouck Hurgronje's observation in Mecca that a slave would not be bought in the market unless he approved of the personal qualities of the master, and that the master would resell the slave if the latter should turn out to be grossly dissatisfied with the former,[84] seems to be the exception rather than the rule and to be brought about by the great dependence of the master on the good will especially of his domestic slaves. In Central Africa, even today, a slave who is dissatisfied with his master knows how to compel the master to give him, by way of *noxae datio*,[85] to another master for whom he has a greater preference.[86] But this, too, is certainly not universally true. Yet the nature of oriental theocratic or patrimonial authority and its inclination toward the ethical elaboration of the patriarchal side of all dependence relationships have created at least in the Near East a highly conventionalized security for the slave vis-à-vis his master. Consequently, unrestrained exploitation in the manner of late Roman slavery is practically excluded. The beginnings of this trend can be found already in ancient Jewish law, and the

decisive motivation for this conduct was provided by the very circumstance that the ancient institutions of levying execution upon the debtor's person and of debt slavery entailed the probability of enslavement of one's fellow citizens.

5. OTHER LIMITATIONS OF FREEDOM OF CONTRACT. Finally, the social and economic interests of the influential, especially "bourgeois," strata of society also constitute the cause of such limitations on the freedom of contract as the prohibition to put feudal or other permanent encumbrances upon land for the benefit of private parties. Such transactions were excluded in the law of Republican Rome just as they were again prohibited in the Prussian Land Redemption Laws.[87] In both instances the operative factors were bourgeois class interests and the economic conceptions associated with them. Roman legislation, which during the Republic did not recognize the emphyteusis except as *ager vectigalis* on public lands, like the present *de facto* limitation in Germany of the creation of similar tenures in lands owned by the state or by state-approved colonization corporations,[88] was a product of the concern of the bourgeois landed interests for legal marketability of land and for the prevention of the development of seigneurial rights or similar obligations tied to the land.

5. *Extension of the Effect of a Contract beyond Its Parties—"Special Law"*

Just as in Roman law, so in the modern rationalized law that type of regimentation of freedom of contract which results from the combination of all the factors just mentioned is generally achieved not by prohibiting the proscribed agreements but simply by the failure of the legal order to provide the particular type-contract or, in Rome, the particular *actio*, and by so regulating the available type-contracts that their norms are incompatible with the disapproved types of agreement. On the other hand, the technical form in which the law provides the power in a legally valid way to engage in those transactions which, like the formation of a business corporation, affect the interests of third parties, consists in the official establishment of certain standard terms which must be incorporated in every such arrangement by individual parties if it is to be legally effective not only between these parties but also against outsiders; for if there are no other reasons for denying its validity, the arrangement itself can have legal effects upon the participants, even if third parties are not bound by them. This modern technique of leav-

ing it to the interested parties thus to create law not only for themselves but also with operative effects as regards third parties gives those interested parties the advantages of a legal institution of *special law*, provided they comply with the substantive requirements as expressed in those terms which they have to incorporate in their arrangement. This modern type of special law differs from that type of special law which was allowed to develop in the past. The modern technique is a product of the unification and rationalization of the law; it is based on the official monopoly of law creation by, and the compulsion of membership in, the modern political organization.

In the past, special law arose normally as "volitive law" (*gewillkürtes Recht*), that is, from tradition, or as the agreed enactment of consensual status groups (*Einverständnisgemeinschaften*) or of rational associations. It arose, in other words, in the form of autonomously created norms. The maxim that "particularistic law" (i.e., volitive law in the above sense) "breaks" (i.e., takes precedence over) the "law of the land" (i.e., the generally valid common law) was recognized almost universally, and it obtains even today in almost all legal systems outside the Occident, and in Europe, for example, to some extent for the Russian peasantry. But the state insisted almost everywhere, and usually with success, that the validity of these special laws, as well as the extent of their application, should be subject to its consent; and the state did this in just the same manner in which it also transformed the towns and cities into heteronomous organizations endowed by the state with powers defined by it. In both cases, however, this was not the original state of affairs. For the body of laws by which a given locality or a group were governed was largely the autonomously arrogated creation of mutually independent communities between which the continuously necessitated adjustment was either achieved by mutual compromise or by imposition through those political or ecclesiastical authorities which would happen at the given time to have preponderant power. With this observation we return to phenomena which have already been touched upon, in a different context, earlier in this section.

Prior to the emergence and triumph of the purposive contract and of freedom of contract in the modern sense, and prior to the emergence of the modern state, every consensual group or rational association which represented a special legal order and which therefore might properly be named a "law community" (*Rechtsgemeinschaft*) was either constituted in its membership by such objective characteristics as birth, political, ethnic, or religious denomination, mode of life or occupation, or arose through the process of explicit fraternization. The primitive situation, as we have seen above, was that any lawsuit that would

correspond to our procedure could take place only in the form of composition-proceedings between different groups (sibs) or members of different groups. Within the group, i.e., among the members of the group, patriarchal arbitration prevailed. At the very origin of all legal history there thus prevailed, if viewed from the standpoint of the political power and its continuously growing strength, an important dualism, i.e., a dualism of the autonomously created law between groups, and the norms determinative of disputes among group members. At the same time, however, another fact intruded into this apparently simple situation: namely, that even at the earliest stages of development known to us the individual often belonged to several groups rather than to just one. But nevertheless, the subjection to the special law was initially a strictly personal quality, a "privilege" acquired by usurpation or grant, and thus a monopoly of its possessors who, by virtue of this fact, became "comrades in law" (*Rechtsgenossen*). Hence, in those groups which were politically integrated by a common supreme authority, like the Persian empire, the Roman empire, the kingdom of the Franks, or the Islamic states, the body of laws to be applied by the judicial officers differed in accordance with the ethnic, religious, or political characteristics of the component groups, for instance, legally or politically autonomous cities or clans. Even in the Roman empire, Roman law was at first the law for Roman citizens only, and it did not entirely apply in the relations between citizens and noncitizen subjects. The non-Moslem subjects of the Islamic states and even the adherents of the four orthodox schools of Islamic law live in accordance with their own laws; but when the former resort to the Islamic judge rather than to their own authorities, he applies Islamic law, as he is not obliged to know any other, and as in the Islamic state the non-Moslems are mere "subjects."

On the other hand, in the medieval *Imperium*, every man was entitled everywhere to be judged by that tribal law by which he "professed" to live.[89] The individual carried his *professio iuris* with him wherever he went. Law was not a *lex terrae*, as the English law of the King's court became soon after the Norman Conquest, but rather the privilege of the person as a member of a particular group. Yet this principle of "personal law" was no more consistently applied at that time than its opposite principle is today.

Under any such systems it was inevitable that difficulties were to arise in conflicts between persons subject to different bodies of law, and with them the need for a certain measure of common legal principles, which increased rapidly with the growing intensity of intercourse. There either emerges, then, as it did in Rome, a "jus gentium," which co-

exists together with the "ius civile" of each group; or, as occurred in England, the political or hierocratic ruler will by virtue of his *imperium*, impose upon his courts an "official law" which is to be the only binding one; or it may happen that a new political group, usually a local one, will fuse the substance of different legal rules into one new body of law. The oldest Italian city statutes were well aware that the citizens had "declared" that they were living under Lombard law, but in a characteristic divergence from older legal notions, it was the *civitas*, the personification of the total body of the citizens, which was said to have accepted as its *confessio iuris* either the Lombard law or, as its supplementary source, the Roman law; or it, *the civitas*, may have adopted the Roman law, and the Lombard law as its secondary system.[90] However, all volitionally formed associations always strove for the application of the principle of *personal* law on behalf of the law created by them, but the extent to which they were successful in this respect varied greatly from case to case. At any rate, the result was the coexistence of numerous "law communities," the autonomous jurisdictions of which overlapped, the compulsory, political association being only one such autonomous jurisdiction in so far as it existed at all. By virtue of their membership, "comrades in law" could monopolize the control of certain tangible things or objects, for example, land of a certain type such as copyholds or fiefs; however, when these "law communities" ceased to be closed shops under the pressure of certain interests, and when these communities increased so that any one individual member was simultaneously belonging to several groups, then the special law of any "law community" became almost identified with the ownership of the particular object so that now, in the reverse sense, such ownership became the test for membership in the particular special law community.[91] This was also a step towards the situation which prevails today, namely that those relations which are subject to a special law are formally and generally accessible to any person. Nevertheless, it was only one step in the transition to the modern situation. For all special law of the older type conferred enduring legal privileges either directly on certain persons belonging to a group or on certain objects the possession of which provided this membership. In modern society special legal regulation may also be occasioned by the existence of certain purely technical or economic conditions such as ownership of a factory or a farm, or the exercise of the profession of attorney, pharmacist, craftsman of a certain kind, etc.

Naturally every legal system has certain special norms that are bound up with technical and economic facts. But the special bodies of laws which we are discussing at this point were of a different character. The applicability of this type of special law was founded not on economic

or technical qualities but on status, i.e., qualities derived from birth, mode of life, or group membership ("nobleman," "knight," or "guild fellow") or certain social relationships with respect to material objects such as a copyhold or a manor. It has therefore always been the case that the applicability of a special law was conditional upon a particular quality of the person or upon his relationship to some material object.[92] In marginal cases, the "privilege" could even adhere to a single individual or object and it did so in fact quite frequently. In that case, the right coincided with the law; the privileged individual could claim as his right that he be treated in accordance with the special law. But even where it was significant that one belonged to a group of special corporate status or that one stood in a special relationship to a group of objects, it was natural to regard the application of the special legal norms as the personal right of the interested parties. The idea of generally applicable norms was not, it is true, completely lacking, but it inevitably remained in an undeveloped state; all law appeared as the privilege of particular individuals or objects or of particular constellations of individuals or objects. Such a point of view had, of course, to be opposed by that in which the state appears as the all-embracing coercive institution. At times, especially during the first period of the rising "bourgeois" strata in ancient Rome and in the modern world, the opposition was so strong that the very possibility of "privileges" was repudiated. The creation of privileges by vote of the popular assembly was regarded as impossible in Rome,[93] and the revolutionary period of the eighteenth century produced a type of legislation which sought to extirpate every form of associational autonomy and legal particularism.[94] This end was never achieved completely, however and we shall soon see how modern law has created anew a great mass of legal particularisms. But it has done so upon a basis which differs in many important respects from that of the privileges of the older corporate status groups.

The ever-increasing integration of all individuals and all fact-situations into one compulsory institution which today, at least, rests in principle on formal "legal equality" has been achieved by two great rationalizing forces, i.e., first, by the extension of the market economy and, second, by the bureaucratization of the activities of the organs of the consensual groups. They replaced that particularist mode of creating law which was based upon the private power or the granted privileges of monopolistically closed organizations; that means, they reduced the autonomy of what were essentially organized status groups in two ways: The first is the formal, universally accessible, but closely regulated autonomy of voluntary associations which may be created by anyone wishing to do so; the other consists in the grant to everyone of the power to create law of his own by means of engaging in private legal transac-

tions of certain kinds. The decisive factors in this transformation of the technical forms of autonomous legislation were, politically, the power-needs of the rulers and officials of the state as it was growing in strength and, economically, the interests of those segments of society that were oriented towards power in the market, i.e., those persons who were economically privileged in the formally "free" competitive struggle of the market by virtue of their position as property owners—an instance of "class position." If, by virtue of the principle of formal legal equality, everyone "without respect of person" may establish a business corporation or entail a landed estate, the *propertied* classes *as such* obtain a sort of factual "autonomy," since they alone are able to utilize or take advantage of these powers.

However, this amorphous autonomy merits the designation of "autonomy" only in a metaphorical sense; for, unless the word "autonomy" is to lack all precision, its definition presupposes the existence of a group of persons which, though membership may fluctuate, is determinable, and whose members are all, by consent or enactment, under a special law depending on them for its modification. The particular character of the group is irrelevant for the definition; it can be a club just as well as a business corporation, a municipality, an "estate," a guild, a labor union, or a circle of vassals. The phenomenon itself always denotes the beginning of the state's legal supremacy. It always entails the idea that the state either tolerates or directly guarantees the creation of law by organs other than its own. Qualitatively, too, the autonomy enjoyed by a group through consensus or by enacted norms differs from mere freedom of contract. The line between the two coincides with the limits of the concept of "norm"; in other words, it lies where the order whose validity depends upon the consensus or the rational agreement of the participants is no longer conceived as the objectively valid rule imposed upon a group but as the establishment of reciprocal subjective claims, such as occurs, for instance, in the agreement of two business partners concerning the division of work and profits between them and their legal position within and outside the firm. The absence of a clear dividing line between objective law and subjective right becomes apparent at this point. From the standpoint of our modes of thought, which have developed in regard to enacted law,[98] a distinction can be found, even theoretically, only in the proposition that in the sphere of private law, which alone concerns us here, autonomy is exercised where the enacted rule has its normal source in a resolution, while we have a special case of regulation by virtue of freedom of contract where the rule is supplied by an agreement between concrete individuals. This distinction was not insignificant in the past, but neither was it exclusively decisive.

As long as the distinction between objective norm and subjective

claim was but incompletely developed and as long as law was an attribute of a person determined by his membership in a group, one could speak of only two kinds of rules. The first were those which were valid in a group or organization because of the special status qualities of its members; the others were valid and binding because one had created them for oneself by directly participating in a purposive contract. All special law was indeed originally the law of a group in which membership was determined by status qualities. But this state of affairs changed, as we have already indicated, with the increasing differentiation and economic scarcity of those goods which were monopolistically appropriated by the several groups. The changes were indeed so pronounced that in the end an almost opposite rule came to obtain: namely, that special law was almost exclusively that which applied in a social or economic special relationship. To this conception certain approximations can already be found in the Middle Ages. We agree with Heusler on this score, but he went too far when he completely denied the existence of all state law (*Staatsrecht*).[96] But feudal law was indeed the law for the relation between lord and vassal and not the law of a "vassalic state" simply because such kind of state never existed. In the same sense manorial law was the law applicable to the relationships of manorial service; service law applied to service fiefs; the law merchant was the law for merchandise and mercantile transactions; and crafts law[97] is the law relating to the transactions and the establishments of craftsmen. Yet, outside of these special relationships, the vassals, merchants, the copyholders, the *ministeriales*, and freemen were subject to the general law of the land. An individual could own freehold and copyhold lands at one and the same time; as regards the former, he was under the jurisdiction of the common law of the land, and as regards the latter, under the law of the manor. Likewise, a non-merchant who had lent money in a *commenda* or *foenus nauticum* was subject to commercial law in this, but only this, regard. However, this objective mode of treatment was by no means universal. Almost all those relationships to which a special law applied had to some degree consequences implying corporate status, i.e., touching upon the total legal status of the person. This was the case with the possession of copyholds or other "unfree" lands. Many of them were regarded as mutually incompatible in one person and the tendency to break through such corporate-status restrictions was opposed time and again by the counter-tendency towards the closure of group membership. Which of the two tendencies would be stronger was entirely determined by the concrete constellation of interests in each specific instance. In Germany, as even Heusler acknowledges, borough law (*Stadtrecht*) was a corporate-status right of the citizens rather than a law

of tenure of urban land or other material relationship.[98] In England, however, the municipalities became almost entirely private corporations.

In general it is correct to say that there prevailed the tendency of treating special law as law for certain objects and situations. As a result, the integration of the special laws into the common law of the land, the *lex terrae*, as substantive special rules was greatly facilitated. The actual and final integration, however, depended predominantly on political conditions. Yet in those fields where this integration was not fully realized the problem of the relationship of the various special laws and their corresponding special courts to the common law of the land and its courts was resolved in a great variety of ways. Under the common law of the land seisin in copyhold land (*Gewere*) was vested in the lord rather than the copyholder. But as to land held in fee the situation was not so simple; in the *Mirror of Saxon Law*, for instance, the problem of seisin was in dispute between the author and the glossators.[99]

This particular problem has left traces in the Roman law, too. The Roman *ius civile* was the law of the Roman citizens insofar as a person who was neither a citizen nor an assimilated person by virtue of treaty could not appear as a party before a Roman court, engage in the specific transactions of the quiritarian law,[100] or be judged according to its rules. No Roman *lex* had any validity outside the circle of the citizenry. Its inapplicability to non-citizens was politically of considerable importance because it established the sovereign power of the officials and the Senate over the entire subjugated area which was not incorporated into the law. But on the other hand, the Roman citizen was never judged exclusively by *ius civile*, and he was never exclusively subject to the courts of the *ius civile*. The *ius civile* of historical times must rather be defined as that special law which was relevant for a person exclusively in his character as a citizen, i.e., as a member of that particular status group. Simultaneously with it we find some law spheres which covered either both citizens and non-citizens, or only a part of the citizens, and the law of which presents itself as special law either of status groups or of objective demarcation. In this context belong above all those numerous and important situations which were regulated by administrative law. Down to the time of the Gracchi, title by virtue of *ius civile* did not exist in any lands other than those which had been subjected to *ius civile* by express assignation.[101] Tenures in public lands (*ager publicus*) were neither regulated by *ius civile* nor protected by actions of *ius civile*, as they were accessible to both citizens and non-citizens. When, in the period of the Gracchi, it looked as if the citizenry would subject these lands to regulation by *lex*, i.e., by enactment of *ius civile*, the allies immediately demanded that they be made citizens. These tenures were

thus subject exclusively to the cognition of the magistrates, who proceeded in this respect according to rules different from those of the *ius civile*. The latter knew neither *emphyteusis* nor covenants running with the land nor copyholds. But all these institutions existed under the administrative law applicable to public lands. Furthermore, that law which applied in the relation between the public treasury and private individuals contained institutions which did not occur in the *ius civile*; even where the institutions of the former were the same as those of the latter, they were referred to by different names, as, for instance, *praes* and *praedium*, [rather than *fide-iussor* and *hypotheca*].[102] This objectively defined special law was thus determined by the scope of the jurisdiction of the administrative official. There did not exist any body of particular persons membership in which would have been the test of participation; if one would like to speak of any group one could only say that its membership consisted of all those who at a given moment would happen to be concerned with some matter subject to administrative jurisdiction. Another sphere of special law was constituted by the jurisdiction of that *praetor* who was to decide disputes between citizens and aliens. He might resort to some rule of *ius civile*, but not by virtue of a "law" of the *ius civile*, a *lex*, but simply by virtue of his magisterial power. He rather applied the *ius gentium*, a law which was derived from a different source and the validity of which rested upon different foundations. Yet, this kind of law must not be visualized as having arisen with the very establishment of the office of the *praetor peregrinus*. It rather was that international law of commerce according to which the disputes of the market had been settled from time immemorial and which probably had at first been protected only sacrally by means of the oath. Nor were the substantially feudal relations between patron and client,[103] which were of great practical importance in the early period, possible objects of litigation at *ius civile*. Just as in the Germanic law of seisin, the spheres of the *ius civile* and feudal law touched upon each other in the field of possession, viz., with respect to the *praecarium* [tenancy at will]; the *ius civile* took notice of the relationship also in other respects and dealt with it in criminal law. But it was not *regulated* by *ius civile*. Genuine spheres of special law within the *ius civile* were, on the other hand, formed by certain legal institutions accessible solely to merchants and certain persons engaged in industry, viz., the *actio exercitoria*,[104] the *receptum*,[105] and the special law of the *argentarii* [bankers].

A concept of great importance for future legal development, viz., that of *fides*,[106] was contained in both the general law of commerce and the law of patron and client. It included in a peculiar way not only the obligations following from relations of loyalty but also the

fides bona, the good faith and fair dealing of the pure commercial transactions. To the *ius civile* as such it was unknown. Yet even though technically unknown, there were elements of it in practice from the very beginning; for as regards certain fraudulent acts, the Twelve Tables already threatened with the status of *improbus intestabilisque*.[107] Numerous laws expressly decreed *infamia*, the general consequences of which were in private law exclusion from giving testimony, i.e., the incapacity to bear witness or to have one's actions witnessed, which in practice amounted to a commercial boycott. It led to a limitation of aquiring property by way of testate succession; it involved, furthermore, the denegation of certain actions by the *praetor*. In spite of their informal character, the principles of *fides* were by no means the products of a vague sentimentalism either in the field of the law of patron and client or in that of commercial transactions. The entire series of sharply defined contrasts on which the Roman law of commerce so essentially rested was developed on the basis of the principles of *fides*. Such ancient institutions as the *fiducia*[108] as well as the *fidei-commissum* of the imperial epoch[109] depended entirely upon *fides*. The fact: that the *fidei-commissum* developed because legacies in favor of non-citizens and "prohibited persons"[110] were not actionable in the *ius civile* and guaranteed only by convention does not prove that *fides* was never more than a stopgap device for the *ius civile* and that it arose only at a comparatively late stage. The legal institution of *clientela* is certainly as old as the legal conception of the *ius civile* itself, and yet it remained outside. Thus the coverage of *ius civile* was never coterminous with the "civil" law. But *fides* was not a uniform principle for the regulation of legal relations. What one owed to another according to *fides* depended on the peculiar nature of the concrete relationship, and even in this specialization the *fides* did not, in the event of infringement, always produce the same legal consequences. *Infamia* was the consequence of certain specific acts rather than of all infringements against *fides*. Of the various reactions against offensive conduct, e.g., censorial reproof, or consular refusal to list one as a candidate for office, each had its own particular preconditions, which were identical neither with cases of *infamia* nor with the principle of *fides*, and which, moreover, fluctuated; they were never bound up with infringements of *fides* purely and as such. Infringements of the obligations of clientship were originally subject to the sanctions of the patron in the household court. Later these obligations were guaranteed sacrally or conventionally and finally also by *ius civile* in the case of the purely commercial clientage of freedmen.

Of the original role of *fides* in commerce we have no knowledge. We do not know the means by which the *bonae fidei* contracts were

guaranteed before they were recognized in the praetorian forms of action by virtue of the magistrate's authority like other institutions of the *ius gentium*. Probably there were individual or general arbitration agreements under oath, which, if broken, produced *infamia* in the same way in which in later times *infamia* was the sanction for the breach of a sworn contract of compromise. But the creation of the forms of action for the institutions of the *ius gentium* did not mean that its distinction from the *ius civile* became eliminated; the *ius civile* remained the pure corporate status group law of the citizens. Occasionally the *praetor*, through the formula *si civis Romanus esset*, [let him be treated "as if he were a Roman citizen"] made a civil form of action available to non-citizens. Other institutions were imperceptibly received into the *ius gentium*. It was only during the Empire that the distinction disappeared entirely, together with other privileges of citizenship.

None of the groups of persons interested in the *fides* constituted a closed organization, although Mommsen incorrectly, as we shall subsequently see, identified the clients with the organization of the *plebs*.[111] Certainly those persons whose interests were involved in *bonae fidei* contracts or in *ius gentium*, which were quite indifferent with respect to personal status, did not form such an organization. The praetorian law as such was naturally quite far from being identical with the *ius gentium*, and the reception of the *ius gentium* was by no means brought about only by praetorian law; indeed it was to a great extent brought about by the integration of its fundamental principles into the *ius civile* through the jurists. Both during the Republic as well as during the Empire even the genuine status groups, i.e., the slaves, the freedmen, the knights, and the senatorial families, lacked any associational organization which could have been the bearer of a genuine autonomy. For reasons of politics and police, the Republic had repeatedly found itself compelled to intervene sharply against private organizations. Periods of repression alternated with periods of toleration. The period of the monarchy was naturally unfavorable to private associations. The democracy had reasons to be afraid of the associations of the socially and economically powerful; the monarchy had reasons to fear the political consequences of any sort of uncontrolled organization. The Roman law of both the Republican and the Imperial periods admitted, in effect, associational autonomy only as a law of voluntary associations (*Vereine*) or corporations in the modern sense. Autonomy existed to the very degree to which such associations and corporations were tolerated or privileged. Just to what extent they existed is to be examined in connection with the general discussion of another problem, namely, that of the *legal personality* of organizations.[112]

6. Associational Contracts—Juristic Personality

The general transformation and mediatization of the legally autonomous organizations of the age of personal law into the state's monopoly of law creation found its expression in the change of the forms in which such organizations were legally treated as the bearers of rights. Such treatment cannot be dispensed with when the autonomous organizations have become subject to a common body of law peacefully applied through an orderly system of adjudication within a compulsory political association, when there furthermore exist, on the one hand, monopolistically appropriated goods to be used solely by the members of the group (*Rechtgenossen*) as such and by them only for some common purpose, and when also, on the other hand, legal transactions involving these objects have become economically necessary. Where, however, this development had not yet occurred, the problem was settled in a simple way: the members of one organization held all the members of another solidarily responsible for the acts of any one of its members, including its organs. Alongside the primitive blood feud we thus find the reprisal as a universal phenomenon, i.e., the reprisal in the sense of the detention of the person or goods of a member of a group for the obligations of one or all of his fellows.[113] In the Middle Ages, negotiations about reprisals and their avoidance by reciprocal grant of access to the courts and mutual legal assistance were a constant object of discussion between the cities. Composition, too, is of the same primitive origin as the blood feud. The question of what person or persons could validly conclude a composition and represent the members of a group in dealings with outsiders was determined simply by the experiences of the outsider with respect to whose orders are in fact obeyed. The original conception, even in early medieval law, still was that a member of the group who had not participated in a particular resolution of the village, the guild, the rural commune or other collectivity, could not be bound by it, that the organization's transactions with the outside had to be based upon an agreement of the members as expressed in a general resolution in order to have any effect. One may thus agree with Heusler[114] that the necessity of a resolution and its binding force were characteristic elements in the development of the law of organizations. But, obviously, the distinction between resolution and contract remained as fluid as that between objective norms of law and subjective rights in general; normations arrived at through resolutions were often designated as *pactus*. But virtually the distinction was always present, quite particularly in the once universal idea that a resolution would not bind anyone except those persons who had participated in and associated themselves with it, and

that it had consequently to be unanimous. In appearance, at least, the idea is implied that a resolution could come into effect only as a contract. Actually, however, that conception was rather influenced by the element of revelation implied in all law, according to which only *one* law could be right. Once the magical and charismatic means for the discovery of the right law had disappeared, there could and did arise the idea that the right law was the one acknowledged by the majority and that, therefore, the minority had the duty to associate itself with it. But before the minority did so, occasionally under drastic compulsion, the majority resolution was not law and no one was bound by it.[116] Such was the practical significance of that outlook.

On the other hand, no one, of course, was considered to be obliged to conclude a contract with another. Hence, even under these modes of thought, including the conceptions of the earliest times, the distinction between enactment as the means of creating objective law and contract as the means of creating subjective rights was a familiar one, despite the great vagueness and fluidity of the transition between them. As its complement, the resolution required an organ for its execution. The mode of its selection, e.g., election from case to case or for a longer period or hereditary appropriation of the executive functions, etc., could assume many different forms. As the process of differentiation and appropriation among and within the various organizations advanced, as individuals came to be simultaneously members of several organizations, as in the internal relations among group members the relative degrees of power of officers and members came to be subject to fixed and increasingly rational rules, and as, finally, purposive contracts both of individuals and between the organization as a whole and outsiders became more frequent in consequence of a growing exchange economy, an unambiguous determination of the significance of every action of every member and every official of an organization became necessary, and the question of the position of the organization and of the legitimation of its organs in both contractual transactions and in procedure had to arise in one way or another.

The technical legal solution of this problem was found in the concept of the juristic person. From a legal standpoint the term is a tautology, since the very concept of person is necessarily a juristic one. When a child *en ventre de sa mère* is regarded as a bearer of rights and obligations just as a full citizen while a slave is not, both these rules are technical means of achieving certain effects. In this sense the determination of legal personality is just as artificial as the legal definition of "thing"—i.e., it is decided exclusively in accordance with expedientially selected juristic criteria. However, the more numerous alternatives available for

the determination of the legal position of organizations and associations were then to create a special problem.

The most rational actualization of the idea of the legal personality of organizations consists in the complete separation of the legal spheres of the members from the separately constituted legal sphere of the organization; while certain persons designated according to rules are regarded from the legal point of view as alone authorized to assume obligations and acquire rights for the organization, the legal relations thus created do not at all affect the individual members and their property and are not regarded as their contracts, but all these relations are imputed to a separate and distinct body of assets. Similarly, what the members as such may claim from or owe to the organization under its rules, belongs to or affects their own private assets, which are legally entirely separate from those of the organization. An individual member as such can acquire neither a right nor a duty for the organization. Legally this is possible only for the officers acting in the name of the organization, and only the assembly of qualified members called together and acting in accordance with fixed rules can, but need not, have the authority to make binding decisions. The concept of juristic personality can be extended even further to contain the control over economic goods the benefit of which is to accrue to a plurality of persons who, while they are determined in accordance with rules, are not to be associationally organized. When thus established as an *endowment*,[116] a separate bearer of rights, to be determined in accordance with fixed rules, becomes recognized as legitimated to represent the interests of those individuals. Where a consociation of persons is to be endowed with juristic personality, it can thus be constructed in two possible ways. It can be organized as a *corporation*. In that case the body of members is constituted as a fixed group of persons. The composition of that body can be changed in two ways, viz., either by succession to a position of membership in accordance with the general rules of private law, or by virtue of a resolution of a designated corporate organ. The persons designated in one of these two ways are the only ones who are entitled to any rights, and the administration is juristically carried on by virtue of their mandate. The other possible form in which a consociation of persons can be established as a juristic person is that of the *institution* (*Anstalt*), which is basically similar to the endowment. (When used as a juristic term of art, the concept of institution overlaps only in part with the one used in the field of social welfare.) The institution has no organized body of members but only an organ or organs by which it is represented. Membership is frequently based upon obligation, and the accession of new members is not dependent upon the will of the older

ones but rather upon objective criteria or upon the discretion of the organs of the institution. Furthermore, the "members" of the institution, such as, for instance, the pupils at a school, have no influence upon its management.[117]

The three forms of organization—endowment, institution, and corporation—are not separated from each other by absolutely clear-cut legal tests. The transitions between them are rather gradual and fluid. It can certainly not be a decisive test, as Gierke assumed, whether the organization is autocephalous or heterocephalous.[118] A church is an institution, although it can be autocephalous.

From the technical legal point of view, the concept of juristic personality can be dispensed with where an organization has no property concerning which contracts in the name of the organization would be necessary. Juristic personality is inappropriate for those societies which by their very nature comprehend only a narrowly limited number of partners and which are also limited in their duration, such as a certain business associations. For them the absolute separation of the legal spheres of the members from that of the collectivity would be injurious to credit since the specific credit-rating, while influenced by the existence of a separate fund, is based primarily upon the fact that all the partners are to answer for the debts of the collectivity. Likewise the establishment of separate organs for the representation of the latter would not always be expedient. For such organizations and associations the form most adequate to capitalistic credit interests is the principle of "joined hands" (*Gesamthand*),[119] which has been known, at least in an incipient state, to most legal systems of the past. It involved, first, that authority to represent the collectivity be vested in either all the participants acting jointly, or in every one, or some, or one particular participant acting in the name of all; the principle of joined hands involved, second, the liability of all with both their persons and their property. The configuration arose from the solidary responsibility of the household community. It acquired its specific character when in a community of heirs the legal separation of the collective property from the individual property of the participants made it necessary that a distinction be made between collective and individual debts.[120] This process occurred in that course of disruption of fraternal relationships by commercial influences of which we have earlier spoken [ch. IV:2].

From the community of heirs the institution spread and became the basis of numerous deliberately constituted communities for which the in- and out-group relations arising from the fraternal character of the household community were either basic or adopted out of considerations of legal-technical convenience.[121] The present-day law of the partner-

ship is, as we have seen, a direct rational development of the relations of the household community for purposes of the capitalistic enterprise. The various forms of the "société en nom commandite"[122] are combinations of this principle with the law of the *commenda* and the *societas maris* as they were found everywhere. The German "limited liability company"[123] is a rational invention to serve as a substitute for the regular joint-stock corporation (*Aktiengesellschaft*) which is legally inadequate for the purpose of smaller family-like enterprises, especially among co-heirs, and particularly inconvenient because of the many publications required by modern legislation.

The fraternity (*agermanament* in Spanish law) of merchants, shipowners, and seamen was, by the very nature of the matter, intrinsic to the joint enterprise of a sea voyage. Corresponding to the rise of the business firm from the household community, it developed in the field of shipping into an *association of joint hands* (*Gesamthandvergesellschaftung*) of the enterprisers, whereas, on the other side, in bottomry and in the rules of general average it resulted in a single community of risk among all those interested in the voyage. In all those cases, the typical element was the replacement of a fraternal by a business relationship, i.e., of a status contract by a purposive contract, saving, however, the legally technically expedient treatment of the total group as a separate and distinct legal subject and as the separate owner of joint assets. On the other hand, the formal bureaucratization of the apparatus that would have become technically necessary in the case of a corporation was avoided. In no other legal system were the rationally transformed relationships of joint hands developed so specifically as they were in that of the Occident of the Middle Ages and later. Their absence from Roman law was due more to certain elements of legal technique inherent to the nature of the national *ius civile* than to economic causes; we do not know details of the development of Hellenic commercial law, from which, especially its Rhodian species, certain special institutions of the commercial law of Antiquity were borrowed. The relative ease with which Roman Law could dispense with any development of such a rich variety of legal forms was connected with the peculiar character of ancient capitalism, which was both a slave capitalism and a predominantly political capitalism based upon the state. Slaves were used as business instruments through whose contracts the master could acquire unrestricted rights but only limited liabilities. The treatment of the *peculium* in the fashion of a separate fund made it possible to obtain at least part of the results which today are brought about by the various forms of limited liability.[124] Of course, the fact remains that this restriction, in connection with the complete exclusion of all forms

of joint hand from the law of the *societas* and the requirement of all solidary claims and obligations being created by express *sponsio correalis*,[125] is one of the legal symptoms of that absence of stable capitalistic industrial enterprises with continuous credit needs which is characteristic of the Roman economic system. The significance of the essentially political basis of ancient capitalism is indicated by the fact that those very legal institutions which were lacking for private business were recognized already in the private law of the early Empire with respect to publicans (*socii vectigalium publicorum*),[126] i.e., groups of private businessmen to whom the state farmed out the levying of taxes and the exploitation of the state-owned mines and salt works. The legal and economic structure of these associations was similar to the syndicates as they are customarily established today by banks coöperating in the issuance of bonds and other securities: one or more "leading" banks undertake toward the issuer the obligation of providing the full capital in question; other banks join the syndicate with internal liability for the full amount, while still others participate with only limited subscriptions. In Rome, the *socii* of the consortial leader (*manceps*), as they are mentioned in the *interdictum de loco publico fruendo* and in other sources,[127] were members of the *consortium*, while the *affines* subscribed only with limited liability in the manner of a modern *commanditista*;[128] both internally and externally the legal situation was thus quite similar to that of the modern phenomenon.

Whether the institution of *the state* itself should be treated *as a juristic person of private law*, would depend in each case upon both legal-technical and political considerations. If it is done, it means in practice primarily that the legal spheres of the organs of state authority are to be divided into a sphere of personal rights, with claims and obligations ascribed to them as individuals, and an official sphere in which property relations are regarded as separate institutional assets; it means, furthermore, that the sphere of official activity of the organs of the state is divided into a sphere of public and one of private legal relations and that in the latter sphere, which is exclusively concerned with property matters, the general principles of the law of private transactions are applicable.[129] It is a normal consequence of the juristic personality of the state that it has capacity to sue and to be sued in ordinary civil procedure, and on an equal footing with private parties, and that claims may be freely prosecuted against it. From a strictly legal point of view, it is true that the juristic personality of the state has nothing to do with this latter question. The *populus Romanus* had, without any doubt, the capacity to acquire private rights, for instance by way of testate succession, but it could not be sued. The two problems

are also different from a practical point of view. There seems to be no doubt that all compulsory institutional, and thus political, state structures have a juristic personality in the sense of being capable of acquiring rights, even where they avoid being subject to the ordinary process of law. Likewise the juristic personality of the state and its amenability to the process of law may be recognized while different principles may obtain for government and private contracts. But the latter phenomenon has usually been associated, as for instance in Rome, with the exclusion of the ordinary courts and the decision by administrative officials of disputes arising out of government contracts. The capacity to sue and to be sued has been recognized not only for juristic persons but also for numerous groupings of joint hands. Nonetheless, the problem of juristic personality has usually appeared in legal history in close association with the problem of the capacity of organizations, especially public ones, to sue and be sued.

All the problems just discussed were bound to arise wherever the political authority could not deal with private persons as a master deals with his subjects but where it was compelled to obtain their services by free contracts. The problem had to be particularly acute where the political authority had to resort to transactions with capitalists whose credit or whose entrepreneurial organization it needed, and where, in consequence of the free movement of capital among several competing organizations, it could not coerce these services liturgically. The problems were finally bound to arise where the state had to deal with free craftsmen and workers, against whom it either could not, or did not wish to, apply liturgical coercion. The security of private interests was generally increased wherever the juristic personality of the state and the jurisdiction of the ordinary courts came to be recognized. But the denial of either one did not necessarily entail an impairment of this security, as the observance of the state's contractual obligations may be adequately guaranteed by other means. The fact that the king of England could always be sued in court did not protect the Florentine bankers against the repudiation of his enormous debt in the fourteenth century.[180] The lack of any means of procedural coercion against the Roman state treasury did not in general endanger its creditors, and when such a danger nonetheless arose during the Second Punic War, the creditors were able to obtain pledges for their loans which no one attempted to disturb. The French state has remained exempt from the compulsory jurisdiction of the courts even after the Revolution but without impairment of its credit.[181] To some extent the exemption of the public treasury from ordinary legal process has been connected with that principle of setting apart the state from other organizations which developed

in connection with the modern concept of sovereignty. This was certainly the case in France, and in Prussia too. Frederick William I, conscious of his sovereignty, tried by all sorts of chicanery to discourage his "obstinate nobles" from invoking the Imperial Chamber Court (*Reichskammergericht*).[182] The availability of the ordinary process of law was, on the other hand, beyond doubt wherever the corporate status structure of the political organization resulted in the treatment of all administrative grievances as disputes between the holders of privileges or vested rights and therefore as the subject matter of ordinary litigation, in which the prince appeared not as sovereign but as the possessor of a limited prerogative or as one bearer of privileges among others in the political organization. This was the situation in England and in the Holy Roman (German) Empire.

The denegation of actions against the state could, however, also be the result of essentially technical legal factors. Thus in Rome the *censor* was the authority for deciding all claims of individuals against the state or vice versa which, according to our modes of thought, would be claims of private law. But the *censor* was also the authority for disputes between private persons in so far as they turned on questions of law arising from relations touching state property.[183] All tenures in the *ager publicus* and all disputes between the capitalist owners of interests in the public lands and the state contractors (publicans), or between them and the subjects, were thus withdrawn from the high jurisdiction of the juries and referred to simple administrative cognition. This was in effect a positive rather than a negative privilege of the tremendously powerful state capitalists. The lack of jury trial and the dual quality of the magistrate as judge and party representative persisted and was transferred in effect to the fisc of the imperial administration when, since Claudius, following a brief fluctuation under Tiberius, the fisc increasingly acquired the character of state property and ceased to be looked upon as the personal property of the emperor.[184] The distinction, it is true, was not complete and residues remained both terminologically (although such old terms of administrative law as *manceps*, or *praes*[185] came gradually to be replaced by the terms of private law) and in the maxim that the fisc was capable of suing and being sued. Fluctuations between the patrimonial and the institutional conceptions of the imperial property, i.e., of the conceptions of it as belonging to the emperor personally or to the state as an institution, together with considerations of administrative technique and the economic interests of the dynasty, also influenced the various transformations of and differentiations between the several kinds of imperial assets which in theory were all regarded as having a regular standing in court.

Actually the distinction between the emperor as a private person and as a magistrate (ruler) was carried out only under the first emperors. Finally all the property of the emperor was regarded as property of the crown and hence it became customary for the emperor, when he acceded to the throne, to transfer his private fortune to his children. The treatment of acquisitions by way of confiscation and of the numerous legacies which were left to the emperor as a means of reinforcing the validity of testaments, was not clearly elaborated from the standpoint of either private or constitutional law.

Within the structure of Medieval estate corporatism, which we shall discuss later, it was out of the question that the prince as a ruler would be differentiated from the prince as a private individual or that those of his assets which served political ends would be differentiated from those which were to serve his private ends. As we have seen, this lack of differentiation resulted in the acknowledgment of the possibility of suing the British king, or the German emperor. Quite the opposite effect occurred, however, when the claims to sovereignty led to the withdrawal of the state from the jurisdiction of its own organs, although in this connection, too, legal technicalities were used for rather effective resistance to the political aspirations of the princes. The Roman concept of the fisc, which was received in Germany, was used there to serve as the instrument of legal technique which made it possible to sue the state. Consequently, and as a result of the traditional corporate estate concept of the state, it also had to serve as a first basis for a genuine administrative justice far beyond the scope of private law disputes. The concept of the fisc should have produced the concept of the state as an institution already in Antiquity. However, this conceptual step was never taken by the classical jurists because it would have been alien to the existing categories of ancient private law. Not even the "*Auflage*," as it is understood in modern law, was developed so that it could have served as a substitute.[126]

Likewise the concept of *endowment* thus remained entirely alien to Roman law. The only way available was that of establishing a corporative fund, the actual use of which is demonstrated by inscriptions. The true concept of endowment both in its substantive and technical aspects was almost everywhere developed under religious influences. The great mass of endowments have been dedicated from times immemorial to the cult of the dead or to works of religiously meritorious charity. The main interest in the definition of the legal status of such endowments was thus found among those priests to whom the supervision of the endowments' activities was entrusted. Hence a "law of endowments" arose only where the priesthood was sufficiently independent of the lay au-

thority to develop a special body of sacred law. In Egypt, for this reason, endowments have existed from times immemorial.[137] Purely secular endowments, and particularly family endowments, however, were practically unknown everywhere, not only because of technical legal reasons but, without doubt, also for political reasons, unless they used the form of feoffment or similar forms and thus created a dependence of the privileged families on the prince. In the *polis* they were thus completely absent. A change occurred for the first time in Byzantine law, where sacral norms were used as a technical means, after late Roman law had already made the first limited steps in this direction by means of the *fidei commissum*. For reasons which we shall discuss later, in Byzantium the creation of perpetual rents took the form of monastic foundations in which the management and rights to revenue were reserved for the family of the founder. The next phase in the development of this type of endowment was the *wakf* of Islamic law, which has played there a role of immense importance economically as well as in other respects. In the West, the saint was at first treated, from the legal-technical viewpoint, as the owner of the endowment fund.[138] The concept of the secular endowment of the Middle Ages began to develop once the canon law had prepared it for ecclesiastical purposes.[139]

The concept of the *institution* (*Anstalt*) was not fully developed in the purely legal sense until the period of modern theory. In substance it, too, is of ecclesiastical origin, derived from late Roman ecclesiastical law. The concept of institution was bound to arise there in some manner as soon as both the charismatic conception of the bearer of religious authority and the purely voluntary organization of the congregation had finally yielded to the official bureaucracy of the bishops and the latter had begun to seek for a legal-technical legitimation for the exercise of the ecclesiastical rights of property.

No concept of ecclesiastical institution at all had existed in Antiquity. Ever since the secularization of the cult by the *polis*, the temple assets were legally regarded as its, the polis', property. Ancient legal technique aided the Christian church by means of its corporative concept; the early Middle Ages, in so far as church funds were not regarded as the property of the private owner of the church, resorted to the idea of the saint's being the owner and the church's officers his agents. After the declaration of war on the private ownership of churches in the Investiture Conflict,[140] canon law elaborated a peculiar ecclesiastical corporation law, which, in consequence of the authoritarian and institutional elements of Church structure, had to differ from the corporation law of both voluntary associations and corporate status organizations.[141] But this very ecclesiastical corporation law, in turn, markedly influenced

the development of the secular corporation concept of the Middle Ages. It was the essentially technical needs of administration in the modern institutionalized state which led to the establishment as separate juristic persons of innumerable public enterprises such as schools, poorhouses, state banks, insurance funds, savings banks, etc.; having neither members nor membership rights but only heteronomous and heterocephalous organs, they could not be construed as corporations, and thus there was developed for them the *legal* concept of the "institution."

The rational concept of the *corporation* in the more developed form of Roman law was a product of the Imperial period, quite particularly of the law of municipal corporations.[142] Municipalities distinct from the state appeared in large numbers only after the Latin War, when hitherto sovereign cities were received into the community of Roman citizens, without impairment, however, of autonomy. In a definitive way these relations were regulated by laws of the first emperors. In consequence of their mediatization the municipalities were deprived of their status as political institutions; *civitates privatorum loco habentur* ["Cities are deemed to be private persons"] was said already in the second century and Mitteis properly points out that the adjective *commune* began at that time to replace *publicum* with reference to municipal property.[143] Of their litigations, some were treated as administrative, e.g., the *controversia de territorio*, and others as private, especially those arising out of contracts, for which ordinary civil procedure was apparently available. The typical form of the municipal officialdom spread over the Empire; indeed, the titles of municipal magistrates appear also in the private corporations of the Imperial period. This is probably the origin of the bureaucratization of the concept of the corporation according to the pattern of the once political institution of the municipality, for which the absolute separation of the municipal property from that of the individuals was as self-evident as the maxim: *quod universitati debetur singulis non debetur* ["That which is owed to the collective is not owed to its members."—Ulpian in D. 3.4.7.1.]. At the same time, the establishment of voluntary associations in the Julian monarchy was conditional upon a license, undoubtedly for political reasons. Whether at that time the license conferred, as it did in the later period, full, or only partial, juristic personality, is doubtful. It is probable, although not certain, that the expression *corpus collegii habere* referred to full legal capacity. The term typically used in later theory was *universitas*.[144] If it is correct, as Mitteis plausibly asserts, that the internal relations of private corporations were subject only to administrative cognition,[145] it would well fit in with that bureaucratization of the corporations which runs through the entire law of the Imperial period, and it would at the

same time constitute one of those secularizing adaptations of the previously prevailing situation which are characteristic of this entire development. In the Republican period the situation was obviously different. While it is not certain it is also not improbable that the Twelve Tables, just like the laws of Solon, recognized the autonomy of existing corporations. A common purse was, as shown by later prohibitive laws, a matter of course. On the other hand, there was no legal technical possibility of a civil action. It is not even certain that it was available in the Edict before the Imperial period. There was no form of action for disputes between members concerning membership rights. The reason apparently lay in the fact that the private corporations were at that time subject in part to sacral law and in part to administrative law, priestly or magisterial cognition; this fact, in turn, was related to the status structure of the ancient *polis*, which tolerated slaves and metics in the *collegia* [voluntary associations] but not in the political body of the citizenry.

Like the Hellenic phratries,[146] the voluntary organizations of the earlier period, and most other permanent associations of all legal systems as far back as the totemic clans, the oldest known Roman voluntary associations were fraternities (*sodalicia, sodalitates*)[147] and, as such, cult-communities. One brother could no more summon another brother into court than he could summon anyone else to whom he was bound by ties of loyalty. Traces of this state of affairs are retained even in the law of the Pandects, where criminal actions are prohibited between such brethren. In private law, these fraternal relations were significant primarily in their negative consequences, i.e., as situations excluding actionability.[148] For the same reasons, the guilds and trade associations, the existence of which in early Republican Rome is definitely established, were constituted as *collegia cultorum*.[149] Like the Chinese and medieval organizations of the kind, they were fraternities under the protection of their special patron god, who was then acknowledged as legitimate in Rome by the recognition of the *collegium* by the state; thus it was, for instance, with Mercury and the *collegium mercatorum*, which tradition marks as having been very old.[150] The obligation of mutual aid in emergencies and the cult meals, which are as characteristic of them as of the Germanic guilds or all other organizations based on fraternity, were later transformed into rationally organized assistance and burial funds. Quite a few of these *collegia* are known to have been organized during the Empire as funds of this kind.[151] They had nothing to do with the law of the citizens. As long as the sacral organization was more than a mere form, its property was probably protected sacrally; disputes among members were settled by arbitration and conflicts with outsiders probably

by cognition of the magistrate. The magistrate's right of interference was obvious as to those occupational organizations which were important for state liturgies (*munera*). This fact explains the easy transition to the bureaucratization of the Imperial period. It is also probable that the relationships of those agricultural organizations, the persistence of which may only be surmised from our sources, remained outside of the regular jury procedure. The *ager compascuus* was a rudimentary commons, and the *arbitria*, which are mentioned by the agricultural writers,[152] were the residue of a state-regulated but nonetheless autonomous arbitration of disputes among neighbors. Once the *municipium* had arisen as a type that was to be increasingly influential for the entire law of corporations, the law applicable to those corporations which were still permitted grew increasingly uniform during the Imperial period. The remnants of the rights of sodality membership, as far as one could find them at all, disappeared; they remained possible only outside the area of Roman imperial law, e.g., in the craftsmen's phylae of Hellenistic small towns.[153] The latter are not mentioned, it is true, in the Imperial Law. This omission does not prove, however, that there had not existed certain forms of organizations which it did not pretend to regulate. To draw such a conclusion would be as unjustified as it would be to conclude from the absence in the ancient *ius civile* of any regulation of *emphyteusis* or other tenures that they actually did not exist in lands other than those which made up the *ager optimo iure privatus* and which were thus the only ones to be listed in the census rolls.

Medieval continental law stood under the threefold influence of the Germanic forms of sodality, the Canon Law, and Roman Law as received in legal practice. The Germanic forms of sodality were rediscovered by Gierke and are described in all their richness and development in his magnificent work, but we shall not deal with their details, which belong into the context of agrarian history and the history of the enterprise. In the present context a few remarks must suffice to explain those formal principles of treatment with which we are exclusively concerned here. We find there a continuous series of structures ranging from the simple relationships of joint hands to the purely political community, and that meant in the Middle Ages, the municipality. From the point of view of legal technology they all have in common the capacities to sue and to be sued and to own property; the relationships between the entity and the individuals were worked out, however, in the most manifold ways conceivable. The individual might be denied any share in the common fund or he might be regarded as the private owner of a share as his free property, transferable, perhaps, by some form of commercial paper, but representing a share in the total fund

rather than in any one of its particular assets; or, on the very contrary, every member might be regarded as owner of a share in every particular asset. To an ever varying extent the rights of the individuals might be limited and determined as to their content by the community or, on the contrary, disposition by the community might be limited by the rights of the individuals. In varying ways, too, the community could externally be represented and internally managed by one of its officers or a particular member as such or, perhaps to a certain extent at least, by all members. Contributions might have to be made by the members in kind or through personal services. Membership might be open or closed so that it could be acquired only through a resolution of the members. The administration approximated, in varying degrees, those forms which were found in the political organizations, often to such an extent that the coercive powers within the organization or toward outsiders were distinguishable from the coercive power of the political organization only by the nature of the coercive means or by its heteronomy as to the political organization. On the other hand, the collectivity was also treated as the bearer of personal rights and obligations. Like any private person it could have the right to a name, rights of status (*Standesrechte*), or the monopoly of the exclusive use of certain inventions; it could be held liable for certain unlawful acts, especially certain acts and omissions of its agents. The latter situation was so far from being exceptional that there were entire epochs, especially in England, when collective personalities were regarded as the bearers of certain duties and in the event of failure of performance were regarded as the debtor of the fine imposed by the king.[154] The collectivities could assume almost every one of the forms which we shall encounter in the course of our examination of political organizations: e.g., direct administration or representative management in the name of the participants, resting on either equality or inequality; with office holders selected by rotation or election; or management could be a lord's right, possibly limited by norms or tradition but otherwise autocratic, pertaining either to a single individual or to a firmly delimited group of persons, and acquired through periodic election or some other type of appointment or through inheritance or through other acquisition as a transferable right, title to which could be connected with that to some piece of property. The position of the organs of the collectivity could tend toward constituting a prerogative composed of clearly defined rights, i.e., a bundle of concrete but strictly limited privileges to exercise certain particular authoritative powers as subjective rights; or it could be more like a governmental power limited by objective norms but free within its scope in the choice of means, and in that case the organization could approximate either the type of the as-

sociation or that of the institution. As to its powers, management could be strictly bound to the particular ends of the organization or it could enjoy a greater or lesser freedom of choice. The latter factor was also important for the degree of autonomy enjoyed by the organization as such; it could be lacking entirely, and the acquisition of rights and obligations could be regulated automatically according to fixed rules, as, e.g., in the case of certain liturgical organizations in England; or the organization could possess broad powers of autonomous enactment, limited by elastic norms of a conventional, statutory or otherwise heteronomous character.

Which of these numerous alternatives was realized in any particular instance was, and under a system of freedom of association still is, determined by the concrete ends and, quite particularly, by the economic means of the particular organization. The organization may be a predominantly economic community. In that event the structure is essentially determined by economic factors, especially the extent and the role of "capital" and of its inner structure, on the one hand, and the basis of credit and risk, on the other.

In an organization aiming at capitalistic profit, such as a business corporation, a mining or a shipowners' company, or a company for financing state needs or colonial enterprise, capital is of predominant significance for the efficiency of the whole, and the prospect of a share in the profits for the interests of the members. Such an organization thus requires that, at least as a general rule, membership be closed and that the purposes be fixed in a relatively stable way; also, that the membership rights be formally inviolable and transferable upon death and, at least usually, *inter vivos;* that the management be carried on bureaucratically; that the members participate either themselves or through proxies in an assembly that is *de iure* organized democratically but in fact plutocratically, and that adopts its resolutions, after discussion, by a vote proportionate to capital shares. The special aim of such organizations, furthermore, does not require personal liability of the members externally, since it is irrelevant for the credit standing of the enterprise. It can also be dispensed with internally, except, however, in the mining company, in consequence of the peculiar structure of mining capital.[165]

All this is different in the case of an organization aiming at self-sufficiency without the use of money; the more comprehensive its purposes are, the more it requires the preponderant authority of the collectivity, the absence of fixed membership rights, and an approximation to communist economy upon either a directly democratic or a patriarchal basis, such as is found in the household community, the *Gemeinderschaft,*[165a] or a system of strict communal tillage (*Feldgemeinschaft*).

As membership in the organization becomes increasingly closed and internally connected with fixed appropriation, as is the case in the village and commons community, the membership rights will come more to the foreground, whereas the land remaining under communal control becomes part of the individually appropriated rights; it will be administered by members in rotation, by hereditary bodies, or by lordly authority. Finally, in voluntary organizations established for the communal supplementation of individual production or consumption, as, for instance, in the modern cooperatives, membership is usually closed since membership rights, although firmly appropriated and, like membership duties, firmly delimited, are ordinarily not freely alienable; although personal liability tends to become more significant for the credit standing of the organization, it is usually limited, unless the risk can be clearly determined, in which case it may be unlimited; administration is formally bureaucratic but in practice is conducted quite frequently by *honoratiores*.[156] Individual membership rights in the collective fund increasingly lose their structurally determinative significance the more the organization comes to serve an indefinite plurality of interests and, particularly, of privileged persons, while the contribution of capital becomes less significant relative to periodical contributions or payments by the interested parties for the services rendered by the collectivity. Such a situation has arisen in the case of the purely economically oriented insurance mutuals, but even more so, in the case of institutions serving ends of social security or charity.[157] Where, finally, the organization appears as an economic unit meant to serve primarily noneconomic ends, the guaranteed property rights of the members become insignificant and economic considerations lose their importance in the determination of the structure of the organization.

Generally it appears, however, that the development of the legal structure of organizations has by no means been predominantly determined by economic factors. This fact is proved primarily by the sharp contrast between medieval and also modern English developments, on the one hand, and the Continental, especially the German, development on the other. In English law the sodality, as defined by Gierke, did not exist after the Norman invasion, and no concept of corporation of the Continental type was developed until modern times.[158] Apart from rudimentary beginnings, there was no group autonomy in the sense and scope in which it was taken for granted in medieval Germany, and there was no normatively and generally regulated juristic personality of associations. Sodalities of the kind of Gierke's theory, have, as shown by Maitland, and later by Hatschek,[159] found almost no place in English legal life, except in that form which Gierke designated as authoritarian asso-

ciations (*Herrschaftsverbände*);[160] significantly, however, these latter can be, and in England have been, subsumed under juristic categories different from those formulated by Gierke. This absence in England of the allegedly Germanic form of the law of organizations (*Verbandsrecht*) occurs not only in spite of the non-reception of Roman law but was caused, at least in part, by this very fact. The absence of the Roman corporation concept facilitated the development of a situation in England in which, through the canon law, at first only ecclesiastical institutions possessed effective corporate rights, while later on all English organizations tended to be ascribed a similar character. The theory of the "corporation sole," i.e., the *dignitas* represented by the succession of officers,[161] gave in English legal doctrine the possibility of treating state and communal administration as juristic persons in the same way in which ecclesiastical authorities were treated in canon law. Until the seventeenth century the king was regarded as a "corporation sole,"[162] and if even today it is neither the state nor the exchequer (*Fiskus*) but the crown which is regarded as the bearer of all the rights and obligations of the political organization,[163] it is a consequence of the canon law influence as well as of the earlier absence of the German corporation concept as influenced by Roman law, which absence, in turn, was brought about by the political structure of the estate corporative state (*Ständestaat*). In modern times the English corporation, once it had come to exist at all, essentially retained its character as an institution rather than a voluntary association; it never, at any rate, became a sodality of the German type. These facts make us suspect that on the Continent Roman law was less responsible for the decline of the medieval law of sodalities than has frequently been believed. The medieval organizations were, it is true, quite alien to the law of Justinian. But the Romanist jurists, by whom it was interpreted, were compelled to accommodate the existing needs. Their theories had thus to use conceptual tools of frequently questionable character, but even so they were hardly sufficient to undermine the existence of the medieval organizations. At any rate, that the concept of the corporation came to take the place of the vague German forms of thought was not entirely due to their efforts, although they contributed a good deal. The real reasons for the developments both in England on the one side and on the Continent, specifically Germany, on the other, were primarily political ones. This statement applies to the Middle Ages as well as to the early modern period. The essential difference was this: In England royal power was strong and centralized and, under the Plantagenets and their successors, disposed of highly developed technical means of administration. In Germany, on the other hand, no political center was in existence.

Another factor was constituted by the continued effectiveness of certain feudal notions in the English law of real property.

This extremely institutional and autocratic structure of the corporation was, however, not the only relevant form in England. As substitute for the Continental corporation, we find the technique of treating certain persons or bearers of office as "trustees," i.e., persons to whom certain rights are entrusted for the benefit of either some certain beneficiary or of the public at large. Since the end of the seventeenth century not only the king but also certain municipal and parish officers have every now and then been regarded as trustees. Indeed, wherever we are presently using the concept of "special purpose fund" (*Zweckvermögen*),[164] English law resorts to trusteeship as the most adequate technical device. The characteristic element in this institutional approach is that the trustee not only may but must do what is in his jurisdiction; it is, thus, a substitute for the concept of public office (*Amtsbegriff*). The origin of the trust in this sense lay, just as in similar cases that of the Roman *fidei commissum*, primarily in the need to circumvent certain prohibitory laws, especially the laws of mortmain and certain other limitations imposed by the legal system.[165] A second cause was the absence in the earlier Middle Ages of any concept of corporation. When English law did finally develop such a concept, the trust continued to apply to those institutions which could not be construed as corporations; but a similar institutional trend has continued persistently to play an important role in the entire English law of corporations.

It was the last mentioned situation which accounts for the fact that the structure of the village community (*Markgenossenschaft*) was much more authoritarian in English than in German law and that the landlord was usually regarded as the owner of the commons, while the peasants were looked upon as mere grantees of *iura in re aliena* ["rights in another person's land (or chattel)"]. In view of this consistently held theory their right of access to the king's courts was of little use. The final result was the recognition of the fee simple as the fundamental form of English real property in a far more extreme form than that in which the *ager optimo iure privatus* of Roman law [cf. sec. iv, n. 64] ever prevailed in practice. Undivided communities of heirs and all the other forms which were derived from it in German law were excluded already through the feudal principle of primogeniture. The principle of tracing all land titles ultimately to a royal grant necessarily resulted in the view that the dispositive powers of all organizations were but special titles of certain persons and their legal successors which could be acquired only by way of privilege. Maitland's studies[166] have shown that, as a result of the purely automatic distribution of rights and duties to each individual

in accordance with his share, which was derived from the old hide system and transferred to all similar organizations, English practice had little need to deal as an independent legal subject with the totality of the individuals participating in a community. The situation was intensified because the state was in part feudal and in part specifically *ständisch*. It was brought about first by the laws of mortmain which prohibited, in the interests of the king and the nobility, all alienation of land to the "dead hand" including the municipalities.[107] Exemptions from this prohibition could be obtained only through special privilege, and in fact, the city privileges of the fifteenth century which, beginning with the privilege of Kingston of 1439, granted corporation rights with positive content to the cities in question, were striven for by the cities as the very means of escape from these prohibitions. But the law of corporations thus remained a law of privileges and subject to the general influences of a legal development peculiar to a society of estates. From the king and Parliament downward all authority was regarded as a complex of specific privileges and prerogatives. Whoever claimed to exercise a right acquired otherwise than through private contract had to derive it legally from a valid grant and could thus have it only within certain definitely established limits. Positive proof of grant could be dispensed with only in the case of immemorial custom. Even after the emergence of the concept of the corporation there persisted into modern times the doctrine, in all its rigor, according to which every organization, if it were to transcend in its legal actions the range of the privileges explicitly granted to it, would be acting *ultra vires*, hence be guilty of an abuse of privilege and thus subject to dissolution as it was actually exercised on a large scale by the Tudors and Stuarts.[108]

The results were that neither a public nor a private corporation could be established in any way other than that of special grant; that no such grant would be given except for a limited purpose and upon grounds of public utility; and that all corporations were political, or politically authorized, limited purpose corporations, which were to remain under constant control and supervision. In the last analysis, the origin of this legal situation can be traced to the liturgical character of the Norman administration. The king assured himself of the contributions needed for the government and the administration of justice by forming compulsory organizations with collective duties similar to those of the Chinese, the Hellenistic, the late Roman, the Russian, or other legal systems. A *communaltie* existed exclusively as an organization with liturgical duties toward the royal administration, and it had its rights only by virtue of royal grant or indulgence. Otherwise all such communities legally remained *bodies non coporate*, even into modern times.

In consequence of the rigorous patrimonial central administration this integration of all associations in the state was at its maximum at the beginning of English legal history and had to undergo a gradual weakening from then. In Continental legal history, on the other hand, it was the bureaucratic princely state of modern times which broke the bonds of the traditional corporative autonomy; subjected to its own supervision the municipalities, guilds, village communities, churches, clubs, and other associations of all kinds; issued patents; regulated and controlled them; canceled all rights which were not officially granted in the patents; and thus for the first time introduced into actual practice the theory of the "legists,"[169] who had maintained that no organizational structure could have juristic personality or any rights of its own except by virtue of a grant by the *princeps*.[170]

Within those territories where it had lasting effects the French Revolution destroyed not only every formation of corporations but also every type of voluntary association which could not be expressly licensed for narrowly defined special ends, as well as all associational autonomy in general. This destruction was motivated primarily by those political reasons which are characteristic of every radical democracy, but some part was also played by doctrinaire conceptions of natural law as well as considerations of bourgeois-economic orientation which in their doctrinairism also tended towards ruthlessness. The Code excludes the very concept of juristic person by simply saying nothing about it. The trend was reversed, however, by the economic needs of capitalism and, for the noncapitalistic classes, the needs of the market economy on the one hand, the agitational needs of the political parties on the other, and, finally, the growing substantive differentiation of the cultural aspirations in connection with the personal differentiation of cultural interests among individuals.[171]

Such a sharp break with the past was never experienced in the English corporation law. English legal theory began in the sixteenth century to elaborate, at first for the cities, the concept of "organ" and of "acting as an organ" as legally distinct from the private sphere, and in doing so it used the concept of the ***body politic***, i.e., the Roman concept of *corpus*.[172] It brought the guilds into the domain of corporation types, conferred upon the municipalities the possibility of procedural and contractual autonomy, provided they had a seal, and gave the licensed corporations a limited autonomy by allowing them to have their own by-laws on the basis of the majority principle rather than unanimity. In the seventeenth century it came to deny the delictual capacity of corporations but, until the eighteenth century, corporations were treated in matters of property merely as trustees for the individual members, whose

claims against the corporation were enforced only in equity. It was not until the end of the eighteenth century that English law permitted, and even then only reluctantly, the termination of a stockholder's liability for the debts of the corporation after he had transferred his shares, and even then the law still excepted the case of the company's insolvency. Blackstone at last was the first to make the real distinction between corporate and private assets, referring to Roman law in doing so.

The gradually increasing influence of the needs of capitalistic enterprisers played an important role in this development. The great Companies of the mercantilist Tudor and Stuart periods were legally still state institutions, as was also the Bank of England.[173] The medieval requirements of the use of the seal for every instrument to be issued by the corporation, the treatment of the shares of stock as real property whenever some part of the corporate assets consisted of land, and the limitation of corporate purposes to public tasks or tasks of public utility were completely impracticable for business corporations and had thus to be dropped in the course of the eighteenth century. But it was only in the nineteenth century that limited liability was generally introduced for business corporations and that a system of general normative regulation was established for all joint-stock companies, together with certain special norms for friendly and benevolent societies, learned societies, insurance companies, savings banks, and, finally, labor unions. In all these cases the norms are by and large similar to the corresponding norms of the Continent.[174] The old forms, however, were not entirely discarded. Even today the appointment of trustees is still required for the appearance in court for a whole range of recognized voluntary associations, for instance a friendly society,[175] while for an unincorporated voluntary association (club) a unanimously granted power of attorney is necessary for every legal transaction.[176] The doctrine of *ultra vires* is still alive, and an individual charter is still required for every corporation which cannot be fitted in with any one of the statutory patterns. In practice, however, the situation is not much different from that which has existed in Germany ever since the Civil Code took effect.

Not only this brief comparative sketch but every glance at the great legal systems shows that none of the great variations in legal development can be explained by the all too frequently invoked slogan of the individualistic character of the Roman law as contrasted with the social character of Germanic law.[177]

The great wealth of forms of German medieval sodalities was conditioned by quite particular, predominantly political, factors, and it was and still is unique. Russian and Oriental law, including Hindu law, have recognized liturgical collective liability and the corresponding

collective rights of the compulsory organizations, especially of village communities, but also of craftsmen.[178] They also have, although not everywhere, the solidary liability of the family community and quite frequently of familylike work fraternities like the Russian *artel*. But they never found a place for such a richly differentiated law of sodalities as that of the medieval Occident or for the rational concept of the corporation as it was produced in the confluence of Roman and medieval law. The Islamic law of endowments was, as we have seen, prefigured by the ancient Oriental, particularly Egyptian, and above all Byzantine, legal developments, but it contained no germs of a theory of corporations. Finally, Chinese law shows in a typical way the concomitance of the authority of patrimonial princes and the maintenance of the family and kinship groups in their significance as guarantors of the individual's social status. A conception of the state as independent of the private person of the emperor did not exist any more than a law of private corporations or voluntary associations, apart from the politically motivated police prohibitions against all organizations which would be neither familial, fiscal, nor specially licensed. Municipalities were recognized in official law only as organizations for carrying the family liability for taxes and charges. On the basis of the kinship group membership, they still exercise the strongest conceivable authority over their members, organize common institutions of all sorts of economic activity, and manifest a degree of cohesion towards outsiders with which the officials of the imperial authority had to reckon as with the strongest local authority. These phenomena, which are no more recognized in the legal concepts of official Chinese law than they were elsewhere, have often enough impeded its effectiveness. For no clearly defined content could be acquired by an autonomy which expressed itself externally in blood feuds of kinship groups and towns but was never recognized by the official law. The situation of the private organizations other than the kinship groups and families, especially of the highly developed mutual loan and burial societies and the occupational organizations, corresponds in part to the situation of the Roman imperial period and in part to that of Russian law of the nineteenth century. Despite that, the concept of juristic personality in the sense of the law of Antiquity is completely absent and the liturgical function has disappeared, if it ever existed at all, which is by no means certain. The capitalistic property communities (*Vermögensgemeinschaften*) have come to be emancipated from formal dependence on the household just as they did in medieval southern Europe, but in spite of the *de facto* use of such institutions as the firm name, they never reached the point of becoming definite legal types as they did in Europe in the thirteenth

century. Collective liability, corresponding to the general state of the law of obligations, took as its origin the delictual liability of the kinship groups, which still persists in fragmentary form. But contractual liability, which is still a purely personal liability, has not assumed the form of solidarity but is limited to the duty of group members to bring forward an absconding fellow member; in all other respects co-debtors are liable only *pro rata* rather than solidarily. Only fiscal law recognized the solidary liability of the family and its property, while collective property did not legally exist for private associations any more than it did in Roman Antiquity. Like the ancient companies of publicans, the modern Chinese business associations are legally treated as consortia or as *sociétés en commandite* with personally liable directors. Just as in Antiquity and in the Orient, this underdeveloped state of the Chinese law of private associations and business organizations was caused by the continuing significance of the kinship group, within which all economic association is taking place, also by the obstruction of autonomous corporations by political patrimonialism, and finally by the general reluctance to invest capital in anything other than fiscal enterprises and trade.

The different course of medieval Occidental development was caused primarily by the fact that here patrimonialism was of a corporate status rather than a patriarchal character, which, in turn, was caused essentially by political and, particularly, military and fiscal reasons. In addition there was the development and maintenance of the form of administration of justice associated with the folk community. Wherever it was lacking as, for example, in India ever since the rise to predominance of the Brahmins, the actual variety of corporate and sodality forms of associations was never accompanied by a correspondingly rich legal development. The long and persistent absence of rational and strong central authorities, as it constantly recurred after temporary intervals, did indeed produce an autonomy of mercantile, occupational, and agricultural communities, which is explicitly recognized by the law. But no legal development of the German type arose therefrom. The practical consequence of the folk community type of the administration of justice was that pressure came to be exercised upon the lord, both the political and the landlord, to render judgment or pronounce customals not in person or through friends but through members of the popular assembly or at least under their decisive influence, lest they be regarded as not really binding. No such determination could be made without the participation of the groups affected by the particular body of law. Copyholders, serfs, and retainers (*Dienstmannen*) had to be called in whenever the rights and obligations arising from their economic and personal dependence relations were involved; and vassals or townsmen, whenever

rights and obligations concerning their political and contractual dependence were in issue.[179] This situation derived originally from the military character of the public court community, but with the decay of the central authority it was taken over by all organizations with granted or usurped administrations of justice. It is clear that this system constituted the strongest possible guaranty of both autonomous lawmaking and corporate or sodalian organization. The origin of this guaranty and of that *de facto* autonomy of the groups of legally affected parties in the formation of their own laws, which was necessary to make possible the development of the Occidental law of corporations and sodalities as well as of the specifically capitalistic forms of association, was conditioned by essentially political and technical administrative considerations. Quite generally the lord was preoccupied with military activities and he hardly had at his disposal a rational administrative apparatus which would have been dependent on him and which he could have used to supervise his subordinates; thus he had to depend on their good will and on their coöperation in meeting his claims and thus had to meet the traditional or usurped counterclaims of his dependents against him. The typification and appropriation of the rights of these dependent strata as sodality rights had their source in this situation. The guaranty of the associational norms was increased through a custom which stemmed from the form of lawfinding by the popular assembly, namely, that of periodically ascertaining the prevailing law of the consociation by oral testimony and recording it in customals, combined with the tendency of the dependents at propitious moments to ask the lord for the confirmation of this law as their privilege.[180] Such occurrences within seigneurial, political and economic organizations naturally increased the probability of maintaining corporate autonomy also for the free and voluntary associations. No such situation could prevail in England, because the royal courts of the strong patrimonial power suppressed the old administration of justice by the popular assemblies of the counties, municipalities, etc. Hence the development of a law of sodalities was inhibited; customals and privileges of autonomy were rare, and those few which existed lacked the peculiar character of their Continental counterparts. In Germany, too, sodalian autonomy, and with it, the law of the sodalities, declined rapidly as soon as the political and seigneurial authorities had become able to create the administrative apparatus that allowed them to dispense with the folk type of administration of justice.[181]

It was, of course, no accident that this development coincided with the intrusion of Romanist traits into the system of government, but Roman law as such did not play the decisive role. In England the rise

of a law of sodalities was prevented by devices of Germanist legal technique. Besides, those associations which could not be fitted into the categories of the corporation sole or the trust or the patented forms of organization were regarded as purely contractual relations of their members, with the statutes being accorded validity only in the sense of a contractual offer to be accepted by joining membership. Such a view closely corresponds to a construction of the Romanist type. The political structure of the lawmaking organizations and the peculiar characteristics of the professional bearers of the legal structure, whom we shall discuss later [*infra*, sec. *iv*], were the decisive factors.

7. *Freedom and Coercion*

The development of legally regulated relationships toward contractual association and of the law itself toward freedom of contract, especially toward a system of free disposition within stipulated forms of transaction, is usually regarded as signifying a decrease of constraint and an increase of individual freedom. It is clear from what we have been saying, in how relative a sense this opinion is formally correct. The possibility of entering with others into contractual relations the content of which is entirely determined by individual agreement, and likewise the possibility of making use in accordance with one's desires of an increasingly large number of type forms rendered available by the law for purposes of consociation in the widest sense of the word, has been immensely extended in modern law, at least in the spheres of exchange of goods and of personal work and services. However, the extent to which this trend has brought about an actual increase of the individual's freedom to shape the conditions of his own life or the extent to which, on the contrary, life has become more stereotyped in spite, or, perhaps, just because of this trend, cannot be determined simply by studying the development of formal legal institutions. The great variety of permitted contractual schemata and the formal empowerment to set the content of contracts in accordance with one's desires and independently of all official form patterns, in and of itself by no means makes sure that these formal possibilities will in fact be available to all and everyone. Such availability is prevented above all by the differences in the distribution of property as guaranteed by law. The formal right of a worker to enter into any contract whatsoever with any employer whatsoever does not in practice represent for the employment seeker even the slightest freedom in the determination of his own conditions of work, and it does not guarantee him any influence on this process. It rather means, at least

primarily, that the more powerful party in the market, i.e., normally the employer, has the possibility to set the terms, to offer the job "take it or leave it," and, given the normally more pressing economic need of the worker, to impose his terms upon him. The result of contractual freedom, then, is in the first place the opening of the opportunity to use, by the clever utilization of property ownership in the market, these resources without legal restraints as a means for the achievement of power over others. The parties interested in power in the market thus are also interested in such a legal order. Their interest is served particularly by the establishment of "legal empowerment rules." This type of rules does no more than create the framework for valid agreements which, under conditions of formal freedom, are officially available to all. Actually, however, they are accessible only to the owners of property and thus in effect support their very autonomy and power positions.

It is necessary to emphasize strongly this aspect of the state of affairs in order not to fall into the widely current error that that type of "decentralization of the lawmaking process"—a quite suitable phrase of Andreas Voigt's[182]—which is embodied in this modern form of the schematically delimited autonomy of the parties' legal transactions is identical with a decrease of the degree of *coercion* exercised within a legal community as compared with other communities—for instance, one organized along "socialist" lines. The increasing significance of freedom of contract and, particularly, of enabling laws which leave everything to "free" agreement, implies a relative reduction of that kind of coercion which results from the threat of mandatory and prohibitory norms. Formally it represents, of course, a decrease of coercion. But it is also obvious how advantageous this state of affairs is to those who are economically in the position to make use of the empowerments. The exact extent to which the total amount of "freedom" within a given legal community is actually increased depends entirely upon the concrete economic order and especially upon the property distribution. In no case can it be simply deduced from the content of the law. Enabling laws of the sort discussed here would certainly play a slight role in a "socialist" community; likewise, the positions from which coercion is exercised, the type of coercion, and those against whom it is directed, will also be different from what they are in a private economy. In the latter, coercion is exercised to a considerable extent by the private owners of the means of production and acquisition, to whom the law guarantees their property and whose power can thus manifest itself in the competitive struggle of the market. In this type of coercion the statement "*coactus voluit*"[183] applies with peculiar force just because of the careful avoidance of the use of authoritarian forms. In the labor market, it is

left to the "free" discretion of the parties to accept the conditions imposed by those who are economically stronger by virtue of the legal guaranty of their property. In a socialist community, direct mandatory and prohibitory decrees of a central economic control authority, in whichever way it may be conceived, would play a much greater role than such ordinations are playing today. In the event of disobedience, observance will be produced by means of some sort of "coercion" but not through struggle in the market. Which system would possess more real coercion and which one more real personal freedom cannot be decided, however, by the mere analysis of the actually existing or conceivable formal legal system. So far sociology can only perceive the qualitative differences among the various types of coercion and their incidence among the participants in the legal community.

A (democratically) socialist order (in the sense current in present-day ideologies) rejects coercion not only in the form in which it is exercised in the market through the possession of private property, but also the direct coercion exercised on the basis of purely personal claims to authority. It would recognize only the validity of agreed abstract laws, regardless of whether they are called by this name. Formally, the market community does not recognize direct coercion on the basis of personal authority. It produces in its stead a special kind of coercive situation which, as a general principle, applies without any discrimination to workers, enterprisers, producers and consumers, viz., in the impersonal form of the inevitability of adaptation to the purely economic "laws" of the market. The sanctions consist in the loss or decrease of economic power and, under certain conditions, in the very loss of one's economic existence. The private enterprise system transforms into objects of "labor market transactions" even those personal and authoritarian-hierarchical relations which actually exist in the capitalistic enterprise. While the authoritarian relationships are thus drained of all normal sentimental content, authoritarian constraint not only continues but, at least under certain circumstances, even increases. The more comprehensive the realm of structures whose existence depends in a specific way on "discipline"—that of capitalist commercial establishments—the more relentlessly can authoritarian constraint be exercised within them, and the smaller will be the circle of those in whose hands the power to use this type of constraint is concentrated and who also hold the power to have such authority guaranteed to them by the legal order. A legal order which contains ever so few mandatory and prohibitory norms and ever so many "freedoms" and "empowerments" can nonetheless in its practical effects facilitate a quantitative and qualitative increase not only of coercion in general but quite specifically of authoritarian coercion.

NOTES

1. See sec. *i*:1(a). As to the distinction between claim norms and reglementations, cf. JELLINEK, SYSTEM, esp. 63–76 (*Reflexrecht und subjektives Recht*); W. JELLINEK, VERWALTUNGSRECHT (1948) 200, 305. The validity of the distinction is denied by LABAND, STAATSRECHT (1911) I, 331; III, 207. A synthesis is tried by H. KELSEN, REINE RECHTSLEHRE (1934) 39; THEORY 77, 78, 84. The influence on Weber of Georg Jellinek, his Heidelberg colleague and personal friend, was considerable, not only in matters of detail but in giving support to Weber's sociological approach to law in general. It was applied by Jellinek especially in his ALLGEMEINE STAATSLEHRE, 3rd ed. 1914.

2. For a typical presentation of this trichotomy see ENNECCERUS 56; 1 AUSTIN, LECTURES ON JURISPRUDENCE (1885) 39, 92, 684, 710 *et seq.* As to the third kind of right the text is not entirely clear. What is meant is not the situation in which *A* can allow B to engage in certain conduct but, as the following sentences show, the situation in which *A* can engage in certain conduct without being subject to legally justified interference by one, or more, or all, others.

3. Weber is using the term *Freiheitsrecht* ("privilege") in the sense in which it had been developed by G. JELLINEK in SYSTEM 89. It might be noted that Jellinek's and Weber's use of the terms "claim" and "privilege" resembles Hohfeld's terminology; cf. HOHFELD, FUNDAMENTAL LEGAL CONCEPTIONS (1923).

4. Weber is thinking here of the contract to devise or bequeath. In American law such a contract binds the promisor to make a certain will which, in turn, creates the right of the devisee or legatee. In German law the "contract of inheritance," if properly concluded, is as such the basis for the beneficiary's right upon the death of the promisor; it does not thus need to be implemented by a will. See German Civil Code, Secs. 2278–2302.

5. See Austrian Civil Code, Sec. 1249.

6. Cf. McMurray, *Succession, Laws of*, 14 ENCYC. SOC. SCI. 435, 440; Nussbaum, *Liberty of Testation* (1937) 23 A.B.A.J. 183; RHEINSTEIN, DECEDENTS' ESTATES 403, 406.

7. Cf. *infra*, sec. *ii*:4:2–3.

8. All this is current German theory of administrative law. Cf. especially W. JELLINEK, 352 *et seq.* and further literature there cited; A. LOTZ, GESCHICHTE DES DEUTSCHEN BEAMTENTUMS (1914); W. SOMBART, BEAMTENSCHAFT UND WIRTSCHAFT (1927); F. WINTERS, ABRISS DER GESCHICHTE DES BEAMTENTUMS (1929); LABAND, DAS STAATSRECHT DES DEUTSCHEN REICHES (1911) 433 *et seq.*

9. The matter discussed in LOTZ, *op. cit.* 28 (*Beamte als Hofbeamte*); LABAND, *op. cit.* 433.

10. O. GIERKE, 91; same author, GENOSSENSCHAFTSRECHT I, 535; CARLYLE, HISTORY OF MEDIEVAL POLITICAL THEORY (1903), vol. iii, part 1; SPANGENBERG, VOM LEHENSSTAAT ZUM STÄNDESTAAT (1912); Luschin v. Ebengreuth, *Die Anfänge der Landstände* (1897) 78 HIST. Z. 427.

11. The *leges barbarorum* were those "codifications" of the customary laws which were undertaken by the Germanic peoples after their conquest of the western parts of the Roman Empire, as, for example, the *Lex Salica* of the Salic Franks or the *Lex Visigothorum* of the Visigothic conquerors of Spain; cf. AMIRA 15, 16; Jenks, *Development of Teutonic Law* (1907) 1 SELECTED ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 35; HUEBNER 2.

12. Cf. LEWIS H. MORGAN, LEAGUE OF THE IROQUOIS (1922); same author, ANCIENT SOCIETY (1878) 399, 446.

13. On men's houses, see LOWIE, PRIMITIVE SOCIETY (1925) 197, 299, 306, 315, 368; H. SCHURTZ, ALTERSKLASSEN UND MÄNNERBÜNDE (1902); W. SCHMIDT und W KOPPERS, GESELLSCHAFT UND WIRTSCHAFT DER VÖLKER (1924) 224. Cf. also *infra*, ch. IX:2.

14. This view of the origin of procedural law was also maintained by MAINE, at 385. The opposite view that the law of procedure originated in the power of rulers to command their subjects to submit to arbitration has been advanced especially by F. OPPENHEIMER, THE STATE (1914) 78–81, and L. GUMPLOWICZ, OUTLINES OF SOCIOLOGY (1899), 179; cf. SEAGLE 62. It is an oversimplification to say that all procedural law had its origin either in voluntary or in commanded submission, for many other factors must have been involved. Where the disputes between primitive kinship groups were mediated or arbitrated, some additional circumstance must have occurred to change voluntary submission into compulsory submission to adjudication. It is, therefore, perhaps more correct to say that different rules of procedure had different origins; that this was so in Roman law has been argued by so careful a scholar as WENGER (at 11); but see, for another differentiating view, EHRLICH 137 *et seq.* As to the controversy in general, see THURNWALD 145 *et seq.*; DIAMOND, cc. xxx, xxxi.

15. One example for many: The 1925 edition had "lord mayor" instead of Lord Chancellor, which resulted in a lengthy footnote in the English edition on the Mayor's Court. (R)—With respect to the Roman *praetor* Weber seems to be thinking primarily of the *litis contestatio* of the formulary procedure. Through the threat of property sequestration (*missio in bona*) the *praetor* could compel the parties to agree upon the formula proposed by him or worked out, with his coöperation, before him. Once the formula has been settled "the praetor gives the document to the plaintiff. . . And now follows the formal contract between the parties: the one who has now come out . . . as actor hands the document to the defendant, who accepts it." WENGER 139. As to the numerous controversies concerning the *litis contestatio* and its character as a compulsory contract, see WENGER 17, 139. Other compulsory contracts may be found in those various cases in which the *praetor* could compel one party to promise to give security to the other (*cautiones; stipulationes in iure*); cf. WENGER 102.

16. See THURNWALD 51; R. SCHRÖDER 66; BRUNNER I, 132. SCHMIDT UND KOPPERS, *op. cit.* (in *Völker und Kulturen*) III, 167, 234; MAINE, EARLY LAW 69 *et seq.*

17. On the oath, see THURNWALD 176; WENGER 125, 336; POLLOCK AND MAITLAND I, 39; II, 600; DIAMOND 52, III, 336–339, 350–390.

18. SCHMIDT UND KOPPERS, *op. cit.* I, 497; 1 WESTERMARCK, HISTORY OF HUMAN MARRIAGE (1925) 233.

19. See M. EBERT, REAL-LEXIKON DER VORGESCHICHTE (1926) VI, sub tit. "Kauf," 246–248; VIII, sub tit. "Markt," 34.

20. In Roman law, at least with respect to the sale of *res mancipi* by way of *mancipatio* (see *infra*, n. 22) the original source of the seller's obligation arising in the case of a defect of title or quality is predominantly said to have consisted in a wrong committed by him (see E. RABEL, DIE HAFTUNG DES VERKÄUFERS WEGEN MANGELS IN RECHT [1902] 8/9). Jhering, whose opinion seems to have influenced Weber, believed that the wrong consisted in a *furtum* ("theft") which would be committed by the seller when he accepted the buyer's money as the price for goods which did not belong to him (GEIST DES RÖMISCHEN RECHTS, I, 157; III, Part i, 138). It is more probable, however, that the seller's wrong consisted in his failure to come to the buyer's defense when the latter's right to quiet possession and enjoyment was questioned by a third party's claim of supe-

rior title. A duty of the seller to defend the buyer against such attacks has been found to have existed in the archaic stages of Greek, Germanic, Slavic, and numerous other laws; cf. RABEL, *loc. cit.* 6; DARESTE, *op. cit.* 166, 184, 202, 232, 263; but compare now H. Coing, *Die* clausula doli *im klassischen Recht* (1951) FESTSCHRIFT FRITZ SCHULZ 97.

21. Chartal money: all types of money which is either stamped or coined, in contrast with the natural means of exchange or payment.

22. In transactions *per aes et libram* ("by copper and scales") the money was weighed for the recipient in the presence of five witnesses and a weigher (*libripens*); certain ritual words had to be spoken. This institution was principally used in the *mancipatio*, by which title to goods was transferred, i.e., goods which were the mainstay of a Roman farm household (land, slaves, and cattle), the so-called *res mancipi* (*supra* n. 20). Title to other goods could be transferred, at least in classical times, in the less formal way of simple *traditio*. Transaction *per aes et libram* was also used in connection with the *nexum*, the archaic way of creating a debt for a loan, and also for purposes of adoption, making wills, and marriage. See *infra* n. 24. Cf. BUCKLAND 236; JOLOWICZ, 151. As Weber states, the transactions *per aes et libram* were, or better seem to have been, one of the two principal methods by which legally binding transactions could be made in the archaic stage of Roman law. The other method was the *in iure cessio*, which, similar to the common law fine, seems essentially to have been a mock trial before the magistrate intended to result in an authoritative authentication of the fact that a grantor had yielded his title to his grantee.

23. The 1925, and still the 1956, edition read "*Zwangskontrakt*," which in English was rendered "coercing contract." However, this turned out to be a simple misreading of "*Zweckkontrakt*." The error obscured several passages in the old translation. (R).

24. *Coemptio* and *confarreatio* are usually stated as the two forms of marriage of early Roman law. The latter was an elaborate religious ceremony, which seems to have been impractical for anyone but the members of the patrician aristocracy. *Coemptio* was a transaction *per aes et libram* which seems to have been essential not so much for the creation of the marriage relation as such as for the acquisition by the husband of the old-style marital power (*manus*) over his wife. In later republican times both kinds of formality became obsolete. The marriage was regarded as validly concluded by the informal consent of the parties, usually evidenced by the celebration of the bride's entry into the groom's house (*in domum deductio*). In the old-style *coemptio* the head of the household to which the bride belonged seems to have transferred for a nominal price his power over her to the groom. In so far as *coemptio* was at all used in classical times, the *mancipatio* with the groom seems to have been performed by the bride herself. Cf. 1 BONFANTE, CORSO DI DIRITTO ROMANO (1925) 39 *et seq.*; Kunkel, 14 PAULY-WISSOWA, REALENZYKLOPÄDIE DER KLASSISCHEN ALTERTUMSWISSENSCHAFT 2259; F. SCHULZ, CLASSICAL ROMAN LAW (1951) 103; CORBETT, ROMAN LAW OF MARRIAGE (1930); for further literature, see JÖRS AND KUNKEL 271 *et seq.*, 416.

25. The term obligation is more commonly used in the civil law than in the common law jurisdictions. In civil law terminology obligation (Lat. *obligatio*) means personal duty of any kind, such as duty to pay money, to deliver goods, to convey a piece of land, to render services, to refrain from engaging in certain conduct, etc. The obligation can arise out of a contract (*ex contractu*), out of a tort (*ex delicto*), or directly out of a command of the legal order (*ex lege*); subdivisions of the latter category are the obligations *quasi ex contractu* and *quasi ex delicto*.

26. *Wergilt* (*wergeld*)—expiatory payment for wrong, especially as fixed by tradition. The word is Germanic, but the institution seems to have been almost universal. Weber follows here the theory primarily expressed by AMIRA, NORDGERMANISCHES OBLIGATIONENRECHT (1882).

27. The *rei vindicatio* was the action for the specific recovery of a chattel or a piece of land. It was brought against the possessor by the person who claimed to be the legal owner. It has been described by Gaius (iv, 16, 17) as follows: [transl. by L. Mears (1882), 518]:

"§ 16: If it was a real action in respect of movables or moving things, which could be brought or led into court, they were claimed before the praetor thus: The claimant, holding a staff, took hold of the thing, for example, a slave, and spoke as follows: 'I say this slave is mine, according to the law of the quirites, by the title which I have shown. Thus, upon him I place my lance.' at the same time placing the staff on the slave. His adversary then said and did the same, and when both had thus laid claim to the slave, the praetor said: 'Both claimants quit hold of the slave.' Upon this, they both let go. The first claimant then said: 'I demand of you the ground of your claim.' The other replied: 'I declared my right when I placed my lance upon him.' Then the first claimant said: 'Since you claim him in defiance of right, I challenge you to stake five hundred pounds of copper upon the issue of a trial.' His adversary replied by a similar challenge, but if the subject matter of the suit was of less value than one thousand pounds of copper, then they named fifty pounds of copper as the sum reciprocally staked. Then the same proceedings were gone through as in a personal action, after which the praetor temporarily assigned to one of the parties the subject matter of the suit, that is, appointed one of them to be interim possessor and ordered him to give security to his opponent for the subject matter of the suit and the interim possession, that is, for the thing in dispute, and the produce, whilst the praetor himself took security from both parties in respect of the penal sum for costs as that would be forfeited to the public treasury. A staff was used, as it were, in the place of the spear, which was the symbol of lawful ownership; since that was especially looked upon as a man's own property which had been taken from the enemy, and for this reason a spear is placed before the centumviral tribunal.

"§ 17: If the thing was of such a nature that it could not be conveniently brought or led into court, as for example, if it were a column, or a ship, or a herd of cattle of any sort, some part of it only was taken, and the claim was made in respect of that part as if the whole were before the court. . . . Similarly, when the dispute was about a piece of land, or a building, or an inheritance, some part was taken and brought into court, and the claim was made in respect of this portion, as if in the presence of the whole. . ."

WENGER, p. 127, adds the following observation: "That is a symbolic reminder of the manual struggle for the thing, of self-help, before the state established the order of peace. This last is represented by the Praetor: *cum uterque vindicasset, praetor dicebat: Mittite ambo hominem* ('since both of you claimed [him], leave both the man'). That is still clearer in the symbolic fight for a *fundus* (tract of land) from which the parties bring a clod, in order to enact with it the aforementioned reciprocal *vindicatio*-proceeding before the Praetor." As to the Greek *dikē* (*δικαία*), see 2 BONNER AND SMITH 79, 101, 163, 260, 265; LEIST 490. See also *supra*, sec. *i*, notes 27 and 28.

28. *Markgemeinschaft* or, more frequently *Markgenossenschaft* is the community of those who are entitled to share in the use of the commons, especially the common pasture and woodland. On the various forms of agrarian communities,

see Weber, ECONOMIC HISTORY (trsl. F. Knight, 1927) 3; cf. POLLOCK AND MAITLAND I, 560.

29. *Hereditatis petitio:* action for the recovery of the total estate of a decedent, brought by the person claiming heirship against one who is alleged to have no right to the estate.

30. Sternberg, *Der Geist des chinesischen Vermögensrechts* (1911) 26 Z.F. VGL. RW. 142/3; cf. ALABASTER 317.

31. On this institution of "sitting dharma" see MAINE, INSTITUTIONS 38 *et seq.*; 297–305; E. S. HARTLAND, PRIMITIVE LAW (1924) 186. A similar custom is reported for ancient Irish law by MAINE, *op. cit.* 280, 296, 303: If the debtor was of chieftain grade, the creditor had "to fast upon him," i.e., to go to his residence and wait a certain time without food.

32. A. Kocourek and J. Wigmore, *Sources of Ancient and Primitive Law* (1915) in 1 EVOLUTION OF LAW 28, on Fanti Customary Law; MAINE, INSTITUTIONS 187, on Irish law.

33. The *nexum* seems to have been the money loan contract which was formally created *per aes et libram*, i.e., by weighing the copper amount in the presence of five witnesses and a weigher (*libripens*); see *supra*, n. 22. It had disappeared in historical times, and the references in the sources are so fragmentary that its origin and nature are still obscure. The theory accepted by Weber is that of Mitteis (25 SAV. Z. ROM. 282), who believed that the *nexum* was a transaction by which the debtor symbolically sold himself to the creditor. This theory has, however, been attacked from various quarters. The extensive literature is listed at JÖRS AND KUNKEL 219; to this should be added Koschaker, *Eheschliessung und Kauf nach alten Rechten* [1951], ARCHIV ORIENTALNY 210, 288; and v. Lübtow, *Zum Nexumproblem* (1950) 67 SAV. Z. ROM. 112. *Stipulatio* was the contract which was bindingly concluded by the exchange of certain ritualistic words. Upon the creditor's question: *Sestertios mille dare spondesne* ("do you promise to pay 1,000 sestertii?" the debtor would answer, "spondeo" ("I promise"). Later it became permissible to use other terms instead of the words "*spondesne? spondeo*," especially, "*promittisne? promitto*," or "*dabisne? dabo*." Whether, as Weber believes, such a promise or stipulation could only relate to the payment of money, is controversial. The literature is listed at JÖRS AND KUNKEL 97. See also *ibid.* 218.

33a. "*Aus römischem und bürgerlichem Recht*" (FESTSCHR. F. BECKER) 109 *et seq.* Mitteis' theory of the origin of the *stipulatio* has been doubted by Segré, 108 ARCHIVIO GIURIDICO 179; Luzzatto, *Per una ipotesi sulle origini e la natura delle obbligazioni romane*, 8 FOND. CASTELLI 253; and Weiss, PAULY-WISSOWA, REALENZYKLOPÄDIE DER KLASS. ALTERTUMSWISSENSCHAFT, 2. REIHE, III, 2540; JÖRS AND KUNKEL 96. These authors declare the origin of the *stipulatio* has as yet not been cleared up.

34. Weber is thinking here of the *in ius vocatio*, by which an action was initiated in archaic Roman law and which is described by WENGER 96, as follows: "*In ius vocatio.* In the Twelve Tables it is placed at the head of the whole statute, and it is handed down to us in its crude archaic primitiveness: I, (1) *Si in ius vocat, ito. Ni it, antestamino: igitur em capito.* (2) *Si calvitur pedemve struit, manum endo iacito.* (3) *Si morbus aevitasve vitium escit, iumentum dato. Si nolet, arceram ne sternito* [translation by J. WIGMORE, SOURCES OF ANCIENT AND PRIMITIVE LAW (1915), vol. I. of EVOLUTION OF LAW, by Kocourek and Wigmore, p. 465]. "*If* [a man] *call* [another] *to law, he shall go. If he go not, they shall witness it; then he shall be seized. If he flee or evade, lay hands on him*

as he goes. If illness or age hinder, an ox-team shall be given him, but not a covered carriage, if he does not wish."

"In these provisions, probably handed down with later additions, appear already fundamental legal principles, special regulations which we today would leave to an enforcing ordinance. Further, such enforcing ordinances were indeed issued by the Praetor in great numbers.—The defendant may not personally offer resistance to the *in ius vocatio*, but it is possible for him to find an appropriate *vindex*, who frees him from the hands of the plaintiff who is applying force, and guarantees—in some manner no longer surely recognizable—the appearance of the defendant in court. If no appropriate *vindex* is found, then the defendant is, according to the Twelve Tables, dragged by force before the judicial magistrate. The calling of witnesses by the plaintiff means for the defendant at least a certain guaranty against the unlawful use of force."

35. As to Roman law, Weber obviously has in mind the archaic *legis actio per pignoris capionem*, which seems not to have been generally available, however, but only for certain claims of sacred law and public law, especially taxes; cf. WENGER 228. In the Germanic law distress seems to have been more generally available. As to both Roman and Germanic law, Weber seems to follow the exposition of MAINE, INSTITUTIONS 257 *et seq.*

36. The famous passage is related by Gellius XX, 48 (Bruns, Fontes juris romani antiqui; Tab. II. 6) to have read as follows: "Tertiis nundinis partis secanto. Si plus minusve secuerint, se fraude esto." ("After sixty days [60 days after the seizure of the defaulting debtor by one of his several creditors] let them cut parts. If they cut more or less, it shall be without prejudice.") The translation of the archaic Latin is not too certain and the meaning of the passage has been controversial. Weber follows the opinion which regards the passage as permitting the creditors bodily to cut the debtor in pieces. Joseph Kohler has used the same interpretation in his famous essay on Shylock's claim to his debtor's "pound of flesh," in which he sees a survival of a once general idea into a time when it came to clash with changed moral ideas. (SHAKESPEARE VOR DEM FORUM DER JURISPRUDENZ [2nd ed. 1919] 50.) An entirely different view has been expressed by Max Radin ("*Secare partis:* The Early Roman Law of Execution against a Debtor" [1922] 43 AMER. J. OF PHILOSOPHY 32), who applies the *secare* to the piecemeal alienation of the debtor's property. For further references to the extensive literature, see WENGER, § 21, n. 8.

37. The German text is as follows: "oder der Gläubiger setzte sich in das Haus des Schuldners, und dieser musste ihn bewirten (*Einleger*)."—There exists a German word "Einleger," but none of its meanings fits the passage of the text (see 2 PREUSSISCHE AKADEMIE DER WISSENSCHAFTEN, DEUTSCHES RECHTSWÖRTERBUCH [1934] 1422). Probably there has occurred an error of transcription or typography, and the word meant is *Einlager*. However, this term refers to the exactly opposite method of debt collection, viz., the exertion of pressure upon the debtor by exacting that he or his surety live away from home at some agreed place until the debt is paid (see the references in 2 DEUTSCHES RECHTSWÖRTERBUCH 1414). Ordinarily the duty to submit to such "quartering" had, in German law, to be assumed by special agreement (HUEBNER 482). Von Schwerin (*op. cit.*) describes the institution as follows: "Hostageship has survived terminologically in the institution of *Einlager* (*gisel-schaft, obstaghum*) which was taken over (sc. in Germany) from France in the 12th century. It was common, especially among knights; usually it was undertaken by contract, but there were also cases where it was provided by statute. It was a kind of captivity into which the surety surrendered himself by riding up to an inn and

remaining there together with a fixed number of retainers until the debt was paid. The institution was abolished by imperial legislation in the 16th century, but in certain regions, for instance, of Switzerland, it survived into the modern age."

The only instance of a situation in which, in the territory of German law, the creditor would have submitted to "quartering" is referred to in the following statement of R. His (*Gelobt r und g bot ner Friede im d utsch n Mittelalter* [1912] 33 SAV. Z. GERM. 169): "To p event an abuse of force, of the two parties, the Dutch and West-Frisian cities of the 15th century ordered *both* litigants—the creditor and the debtor—to submit themselves to 'quartering.'" For further references see M. Rintelen, *Schuldhaft und Einlager im Vollstreckungsverfahr n des alt-niederländischen und sächsischen Recht s* (1908); 1 AMIRA, *op. cit.* (1882) 362, 392 *et seq.*

While no reference could thus be found which would indicate a connection of the German *Einlager* with the mode of exacting a debt by the creditor's installing himself in the house of a debtor, the latter custom has, indeed, occurred as indicated by a remark of Kohler's about China (KOHLER AND WENGER 143).

38. T aditionally, a *lex Poetelia*, dated at 326 B.C., is cited as an important milepost of this development. It is reported to have prohibited the chaining and killing of the debtor and to have compelled the creditor to accept the debtor's willingness to work off the debt. The reports, which are all by historians who wrote centuries later (Livy, Dionysius, Cicero, etc.), are suspect as to the details of the development but probably accurate in so far as they represent the transition from liability of the person to liability of the property as an aspect of the struggle between pat icians and plebeians. As to literature on the problem, see WENGER, § 21, n. 10.

39. In the United States imprisonment for debt was gene ally abolished in the nineteenth century, when its prohibition was expressly stated in numerous state constitutions. It has nevertheless survived in the foun of punishment for contempt of court for nonobedience of equity decrees, as well as, in certain states, judgments for damages render at law upon a verdict which finds the debtor guilty of malice o of reckless or wanton negligence. For obligations to pay family support the threat of imprisonment in alimony row still constitutes one of the p incipal guaranties of enforcement.

In Germany, by Bundesgesetz of 29 May 1868, as in probably all count ies of Western and Central Europe (e.g., Bundesverfassung der Schweizerischen Eidgenossenschaft of 29 May 1874, Art. 59), imprisonment for debt has been radically and completely abolished by nineteenth-century legislation. Public opinion would not tolerate it even as a means of enforcement of duties of family support. Theoretically, but ha dly ever used, imprisonment is still possible as a means to induce a person to comply with certain judgments ordering him to do, or to refrain from doing, an act other than that of the payment of money. See German Code of Civil Procedure, § § 888, 890; cf. A. SCHONKE, ZWANGSVOLLSTRECKUNGSRECHT (1948) 168–189. On the abolition of imprisonment for money debt, see HEDEMANN, I; L. ROSENBERG, LEHRBUCH DES DEUTSCHEN ZIVILPROZESSRECHTS (1949) 806–807.

40. *Vadiatio* (Wadiation)—Germanic transaction establishing suretyship: a staff is hand by the debtor to the creditor, who hands it on to the surety, asking him to assume the suretyship for the debtor's debt. There exists a voluminous literature which is particularly concerned with the symbolism of the transaction. According to AMIRA (*Die Wadiation*, SITZUNGSBERICHTE DER BAYERISCHEN

AKADEMIE DER WISSENSCHAFTEN, PHILOS.-PHILOL. KLASSE [1911]), the staff constitutes an instance of the magically spelled messenger's staff, which is found to play a considerable role in the symbolism of the Germanic laws; see AMIRA, DER STAB IN DER GERMANISCHEN RECHTSSYMBOLIK (1909). For a different view about the *vadiatio* see O. GIERKE, SCHULD UND HAFTUNG (1910); see also HUEBNER 497.

41. Text in square brackets supplied by the translator. The interpolation seems to be the one called for by the context.

42. Cf. *supra*, sec. i:5.

43. As to the effects of this feature in the common law, where it remained influential into the very present, see STREET, THE FOUNDATIONS OF LEGAL LIABILITY (1916) II, 75; III; 129; RHEINSTEIN, STRUKTUR 55 *et seq.* 61.

44. Tab. VI.1: "Cum nexum facit mancipiumque, uti lingua nuncupassit, ita ius esto."—"When he makes a *nexum* and a *mancipium*, as the tongue has spoken, so it shall be the law." For attempts to explain this passage and the numerous controversies around it, see JÖRS AND KUNKEL 90 *et seq.*; BUCKLAND 426; JOLOWICZ 139, 145–150, 164; for a new and apparently well-founded theory, see KOSCHAKER, *op. cit. supra* n. 33, at 210, 288.

45. Of the extensive literature, see especially MAITLAND, FORMS, 2 POLLOCK AND MAITLAND 196, 214, 220, 348; HOLDSWORTH, I, 456; II, 379, 440, 442; III, 281, 323, 455, 457, 422, 430 *et seq.*

46. Weber is apparently following here the famous description given of the development by MITTEIS, 1, 315 *et seq.*, who finds one of the principal sources of what later came to be regarded as liability for breach of contract in the idea that a man who fails to live up to certain duties which he has assumed is not acting "like a gentleman," that he is guilty of *dolus*, and if so found officially, has incurred forfeiture of civil rights (*infamia*). For discussions of this theory, see SOHM 423; R. SOHM AND L. MITTEIS, INSTITUTIONEN (1949) 190, 460 ("infamia"); JÖRS AND KUNKEL 170, 222.

47. Viz., by A. Leist in GRUNDRISS DER SOZIALÖKONOMIK. IV Abt. "Spezifische Elemente der modernen kapitalistischen Wirtschaft." 1. Teil (1925), p. 27, s.t. *Die moderne Privatrechtsordnung und der Kapitalismus* (ed. by Hans Nipperdey).

48. In a general sense continental legal theory distinguishes between two types of representation or (broadly) agency, i.e., between (i) direct representation where the agent makes a contract or creates an obligation expressly in the name and on behalf of his principal, and (ii) indirect representation, in which the principal is neither mentioned nor disclosed. In the technical sense only the former is called agency. Roman law had, apart from *mandatum*, no term of art for "agency" in the technical sense. Indeed, according to Paulus, DIG. 45, 1, 126, 2, "per liberam personam obligationem nullam adquirere possumus"—the making of contracts through free persons (or agents) is impossible. Gaius is to the same effect: 1.2, 95. But in practice Roman law diverged from this negative position by creating exceptions which the Roman lawyers handled in their customary subtle manner. See WENGER, DIE STELLVERTRETUNG IM RECHTE DER PAPYRI (1906), esp. pp. 157–166 and p. 219 for the selling of a slave through an agent; cf. also SOHM, § 45 "Representation"; BUCKLAND 276 *et seq.*, 529. In Greek law, on the other hand, direct representation was well known not only because of the role which the slaves played in commerce but also because the concept of agency was used in the *tutela* and in other institutions; see WENGER 166–172; BEAUCHET, HISTOIRE DU DROIT PRIVÉ DE LA RÉPUBLIQUE ATHÉNIENNE (1897).

49. As to Roman law, see SOHM, § 87; BUCKLAND 518, 550; JÖRS AND

KUNKEL 205. In practice the effect of substituting a new creditor for an old one could be achieved by means of novation: by agreement with the debtor the old obligation toward the original creditor was extinguished, and a new one with a new creditor was substituted for it.

As to Germanic Law, see HUEBNER, §§ 78, 79.

As to the slow development of assignment in the Common Law, see 2 WILLISTON ON CONTRACTS 1164 *et seq.* and literature cited there.

50. By the Lex Anastasiana of A.D. 506 an assignee who had purchased the assignor's claim could recover from the debtor no more than the purchase price which he, the assignee, had paid the assignor; as to the surplus, the debt was discharged. Under a law of A.D. 422, which was restated in Codex 2, 13, 2, a creditor was prohibited to assign his claim to a socially more powerful (*potentior*) person. Cf. Mitteis, *Über den Ausdruck "potentiores" in den Digesten*, 2 MÉLANGES GIRARD (1911). On the role which the fear of maintenance and champerty played in the reluctance of the Common Law to recognize the assignability of choses in action, see WILLISTON, *op. cit.*

51. L. GOLDSCHMIDT 80, 82, 387, 390; see also his VERMISCHTE SCHRIFTEN (1901) II, 172; KOHLER AND PEISER, HAMMURABI'S GESETZ (1904) III, 237; compare this with the doubts in GOLDSCHMIDT, *loc. cit.* 167, as well as those of Koschaker, 9 ENCYC. SOC. SCI. 211, 217/8.

52. The *contractus literalis* (Roman law) was the contractual obligation created or, more probably, re-created, by the ledger entry by a banker or some such person; cf. BUCKLAND 459; see also Goldschmidt, *Inhaber-, Order- und executorische Urkunden im Classischen Altertum* (1889) 10 SAV. Z. ROM. 373, at 393. Many problems are as yet unsolved; cf. the literature listed by JÖRS AND KUNKEL 188, 410.

53. For the insistence of the state upon registration of title to land see Zachariae v. Lingenthal, *Zur Geschichte des römischen Grundeigenthums* (1888), 9 SAV. Z. ROM. 263 *et seq.*, 270 *et seq.*; H. LEWALD, BEITRÄGE ZUR KENNTNIS DES RÖMISCH-ÄGYPTISCHEN GRUNDBUCHWESENS IN RÖMISCHER ZEIT (1909). See the review of these last two books by Mitteis (1909), 30 SAV. Z. ROM. 457; see also MITTEIS, REICHSRECHT 465, 480, 493, 514–517, 532.

54. On the origin of the notary and his role in later Antiquity, see MITTEIS, REICHSRECHT 52, 95, 171; DRUFFEL, PAPYROLOGISCHE STUDIEN ZUM BYZANTINISCHEN URKUNDENWESEN (1915); STEINWENTER, BEITRÄGE ZUM ÖFFENTLICHEN URKUNDENWESEN DER RÖMER (1915).

55. GOLDSCHMIDT 390.

56. *Festuka* (Frankish)—"staff." See *supra* n. 38. On the Babylonian *bukannu* see KOHLER AND WENGER 60.

57. See Brunner, *Carta und Notitia, Commentationes philologae in honorem Theodori Mommseni* (1877) 570, 577, repr. 1 *Abh.* 458, 469.

58. GOLDSCHMIDT 151; BRUNNER, *loc. cit.* 458, 466 *et seq.*

59. POLLOCK AND MAITLAND II, 223 *et seq.*; on the seal see the articles by Hazeltine, Pollock, and Crane in ASS. OF AMER. LAW SCHOOLS, SEL. READINGS ON THE LAW OF CONTRACTS (1931) 1, 10, 598.

60. GOLDSCHMIDT 97, 99; n. 14a, 390.

61. The distinction between *ius dispositivum*—"permissive rules"—and *ius cogens*—"mandatory rules," i.e., rules which cannot be contracted out by the parties, is common in civilian legal theory. *Ius dispositivum* (stopgap law) will be applied when the parties have failed to provide for a contingency which has arisen and for which they should have provided and probably would have provided had they ever thought of it. It is thus constituted by those rules of law

which apply only where they have not been "contracted out" by the parties. A large number of the rules of the law of contracts and of the law of wills are of such character. The provisions, for instance, of the law of sales concerning the seller's "implied" warranty for defects of quality apply only where the parties have not made their own provisions for the case; in the law of wills the rules on lapse or abatement of legacies apply only where the testator has failed to provide for the contingency by dispositions of his own.

Since the time of the Roman jurists it has been characteristic for the Civil Law that elaborate rules of stopgap have been established for the various types of contract of daily life, such as sale, donation, lease, contract for services, suretyship, partnership, mandate, etc. All the modern Codes thus contain chapters respectively dealing with these various types of contract, giving for each those rules of stopgap law which apply in default of different arrangement by the parties. As the statutory rules correspond to the intentions of typical parties, few terms of a contract need to be spelled out expressly. Contractual instruments can thus be shorter and simpler than in this count y where contractual terms are not so easily assumed to be "implied."

62. *Supra*, n. 50.

63. Following the model of the Code of Justinian (C. 8. 18. 12) a legal mortgage is given to the wife in the assets of the husband by the French Civil Code (art. 2121) and numerous other codes patterned upon it, e.g., those of Belgium, Italy, Spain, Mexico, Brazil, and Quebec. It is meant to protect those claims for damages which may arise for the wife against the husband, especially out of the management by him of the community fund and certain assets of the wife. The mortgage arises automatically upon the ma riage, without need of recordation, and with priority over certain others of the husband's creditors. Cf. 2 PLANIOL, TRAITÉ ÉLÉMENTAIRE DE DROIT CIVIL (3rd ed. 1949) 1237 *et. seq.*; T. Rohlfing, *Hypothek*, 4 RECHTSVERGLEICHENDES HANDWÖRTERBUCH (1933) 274.

64. The ordina y lease (*locatio conductio rei*) of Roman law was a personal contract. Hence, if the lessor sold the land, the lessee had no right of continued use as against the purchaser but only a claim for damages against his lessor. In contrast, emphytheusis was the special kind of inheritable lease of land which gave the lessee a property interest in the land which he could enforce against everybody. It originated in Greece and, in the fourth century, became fused in a practical and modern manner, with the *ager vectigalis*, i.e., the Roman long-term lease (*ius perpetuum*) in public lands. Cf. KOHLER AND WENGER 228; BUCKLAND 275; WEBER, AGRARGESCHICHTE 170 *et seq.*; MITTEIS, ZUR GESCHICHTE DER ERBPACHT IM ALTERTUM (1901).

65. Perpetual rents were a common institution of medieval law. While canon law prohibited the lending of money upon interest, it did not prevent a person having capital to invest from "purchasing" a perpetual rent, secured by the possibility of levying execution upon a piece of, mostly urban, land in the case of nonpayment, and subject to termination upon repayment of the capital to the purchaser. Other perpetual rent charges came into being when ancient feudal and manorial claims to services or deliveries in kind were transformed into money rents. In France all these ancient charges were swept away by the Revolution of 1789. In Germany and the other countries of central and western Europe they were made subject to speedy amortization in the course of the so-called "liberation of the soil" ("Bodenbefreiung," see *infra* n. 87), which had been one of the principal postulates of Liberalism as it had become dominant in the nineteenth century. (Cf. HEDEMANN II, part ii, 9, 27.) The law of real property was re-

organized in a way which excluded the creation of new perpetual rents. To a strictly circumscribed and narrowly limited extent their creation was permitted again for certain special purposes by the German Civil Code of 1896 (§§ 1105–1112, 1199–1203) and a few special statutes of later date (see M. WOLFF, SACHENRECHT, 8th ed. 1929, 307).

66. On the freedom of sexual contract in Ptolemaic-Roman Egypt, see J. NITZOLD, DIE EHE IN ÄGYPTEN ZUR PTOLEMÄISCH-RÖMISCHEN ZEIT (1903).

67. Roman institutions of this kind were *arrogatio* (transaction to establish paternal power over an adult man not previously subject to the paternal power of any other *paterfamilias*), *adoptio* (transaction to transfer parental power over a *filiusfamilias* by one *paterfamilias* to another), and *emancipatio* (remission of a person from parental power). Similar institutions were common in Antiquity; cf. Robert H. Lowie, *Adoption*, in 1 ENCYC. SOC. SCI. 459, 463 (literature). On Germanic laws, see HUEBNER 660; L. Talheim, *Ado tion* in 1 PAULY-WISSOWA 396.

68. Cf. *supra* n. 51.

69. As to these "special funds" see HUEBNER 181.

70. Weber's principal sources for the following presentation of the role of contract in sex relationships seem to have been J. Kohler, *Zur Urgeschichte der Ehe* (1897), 12 Z.F. VGL. RW. 186; W. WUNDT, VÖLKERPSYCHOLOGIE (1917), vol. vii; and, above all, the book by his wife, MARIANNE WEBER, EHEFRAU UND MUTTER IN DER RECHTSENTWICKLUNG (1907). The bibliography in WEBER'S WIRTSCHAFTSGESCHICHTE (1923) 42, n. 1, does not list WESTERMARCK'S HISTORY OF HUMAN MARRIAGE, 3 vols. (5th ed. 1921). The more recent literature is listed in the bibliography following Robert H. Lowie's article on *Marriage* in 10 ENCYC. SOC. SCI. 146, 154, to which should be added C. C. ZIMMERMAN, FAMILY AND CIVILIZATION (1944); ROBERT BRIFFAULT, THE MOTHERS (1927); W. GOODSELL. HISTORY OF MARRIAGE AND THE FAMILY (1934); and P. Koschaker, *Die Eheformen der Indogermanen*, 11 Z.F. AUSL. U. INTERNAT. PRIVATRECHT (1937), Sonderheft 121.

71. The question of whether wife purchase has really been the "normal form of marriage" in primitive or archaic civilizations cannot be regarded as definitely settled. The results of the most recent research have been summarized by Koschaker (*loc. cit.* ARCHIV ORIENTÁLNY 210, 211) as follows: "Many ancient laws know a duality of marriage forms. It has long been known to have existed in Roman Law and more recently it has been found to have existed also in several other laws. One of these forms is characterized by the fact that no price is paid for the bride. This kind of marriage for which no special formalities are prescribed, is based in the last resort upon the consent of the spouses. On the other hand, however, the husband does not acquire marital power over the wife, and the children succeed to the mother to whose family they belong. . . . The normal form, however, is that kind of marriage in which the husband pays a 'bride price' and acquires marital power over her. The first-named type of marriage is the exception which occurs only in certain special type-situations, as, for instance, marriage between the abductor and the woman abducted by him, or the marriage with the woman who is the sole heir of her ancestor and through whom the husband enters the wife's family; in other words, situations in which, for one reason or another, the marriage with marital power is not suited for the particular purpose. An exceptional position is occupied by mature Roman law where marriage without marital power appears as the normal type. That in earlier times the situation may have been different and that in Rome the marriage without marital power

was to serve similar functions as in other laws, is possible, but impossible to prove from the fragmentary source material. . . .

"[As to marriage by purchase] we find in the literature an almost ho less confusion. I could mention scholars of several nations of whom everyone maintains that marriage by purchase may certainly have existed among other peoples, but that it is absolutely impossible as to his own nation that it should ever have been so barbaric as to purchase women like merchandise."

Cf. also the recent articles by R. Köstler, *Die Raub- u. Kaufehe bei den Germanen* (1943), 63 SAV. Z. GERM. 62; *Die Raub- u. Kaufehe bei den Hellenen* (1944), 64 SAV. Z. ROM. 200; *Die Raub- u. Kaufehe bei den Römern* (1947), 65 SAV. Z. ROM. 43.

72. As to Hindu forms of marriage, see JOLLY, ÜBER DIE RECHTLICHE STELLUNG DER FRAUEN BEI DEN ALTEN INDERN (1876); also, by the same author, RECHT UND SITTE (1896, transl. by G. Losh, 1928) 49. As to Roman marriage forms, *see supra* n. 24. The statement by Jolly (RECHT UND SITTE 51) and Westermarck (*op. cit.* 404) notwithstanding, it cannot be regarded as proved that marriage by purchase was the specifically plebeian form of marriage; cf. *supra* n. 71; also 1 HOWARD, HISTORY OF MATRIMONIAL INSTITUTIONS (1904) cc. 4 and 6, esp. p. 264.

73. Service marriage: see WESTERMARCK, *op. cit.* 491.

74. On trial and companionate marriage in Hellenistic Egypt, see MITTEIS, REICHSRECHT 223.

75. On prostitution see, in addition to the literature stated *supra*, n. 70, WEBER, GENERAL ECONOMIC HISTORY c. 4 § 2, and May's article q.v. in 12 ENCYC. SOC. SCI. 553, with literature cited there.

76. *Hetaera* (Greek): girl companion, ranging from the common harlot to the geisha-like woman companion of refinement and education, often contrasted with the commonly low status of the legitimately married wife. The hetaerae gave the Greek men that intellectual stimulus which they did not find in the family. Greek life would have been unthinkable without them. Contact with them was not regarded as socially disreputable (LAMER, WÖRTERBUCH DER ANTIKE [3rd ed. 1950] q.v., where one can also find a list of historically famous hetaerae, such as Aspasia, the companion of Pericles); see also H. LICHT, LIEBE UND EHE IN GRIECHENLAND (1933). *Bayadère*—Hindu dancing girl.

77. Cf. BUCKLAND 128 *et. seq.*; JÖRS AND KUNKEL 282 and literature cited there and p. 417.

78. Under the Prussian Code of 1794.

79. On divorce in Rome, see 1 FRIEDLÄNDER UND WISSOWA, SITTENGESCHICHTE ROMS (9thed. 1919) 283.

80. See JOLOWICZ, 125 *et seq.*, 248 *et seq.*; BUCKLAND 324; for further literature, see JÖRS AND KUNKEL 307, 327, 419, 421.

81. Cf. BRENTANO, ERBRECHTSKRITIK (1899) 198 *et seq.*; RHEINSTEIN, DECEDENTS' ESTATES 11 *et seq.* and literature cited there and at p. 412. Significantly, freedom of testation has now been limited in favor of needy dependents even in England by the Inheritance (Family Provision) Act, 1938, 1 & 2 GEO. 6 c. 45.

82. Letters of Napoleon to his brother Joseph, King of Naples, dated 8 March and 5 June 1806, 12 CORRESPONDENCE DE NAPOLÉON I^er^ 167, 432; RHEINSTEIN, DECEDENTS' ESTATES 17, n. 30.

83. On the following, see the literature cited in WEBER'S WIRTSCHAFTSGESCHICHTE 85, n. 1: CAIRNES, THE SLAVE POWER (1862); E. VON HALLE, BAUMWOLLPRODUKTION UND PFLANZUNGSWIRTSCHAFT IN DEN NORDAMERIKAN-

ISCHEN SÜDSTAATEN (2 vols. 1897, 1906); H. J. NIEBOER, SLAVERY AS AN INDUSTRIAL SYSTEM (1900); B. DU BOIS, THE SUPPRESSION OF THE AFRICAN SLAVE TRADE (1904); G. KNAPP, DIE LANDARBEITER IN KNECHTSCHAFT UND FREIHEIT (2nd ed. 1909); see also the articles in 14 ENCYC. SOC. SCI. 73 and literature cited there at p. 90.

84. MEKKA IN THE LATTER PART OF THE 19TH CENTURY (1888; transl. 1931), p. 14.

85. *Noxae datio* (Latin)—the surrender of a person, animal, or inanimate thing by which the father, master, or owner frees himself from the liability created by the child's, slave's, or animal's misdeed or the "act" of his spear, ax, or other thing. It existed in Rome and was widespread in archaic laws.

86. Cf. GIRARD, LES ACTIONS NOXALES (1888) 62, and the review of this book by Kipp in 10 SAV. Z. ROM. 398.

87. As to Rome, see WEBER, ACKERGESCHICHTE 114–117; in Prussia, legislation aiming at the abolition of land encumbrances standing in the way of intensive cultivation started in 1717, with an Edict of King Frederick William I. It was continued by the Prussian Code ("Allgemeines Landrecht," abbrev. ALR) of 1794 and was vigorously promoted after the defeat of the Prussian Army in 1806 during the administration of Baron vom Stein. Final regulation was initiated after the revolution of 1848 by the Regulation Law of 2 March 1850. See F. Gutmann, *Bauernbefreiung* in 2 HANDWÖRTERBUCH DER STAATSWISSENSCHAFTEN (4th ed. 1924) 378, 544; G. F. KNAPP, DIE BAUERNBEFREIUNG UND DER URSPRUNG DER LANDARBEITER IN DEN ÄLTEREN TEILEN PREUSSENS (1887); A. MEITZEN, DER BODEN UND DER PREUSSISCHE STAAT (1868); Skalweit, *Gutsherrschaft und Landarbeiter in Deutschland* (1911), 35 SCHMOLLERS J. B. 1339; HEDEMANN II, 34, and literature cited there.

88. That is, organizations to promote the settlement of German farmers in the predominantly Polish regions of the eastern provinces of Prussia as constituted before 1918.

89. This statement is correct as to the Carolingian empire but must be qualified for the later period. The "tribal" laws had lost their significance throughout the empire at the latest in the thirteenth century, if not earlier; cf. C. Calisse, *History of Italian Law*, 8 CONTINENTAL LEGAL HISTORY SERIES (1928) 18, 24, 57, 97, 100; HUEBNER 2–4; K. Neumeyer, DIE GEMEINRECHTLICHE ENTWICKLUNG DES INTERNATIONALEN PRIVAT- UND STRAFRECHTS BIS BARTOLUS (1901) I, 94, 155; E. Meijers, L'HISTOIRE DES PRINCIPES FONDAMENTAUX DU DROIT INTERNATIONAL PRIVÉ À PARTIR DU MOYEN AGE (Recueil des cours, [1934] III, 558); BRUNNER I, part ii, 382, 399.

90. Cf. CALISSE, *op. cit.*, 127–132, 165, 177; NEUMEYER, *op. cit.*, I, 159; ENGELMANN, *op. cit.* (1938) 97; MEIJERS, *loc. cit.*, 547, 560.

91. On the "law communities" and their development, see PLANITZ 176, and literature stated there.

92. On this characteristic feature of medieval law see POLLOCK AND MAITLAND I, 234–240; II, 182; HOLDSWORTH II, 35–40, 211, 379, 417, 464–466, 562; HUEBNER 4, 88–92, 96, 98, 102, 189, 334–341; A. ESMEIN, COURS ÉLÉMENTAIRE D'HISTOIRE DU DROIT FRANÇAIS (1925) 20, 159, 174, 221, 262–263, 280–282, 344.

93. See MOMMSEN 318, 322; JOLOWICZ 25.

94. Cf. BRISSAUD, HISTORY OF FRENCH PRIVATE LAW (Howell's tr. 1912) 900; BRISSAUD, HISTORY OF FRENCH PUBLIC LAW (Garner's tr. 1915) 548; HEDEMANN I, 39, 41.

95. Weber means the point of view of the modern continental jurist, for whom, in theory, all law is contained in the codes and statutes.

96. A. HEUSLER, DEUTSCHE VERFASSUNGSGESCHICHTE (1905) 138.

97. *Recht der Handwerker.* In Germany and other countries it has become customary to refer to the sum total of those rules of law which relate to the crafts and industries as *Gewerberecht, droit industriel, diritto industriale.* In Germany a part of these rules has been combined in a special code, the GEWERBEORDNUNG of 1869.

98. *Institutionen des deutschen Privatrechts* (1885/86).

99. MIRROR OF SAXON LAW (SACHSENSPIEGEL), treatise on the law of Lower Saxony, by Eike von Repgow, written between 1215 and 1235. Cf. *infra,* sec. iv:3. Glosses have been added since the early fourteenth century. The extensive literature on the SACHSENSPIEGEL is listed in PLANITZ 181.

100. Quiritarian law (*ius quiritium*), the law of the *quirites,* i.e., those who were members of the sibs (*gentes*) of which the Roman community seems to have been composed in its oldest period; in later times the term *ius quiritium* is frequently used as a synonym of *ius civile* as contrasted to *ius honorarium* and *ius gentium.*

101. On the following see WEBER'S AGRARGESCHICHTE and his article on *Agrargeschichte, Altertum,* in 1 HANDWÖRTERBUCH DER STAATSWISSENSCHAFTEN (3rd ed. 1909) 52; also ROSTOVTZEV.

102. *Fideiussor*—surety; *hypotheca*—mortgage. On the *praes* see literature stated by JÖRS AND KUNKEL 213, n. 4.

103. On the relationship between patron and client, see BUCKLAND, 89 *et seq.,* 375.

104. Action against the shipowner upon obligations contracted by the master.

105. *Receptum nautarum, cauponum et stabulariorum*—bailment by water carriers, innkeepers, and stable owners.

106. On *fides* see Kunkel, *Fides als schöpferisches Element im römischen Schuldrecht* (1939) 2 FESTSCHRIFT FÜR KOSCHAKER 1.

107. Loss of certain civil rights, including the right to make a will.

108. Roughly corresponding to the trust without, however, implying a right on the beneficiary's part to pursue the *res* into the hands of third purchasers.

109. A future interest created by imposing upon a testamentary devisee or legatee a personal obligation upon a certain term or condition to transfer the *res* to a third beneficiary.

110. These were primarily those unmarried and childless persons whom Augustus, for reasons of population policy, had declared to be either totally or partially incapable of receiving property by will.—*Lex Iulia de maritandis ordinibus,* of 18 B.C., and *Lex Papia Poppaea* of A.D. 9.

111. MOMMSEN 15.

112. On the following, see GIERKE, GENOSSENSCHAFTSRECHT, the classical work on the history of associations and juristic personality. The most significant English contribution is Maitland's Introduction to his translation of portions of Gierke's work, published as the POLITICAL THEORY OF THE MIDDLE AGES (1900) and his essays in 3 PAPERS 210 *et seq.* (repr. s.t. SELECTED ESSAYS, 1936). The leading discussion of the development of juristic persons in Rome is MITTEIS, I, 339. The most recent comprehensive presentations are given in SCHNORR V. CAROLSFELD, GESCHICHTE DER JURISTISCHEN PERSON (1933) and H. J. WOLF, ORGANSCHAFT UND JURISTISCHE PERSON (1933/34). For Rome, see DUFF, PERSONALITY IN ROMAN LAW (as to which, see DAUBE, 1943, 33 JOURNAL OF ROMAN STUDIES 86, and vol. 34, p. 125); for further literature on

Roman law, see JÖRS AND KUNKEL 73 *et seq.*, 400/401; and on medieval law, PLANITZ 151. As to Gierke's theories see also LEWIS, THE GENOSSENSCHAFT-THEORY OF OTTO VON GIERKE (1935); on "theories" of juristic personality see F. HALLIS, CORPORATE PERSONALITY (1930). For a survey, see C. S. Lobingier, *The Natural History of the Private Artificial Person* (1939) 13 TULANE L. REV. 41.

113. On reprisals cf. Jessup and Deák, 13 ENCYC. SOC. SCI. 15 and literature indicated there.

114. HAUSRATH, *op. cit.* (1885/86).

115. On the origins and development of the principle of majority decision, see KORKUNOV-CZYNSKY, 10 ENCYC. SOC. SCI. 55 and the literature indicated there.

116. The endowment (*Stiftung*) has been recognized as a special form of juristic person especially in modern German law (cf. Civil Code of 1896, §§ 80–88), while it has been defined as follows: "*Stiftung* is an organization for the pursuit of certain defined purposes, which does not constitute an association of persons and is endowed with juristic personality." Cf. ENNECCERUS 274; see also 3 MAITLAND PAPERS 280, 356, where he compares "Institution" or "Foundation" with "Anstalt," saying (p. 357): "I believe that the English term which most closely corresponds to the 'Anstalt' or the 'Stiftung' of German legal literature is 'a charity,' in the sense of 'charitable trust.'"

117. This legal concept of "Anstalt" is being used particularly in modern German administrative law. Cf. W. JELLINEK, VERWALTUNGSRECHT (1928) 174.

118. Cf. GIERKE, PRIVATRECHT I, 458.

119. Cf. HUEBNER 139–146, 150, 235; 3 MAITLAND, PAPERS 336, 361, 377.

120. At the time Weber wrote the general statement of the text, it was doubtful whether a community of heirs had ever existed in Rome. The insufficient evidence has now been strongly fortified, however, through the discovery, in 1933, of a hitherto unknown part of the Institutes of Gaius. See JÖRS AND KUNKEL 34, 240; SCHULZ, HISTORY 105/106.

121. As to the following, see WEBER'S GESCHICHTE DER HANDELSGESELLSCHAFTEN IM MITTELALTER (1891); Schmoller, *Die geschichtliche Entwicklung der Unternehmung* in SCHMOLLER'S JAHRBUCH, vol. 14 (1890), p. 1035, vol. 15 (1891), p. 963, vol. 16 (1892), p. 731, and vol. 17 (1893), p. 359. HOLDSWORTH viii, 192. C. T. CARR, GENERAL PRINCIPLES OF THE LAW OF CORPORATIONS (1905), c. ix, repr. s.t. *Early Forms of Corporateness* in (1909) 2 SEL. ESS. ANGLO-AMER. LEGAL HIST. 160; W. MITCHELL, ESSAY ON THE EARLY HISTORY OF THE LAW MERCHANT (1904) c. v, repr. s.t. *Early Forms of Partnership* 3 SEL. ESS. 182; S. Williston, *History of the Law of Business Corporations before 1800* (1888), 2 HARV. L. REV. 105, 149, repr. 3 SEL. ESS. 195; also A. B. DU BOIS, THE ENGLISH BUSINESS COMPANY AFTER THE BUBBLE ACT, 1720–1800 (1938); S. LIVERMORE, EARLY AMERICAN LAND COMPANIES (1939); GOLDSCHMIDT; P. REHME, GESCHICHTE DES HANDELSRECHTS (1914); K. LEHMANN, DIE GESCHICHTLICHE ENTWICKLUNG DES AKTIENRECHTS BIS ZUM CODE DE COMMERCE (1895).

122. *Société en nom commandite* (French)—that form of business association in which one or more partners with unlimited personal liability combine with one or more partners of limited liability; as to modern law, see French Commercial Code, art. 23–28 (*Code de Commerce*, 1807); German Commercial Code §§ 161–177 (*Handelsgesetzbuch*)

123. "Limited liability company" (*Gesellschaft mit beschränkter Haftung*, G.m.b.H.)—a business corporation which does not appeal for its capital to the

public and which does not have shares suitable for being bought and sold at the stock market. Invented in Germany (Law of 20 March 1898, R.G. Bl. 1898, 370), the G.m.b.H. has been adopted in numerous other countries. Cf. W. Hallstein, *Die Gesellschaft mit beschränkter Haftung in den Ausländischen Rechten* (1939), 12 ZEITSCHRIFT F. AUSL. U. INTERN. PRIVATRECHT 34; on the German G.m.b.H. see MANUAL OF GERMAN LAW (Great Britain, Foreign Office 1950) 247.

124. *Peculium*—a fund legally belonging to the head of a house (*paterfamilias*), but left by him for separate management to a member of the household, such as a son or slave. For debts incurred by the member of the house the *paterfamilias* was liable in the praetorian *actio de peculio*, but he was allowed to limit his liability to an amount corresponding to the value of the *peculium* (*dumtaxat de peculio*). See MICOLIER, PÉCULE ET CAPACITÉ PATRIMONIALE (1932).

125. INSTITUTES 3.16 pr. and Papinian in DIGEST 45.2. 11.1–2. This rule applied only to the promise of a divisible performance. The obligation of several debtors to make an indivisible performance seems in classical law to have been one of joint and several liability even without having been created by one joint promise. Our information of details is incomplete, however. See KERR WYLIE, SOLIDARITY AND CORREALITY (1925); Thayer, *Correality in Roman Law* (1943) 1 SEMINAR 11.

126. Cf. A. Arias Bonet, *Societas publicanorum* (1949), 19 ANUARIO DE HISTORIO DEL DERECHO ESPAÑOL 218.

127. DIGEST 43. 9.1.—injunction issued by the *praetor* to protect the lessee of the public lands and his associates in his possession.

128. The partner in a *société en nom commandite* (*supra* n. 122), who, in contrast to the "personally liable partner or partners" is not liable for the debts of the company beyond the amount of his share.

129. This kind of establishment of the state as a juristic person of private law, in which the state as fisc is regarded as separate from the state as sovereign, has been worked out particularly in German theory and practice. It stands in contrast to the French and the Anglo-American systems in which the state is regarded as the sovereign even where it enters upon contractual relationships with private persons or is engaged as the owner of property. In consequence of this latter approach in the French system, the legal relations of the state as contracting party or as property owner are subject to a body of rules which, at least in theory, are different from those of ordinary private law. Also, in both the French and the Anglo-American systems, the state cannot be sued in the ordinary courts in the same way as a private person. In France actions against the state must be brought in the administrative tribunals, which are separate from the ordinary courts, have the Council of State (*Conseil d'Etat*) as their own supreme court, and are not subject to control by the Court of Cassation, the supreme court in the administration of civil and criminal justice. Cf. A. UHLER, REVIEW OF ADMINISTRATIVE ACTS (1942); GOODNOW, *op. cit.*; F. BLACHLY AND M. OATMAN, ADMINISTRATIVE LEGISLATION (1934), and INTRODUCTION TO COMPARATIVE GOVERNMENT (1938); R. D. WATKINS, THE STATE AS PARTY LITIGANT (1927).

On the historical development of the theory and practice of the state as fisc see OTTO MAYER, DEUTSCHES VERWALTUNGSRECHT (1896), I, 47; FLEINER, VERWALTUNGSRECHT (2nd ed. 1912) 34; HATSCHEK, DIE RECHTLICHE STELLUNG DES FISCUS IM BÜRGERLICHEN GESETZBUCHE (1899) 24; see also S. BOLLA, DIE ENTWICKLUNG DES FISKUS ZUM PRIVATRECHTSSUBJEKT (1938); G. JELLINEK 383; KELSEN, ALLEGEMEINE STAATSLEHRE (1925) 240.

The basic investigations into the history of the juristic construction of the state in general are the following works of OTTO V. GIERKE: POLITICAL THEORIES

OF THE MIDDLE AGES (Maitland's tr. 1900), esp. c. viii; NATURAL LAW AND THE THEORY OF SOCIETY (Barker's tr. 1934); also THE DEVELOPMENT OF POLITICAL THEORY (Freyd's tr. 1939), *passim*. (The former two books are parts of GIERKE's DEUTSCHES GENOSSENSCHAFTSRECHT [1881 *et seq.*]; the latter is a translation of his JOHANNES ALTHUSIUS UND DIE ENTWICKLUNG DER NATURRECHTLICHEN STAATSTHEORIEN [1880].)

130. This statement needs qualification. In the first place, there was never a time in English medieval law when a writ could lie against the king. This followed from the fundamental theory, fully stated by Bracton, that the king could not very well issue a writ against himself or be summoned as defendant in his own court. In the second place, however, it came to be recognized in the thirteenth century that the king, being subject to the law as well as being the fountain of justice and equity, should not (or rather, ought not to) refuse to redress wrongs or satisfy claims against him. Such redress or satisfaction was sought through petitions addressed to the king or his council: but a petition, if given effect to, was substantially a remedy of grace and not one of right. Nevertheless, during the fourteenth century, petitions began to be distinguished between demands for some bonuses or some new remedy on the one hand, and claims embodying a definite legal right, enforceable by writ against anyone but the king. When this distinction was drawn, the "petition of right" grew into an effective remedy against the Crown, though perhaps not completely so before the fifteenth century. In the fourteenth century, the position was rather vague: although the petition of right had as yet not become, at any rate technically, a complete legal remedy, the king seems in practice almost always to have repaid his debts in one way or another. Such is the only conclusion that can be drawn from an examination of the fourteenth-century cases. See EHRLICH, PROCEEDINGS AGAINST THE CROWN, Oxford Studies in Social and Legal History VI, 120; POLLOCK AND MAITLAND 515; HOLDSWORTH IX, 11. As regards foreign merchants, their position was in this respect the same as that of the king's subjects. Indeed, it may actually have been better because of the close and friendly business relationship between the foreign merchants and the king. It is true that later some doubts arose whether aliens could, or could not, sue at common law; this, however, did not affect their right in the fourteenth century to address themselves to the king, to the council, or to the chancery either to recover a debt from the Crown or, indeed, for the redress of any other wrong. See HOLDSWORTH *loc.cit.*, 94–95; POLLOCK AND MAITLAND 464–467; Brodhurst, *The Merchants of the Staple*, SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 16 *et seq.* The repudiation of the king's debt to the Florentine bankers took place in January 1345. Edward III owed the leading Florentine houses, the Bardi and the Peruzzi, 1,500,000 gold florins (£500,000) so that they were now reduced to bankruptcy —"a catastrophe which plunged all Florence in distress." See SCHANZ, ENGLISCHE HANDELSPOLITIK (1881) I, 113, and authorities there cited; RAMSAY, A HISTORY OF THE REVENUES OF THE KINGS OF ENGLAND (1925) II, 189.

131. In this connection it must be kept in mind, however, that the guaranties of legal security and redress obtainable against the state in the administrative tribunals are in no way less effective than those obtainable against private persons in the civil courts. The former are as truly courts as the latter, and the Council of State is looking upon its functions as judicial ones no less than the Court of Cassation. Cf. OGG AND ZINK, MODERN FOREIGN GOVERNMENTS (1949) 583.

132. While no such incident could be verified for the reign of King Frederick William I (1713–1740), Margrave Johann is reported to have stated, in a "recess" concluded with the estates in 1552, that "in contravention to existing usage, some

have been so impudent against our judgments as to appeal to he Imperial Chamber Court and thus to tie our hands with the result that quite often one family completely squeezes out the other with such chicaneries." Hence, anyone who should henceforth dare to make such an appeal should be fined 200 fl. and lose his cause. (STÖLZEL, BRANDENBURG-PREUSSENS RECHTSVERWALTUNG (1888) I, 214.) On the Imperial Chamber Court, see *infra*, sec. vi, n. 51.

133. See 2 MOMMSEN 461 *et seq.*; also WENGER 56.

134. *Fiscus Caesaris* was, in he Principate, the public treasury in so far as it was managed by the emperor; as such it was distinguished from the emperor's private assets (*res privata*) and the special crown domains (*patrimonium Caesaris*); cf. 2 MOMMSEN 998; MITTEIS 347, VASSALLI, CONCETTO E NATURA DEL FISCO (1908); ROSTOVTZEV, 55, 172, 179, 186, 324, 326, 343, 357. On the fisc in the modern German system, see *supra* n. 129.

135. See *supra*, n. 102.

136. *Auflage* (Germ.)—Institution of German law practically amounting to a trust without a beneficiary; it can be used to charge the beneficiary of a testamentary disposition with a burden to be discharged for a charitable purpose: cf. German Civil Code, § 1940.

137. In accordance with the great concern for the care of the soul after death, it was a widespread practice to insure by contract the performance of sacrifices after death. "If for this purpose [a person] made over part of his alienable estate to a priest, the law allowed him to attach to the grant a condition of forfeiture valid in perpetuity. Thus as soon as the priest or his successor in office ceased to offer up the stipulated sacrifices he was to be deprived by the public authorities of the property which should then be given to another." To this description of the Egyptian transaction, E. Seidl (*Law, Egyptian*, 9 ENCYC. SOC. SCI. 209, 210) adds: "Whether there can be seen in such and similar trusts of proper y beginnings of the incorporated foundation is, however, still doubtful."

138. 2 GIERKE, GENOSSENSCHAFTSRECHT 526,962.

139. On the following, see POLLOCK AND MAITLAND I, 480; R. SOHM, KIRCHENRECHT (1892) 75; U. STUTZ, DIE EIGENKIRCHE (1895); GESCHICHTE DES KIRCHLICHEN BENEFIZIALWESENS (1895); art. *Eigenkirche* in REALENZYKLOPÄDIE FÜR PROTEST. THEOLOGIE, and art. *Kirchenrecht* in 3 HOLTZENDORFF-KOHLER, ENZYKLOPÄDIE DER RECHTSWISSENSCHAFT (1914) 301; WERMINGHOFF, VERFASSUNGSGESCHICHTE DER DEUTSCHEN KIRCHE IM MITTELALTER (1913); also Torres, M., *El órigen del sistema de iglesias proprias* (1928), 5 ANUARIO DE HISTORIA DEL DERECHO ESPAÑOL 83; also LESNE, HISTOIRE DE LA PROPRIÉTÉ ECCLESIASTIQUE EN FRANCE (1910/28/36).

140. Cf. v. SCHWERIN, GRUNDZÜGE DER DEUTSCHEN RECHTSGESCHICHTE (2nd ed. 1941), §§ 30, 54, and literature stated there.

141. See 2 GIERKE, GENOSSENSCHAFTSRECHT 958.

142. See *supra* n. 112; also JÖRS AND KUNKEL 74 and literature stated there and at p. 400.

143. MITTEIS I, 348, n. 2.

144. According to Mitteis (*loc. cit. supra* n. 112), juristic personality could not be acquired by private organizations in any way other than by grant through imperial charter. This notion is generally rejected in the recent literature, where it is maintained that it was entirely left to the discretion of the organization itself whether or not it wished to have rights and obligations of its own and distinct from those of its members. "The notion of an express grant of juristic personality was totally alien to Roman law." The term *corpus habere* is said to mean no more

than "to form a club." KUNKEL in JÖRS AND KUNKEL, 75, see also now Bresslau in 1 STUDI RICCOBONO 317.

145. MITTEIS 347, n. 21.

146. About the Hellenic "phratries" and similar voluntary organizations see B. LEIST, 103–175; BONNER AND SMITH 118 n. 3; p. 160; and R. BONNER, ASPECTS OF ATHENIAN DEMOCRACY (1933) 91, 134, 157. These last two works were not yet accessible to Weber. The extensive literature on totemism and totemistic clans is stated in 14 ENCYC. SOC. SCI. 660. Weber seems to have relied primarily on W. WUNDT'S ELEMENTE DER VÖLKERPSYCHOLOGIE (1912) tr. by Schaub, 1916), c. II.

147. See Mommsen, *Zur Lehre von den römischen Korporationen* (1904), 25 SAV. Z. ROM. 45; also his DE COLLEGIIS ET SODALITIBUS ROMANORUM (1843); Ugo COLI, COLLEGIA E SODALITATES (1913); KARLOWA II, 59.

148. See MITTEIS 391; KARLOWA II, 62.

149. For a survey of the numerous kinds of guilds, cult societies, funeral societies, social clubs, etc., in Rome, see KORNEMANN, 4 PAULY-WISSOWA 381. See also MITTEIS I, 390, whose attempted distinction between organizations of public and of purely private character is being questioned by KUNKEL (JÖRS AND KUNKEL 75, n. 4).

150. On the *collegium mercatorum* (later called *mercuriales*) see MITTEIS 392. The legendary date of foundation is 495 B.C.

151. Cf. MITTEIS 393.

152. *Ager compascuus* and *arbitria*—see WEBER, AGRARGESCHICHTE 56, 120.

153. MITTEIS 393; also E. Szanto, *Die griechischen Phylen*, (1906) AUSGEWÄHLTE ABHANDLUNGEN 216.

154. See J. HATSCHEK, ENGLISCHE VERFASSUNGSGESCHICHTE (1913) 87/88.

155. WEBER, GENERAL ECONOMIC HISTORY 178.

155a. See *supra*, Part Two, ch. III, n. 3.

156. The different needs as to liability are neatly accommodated by the German Law on Co-operatives (*Genossenschaftsgesetz*) of May 1, 1889 (RGBl. 55), under which a cooperative may be established either with limited or unlimited liability of the members, and in the latter case either with or without a direct right of action of the c editors against the individual members.

157. What is meant are such state institutions as public insurance funds and, quite particularly, the institutions of the German system of social security (public funds for sickness, old age, unemployment, and industrial accident insurance).

158. Maitland, "Introduction" to GIERKE, POLITICAL THEORY OF THE MIDDLE AGES (1900).

Basic for the history of juristic personality in England are MAITLAND'S STUDIES, referred to *supra* n. 112, and POLLOCK AND MAITLAND, Bk. II. ch. 2, §§ 12, 13; for additional recent literature, see the note on p. 239 of the 1936 ed. of MAITLAND'S SELECTED ESSAYS (ed. by Hazeltine, Lapsley, and Winfield).

159. MAITLAND, *loc. cit.* supra; also HATSCHEK, *op. cit.* (1913); HATSCHEK vol. I.

160. GIERKE, GENOSSENSCHAFTSRECHT II, 43–46, 557.

161. On the "corporation sole" see 3 MAITLAND, PAPERS (1911) 210.

162. See BLACKSTONE I, 469; HOLDSWORTH IV, 202 *et seq.*

163. HATSCHEK I, 75.

164. On "Zweckvermögen" see MAITLAND, PAPERS III, 359, repr. in SELECTED ESSAYS 179, and German li erature cited in the latter at p. 180, n. 2.

165. For the validity of a testamentary disposition it was essential in Rome that the testator should appoint one or more persons as heir (*heres*) or heirs, i.e.,

persons to whom the estate would pass in its entirety and who would become personally liable for the debts of the testator. Provided there was a valid appointment of an heir or heirs, the testator could also make special provision for legatees. He could either provide that a specific asset of the estate should pass directly to the legatee (*legatum per vindicationem*) or that the legatee should be entitled to claim from the heir or heirs the delivery of a specific object or the payment of a sum of money or some other act of performance (*legatum per damnationem*). In both cases it was necessary for the testator to comply with certain rigidly fixed formalities (presence of five witnesses and a *libripens*) and the validity of the legacy was hedged in by a variety of highly formalistic rules. In the later republican period it thus became usual to request the heir or some other person by formless precatory words (*verbis precativis*) to make a payment to a third person or to give him some specific object. Such a request, which would frequently be stated in a formless letter (*codicillum*), could only be charged upon the conscience (*fidei commissum*) of the person concerned, but would be unenforceable legally. For certain special kinds of *fidei commissa* Augustus provided enforcement, although not in the regular procedure of the *praetor* but in the administrative *cognitio* of the consuls. Under his successors this way of enforcement was broadened until finally in the law of Justinian *legatum* and *fidei commissum* were fused into one institution of regular law. Cf. BUCKLAND; SOHM, INSTITUTIONES (ed. 1949) 634.

166. POLLOCK AND MAITLAND, Bk. II, c. III, § 7, esp. p. 620.

167. On the laws of mortmain, see Hazeltine in 11 ENCYC. SOC. SCI. 40 and RHEINSTEIN, DECEDENTS' ESTATES 399.

168. On the history of *ultra vires*, see HOLDSWORTH IX, 59.

169. Legists—the late medieval scholars of temporal (Roman) law as distinguished from the scholars of the ecclesiastical law, the canonists.

170. On the development of the corporation in the periods of mercantilism and early liberalism, see LEHMANN, *op. cit. supra* n. 121; W. R. SCOTT, CONSTITUTION AND FINANCE OF ENGLISH, SCOTTISH, AND IRISH JOINT-STOCK COMPANIES TO 1720 (1910–1912); J. COHN, DIE AKTIENGESELLSCHAFT (1921); J. S. Davis, ESSAYS IN THE EARLIER HISTORY OF AMERICAN CORPORATIONS (1917).

171. On the juristic person (*personne morale*) in modern French law, see MAITLAND, PAPERS III, 312, repr. in SEL. ESS. 230, and literature listed there at p. 237.

On juristic persons in present laws generally, see Kunkel, *Juristische Personen* (1933), 4 RECHTSVERGLEICHENDES HANDWÖRTERBUCH 560.

172. Cf. BLACKSTONE I, 123. "Persons also are divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us; artificial are such as created and devised by human laws for the purposes of society and government, which are called corporations or *bodies politic*." Cf. also Bk. I, c. XVIII, where Blackstone says of corporations, on p. 468: "The honour of originally inventing these political constitutions entirely belongs to the Romans."

173. On the history of the Bank of England, see ANDRÉADÈS, HISTORY OF THE BANK OF ENGLAND (tr. by Meredith, 1909).

174. On modern law of business corporations, see the world-wide critical survey by W. HALLSTEIN, DIE AKTIENRECHTE DER GEGENWART (1931).

175. The trustees whom a "friendly society" is required to have by the Friendly Societies Act, 1896, s. 25 (1), and who are the persons to sue or be sued, *ibid.* s. 94 (1), are, in fact, regular officers of the society.

176. The authorization may be made generally by the rules of the club; cf. 3 ENCYC. LAWS OF ENGL. (3rd ed.) 221.

177. In nineteenth-century Germany the division of labor between the historians of Roman and German law developed into an emotionally affected controversy of political significance. To the Germanists the Roman law, by which the legal system of Germany had been deeply affected since its reception in the fifteenth century, appeared as the expression of a rigid, cold-hearted, and egoistic individualism, while Germanic law, of which English law was regarded as just one branch among others, was extolled as the embodiment of a warm-hearted spirit of folk community. Among the principal representatives of this attitude was as great a scholar as Gierke, to whom the richness of forms of the German *Genossenschaft* (sodality) appeared as one of the most beautiful expressions of the peculiar spirit of Germanic neighborliness, comradeship, and creativeness. In presenting the total body of medieval German private law in his DEUTSCHES PRIVATRECHT, he hoped to help re-Germanize the law of the country at the time when the new German Civil Code was just to take effect. The draft of this Code, Gierke had passionately attacked because of its alleged Romanism. The alleged contrast between the warm-hearted, "social" German and the cold and egoistic Roman law became a stock argument of those political groups which tried to stem the tide of modern capitalism and to preserve other, more patriarchic patterns of social structure, or to create a "new," romantically conceived community of socialist or racist pattern or of the kind vaguely felt by the enthusiasts of the German Youth movement. The National-Socialist party, in which all these streams converged, increased the odiousness of the Roman law by labeling it as being in some unspecified way a product of the Jewish mind. The substitution of a new, truly German law for Roman law was thus established as a basic postulate in Article 19 of the Party Platform (see HITLER, MEIN KAMPF, New York: Reynal and Hitchcock, 1940, pp. 686, 690). Under the National-Socialist government, the newly established Academy of German Law initiated efforts to draft a new German Folk Code (*Deutsches Volksgesetzbuch*). The few parts which could be prepared before energies were diverted into other channels by the war indicate that the new law, if it could have been completed, might have constituted a well-drafted code likely to serve well the needs of modern life. It is difficult to see, however, in what respects it could have been of any peculiarly "German" character.

178. These ideas of Weber's are developed in his GENERAL ECONOMIC HISTORY. About the Russian *Mir*, cf. pp. 17–21; about Oriental laws, cf. p. 57; and about Hindu villages, cf. pp. 22–23; literature is stated on pp. 371/372. About compulsory organizations of craftsmen, see p. 136 and literature stated on p. 375.

179. See GIERKE, GENOSSENSCHAFTSRECHT II, 300ff, 457ff, 114, 93.

180. Cf. AMIRA 27; PLANITZ 188, with further literature.

181. See GIERKE, GENOSSENSCHAFTSRECHT II, 456.

182. Cf. A. Voigt, *Wirtschaft und Recht*, 2 Z. F. SOZIALWISSENSCHAFT (1911), 9–12, 99–108, 177–182, 238–249, 311–322, 387–397, 438–456; the same, *Die wirtschaftlichen Güter als Rechte*, 4 ARCHIV F. RECHTS- U. WIRTSCHAFTSPHILOSOPHIE (1913), 304–316.

183. "Coactus voluit" (it is his wish, although coerced)—Romanist phrase to describe the situation of an individual who has engaged in a legal transaction under the influence of coercion, in contrast to the situation in which a person is used as the mere physical tool of another, for instance, where the latter forcibly grabs the former's hand and moves it so as to go through the physical motion of writing a signature. Cf. *supra*, Part Two, ch. I:4:(5).

iii

Emergence and Creation of Legal Norms

1. *The Emergence of New Legal Norms—Theories of Customary Law Insufficient as Explanations*

How do new legal rules arise? At the present time, they usually arise by way of legislation, i.e., conscious human lawmaking in conformity with the formal constitutional requirements, be they customary or "made," of a given political society. Obviously, this kind of lawmaking is not aboriginal; it is not the normal one even in economically or socially complex and advanced societies. In England, the "common law" is regarded as the very opposite of "made" law. In Germany, non-enacted law is usually called "customary law." But the concept of "customary law" is relatively modern; in Rome it did not emerge before the very late period; in Germany it resulted from Civilian doctrine. Of such academic origin was especially that theory according to which custom, in order to be law, must be actually observed, commonly believed to be binding, and amenable to rational treatment.[1] All the modern definitions, too, are but theoretical constructs. For purposes of legal dogmatics, the concept of customary law is still indispensable, however, provided it is used in such refined ways as those formulated by Zitelmann or Gierke.[2] Otherwise we would have to confine our concept of law to statute law on the one side and judge-made law on the other. In my judgment, the violent struggle against the concept of customary law which the legal sociologists have carried on, especially Lambert and Ehrlich, is not only devoid of any foundation but also represents a confusion between the legal and sociological methods of analysis.[3]

However, matters are completely different with regard to our problem, viz., that of discovering empirical processes in which nonstatutory norms arise as valid customary law. On that problem the traditional doctrines tell us indeed little if anything. As a matter of fact, they are even incorrect where they purport to explain the actual development of law in the past, particularly in periods in which there was little or no enacted law. It is, of course, true that these doctrines find some support in late Roman as well as medieval conceptions, both continental and English, about the meaning and the presuppositions of *consuetudo* as a source of law.[4] There, however, the problem was that of finding an adjustment

between a body of rational law claiming universal validity and a multitude of actually prevailing systems of laws of locally or personally limited application. In the late Roman Empire the conflict was between the imperial law and the laws of the peoples of the provinces;[5] in England, between the law of the land (*lex terrae*), i.e., the Common Law, and the local laws;[6] on the Continent it was between the "received" Roman law and the indigenous bodies of law.[7] Only the various particularistic bodies of law were classified by the jurists as "customary law," and in order to give legal recognition to customary law the jurists devised certain tests of validity which customary law had to fulfill. This was a necessary step in view of the fact that the universal law claimed an exclusive applicability. But it would not have occurred to anyone to classify as customary law the English Common Law, which certainly was not statute law. Similarly, the definition of the Islamic *ijmā'* as the *tacitus consensus omnium*[8] is completely unconnected with "customary law" precisely because the *ijmā'* purports to be "sacred" law.

2. *The Role of Party Practices in the Emergence and Development of Legal Norms*

Theoretically, the origin of legal norms might, as we have already seen, be thought of most simply in the following way: The psychological "adjustment" arising from habituation to an action causes conduct that in the beginning constituted plain habit later to be experienced as binding; then, with the awareness of the diffusion of such conduct among a plurality of individuals, it comes to be incorporated as "consensus" into people's semi- or wholly conscious "expectations" as to the meaningfully corresponding conduct of others. Finally these "consensual understandings" acquire the guaranty of coercive enforcement by which they are distinguished from mere "conventions." Even on this purely hypothetical construction there arises the question of how anything could ever change in this inert mass of canonized custom which, just because it is considered as binding, seems as though it could never give birth to anything new. The Historical School of Jurisprudence tended to accept the hypothesis that evolutionary impulses of a "folk spirit" are produced by a hypostatized supra-individual organic entity.[9] Karl Knies, e.g., inclined toward this view.[10] Scientifically, however, this conception leads nowhere. Of course, empirically valid rules of conduct, including legal rules, have at all times emerged, and still emerge today, unconsciously, i.e., without being regarded by the participants as newly created. Such unconscious emergence has occurred primarily in the form

of unperceived changes in meaning; it takes place through the belief that a factually new situation actually presents no new elements of any relevance for legal evaluation. Another form of "unconscious" emergence is represented by the application of what actually is new law to old or somewhat different new situations with the conviction that the law so applied has always obtained and has always been applied in that manner. Nonetheless, there also exists a large class of cases in which both the situation as well as the rule applied are felt to be "new," although in different degrees and senses.

What is the source of such innovation? One may answer that it is caused by changes in the external conditions of social life which carry in their wake modifications of the empirically prevailing "consensual understandings." But the mere *change of external conditions* is neither sufficient nor necessary to explain the changes in the "consensual understandings." The really decisive element has always been *a new line of conduct* which then results either in a change of the meaning of the existing rules of law or in the creation of new rules of law. Several kinds of persons participate in these transformations. First we should mention those individuals who are interested in some concrete action. Such an individual may change his behavior, especially his social actions, either to protect his interests under new external conditions or simply to promote them more effectively under existing conditions. As a result, there arise "new" consensual understandings and sometimes new forms of rational association with substantively new meanings; these, in turn, generate the rise of new types of customary behavior.

It may also be, however, that, without any such reorientation of behavior by individuals, the total structure of social action changes in response to changes in external conditions. Of several kinds of action, all may have been well suited to existing conditions; but, when the conditions change one may turn out to be better suited to serve the economic or social interests of the parties involved; in the process of selection it alone survives and ultimately becomes the one used by all so that one cannot well point out any single individual who would have "changed" his conduct. In its pure form, such a situation may be a theoretical construct, but something of the kind does actually occur in the selective process which operates between ethnic or religious groups which cling tenaciously to their own respective usages. More frequent, however, is the injection of a new content into social actions and rational associations as a result of individual invention and its subsequent spread through imitation and selection. Not merely in modern times has this latter situation been of greatest significance as a source of economic reorientation, but in all systems in which the mode of life has reached at

least a measure of rationalization. The parties to the new arrangements are frequently unconcerned about the fact that their respective positions are insecure in the sense of being legally unenforceable. They regard legal enforceability by the state as either unnecessary or as self-evident; even more frequently do they simply rely upon the self-interest or the loyalty of their partners combined with the weight of convention. Prior to the existence of any coercive machinery, and prior even to the regulated enforcement of norms through the sib members' duty to participate in vengeance, the function later fulfilled by the "legal" guarantee of a norm was undoubtedly performed by the general convention that the person who was admittedly "in the right" could find others who would help him against an offender; and, where some special guaranty appeared desirable to the interested parties, magical self-malediction, i.e., the oath, largely superseded even at an advanced historical stage all other forms of guaranty, including an existing guaranty of legal coercion. In most periods, the preponderant part of the consensual order, including that of economic matters, has operated in this way and without concern for the availability of the legal coercive power of the state or of any coercive enforcement at all. Such an institution, however, as the Yugoslav *zadruga*[11] (household community), which is so often cited as evidence of the dispensability of legal coercion, actually dispensed only with the coercive legal power of the state, while during the period of its universal diffusion it undoubtedly enjoyed effective protection through the coercive power of the village authorities. Such forms of consensual action, once they have become firmly embedded in usage, may continue to exist for centuries without any recourse to the coercive power of the state. Although the *zadruga* was not recognized by, and was even contrary to many of the rules of, official Austrian law, it still dominated the life of the peasantry. But such instances should not be regarded as normal and should not be used as a basis for general conclusions.

Where several religiously legitimated legal systems coexist side by side on a completely equal footing, and with freedom of choice between them for the individuals, the fact that one of them is supported not only by the religious sanction but also by the coercive power of the state may well decide the rivalry between them, even if state and economic life are dominated by traditionalism. Thus, in Islam the same status is officially enjoyed by all the four orthodox schools of law.[12] Their application to the individuals is determined by the principle of personality in much the same way in which the application of the several tribal laws was determined in the Frankish empire.[13] At the University of Cairo[14] all four schools are represented. Nevertheless, the fact that

the Hanefite system was adopted by the Osmanic sultans and that, in consequence, its rules were enjoying the sanction of coercive enforcement by the secular officialdom and the courts,[15] condemned to a slow death the Malekite system, by which that support was once enjoyed in the past, as well as the other two law sects; and this development has taken its course despite the complete absence of any other negative factors. In business affairs proper, that is, in the contracts of the market, the interested parties' concern for the availability of the coercive power of the state is considerable. In this field, the development of new forms of association has taken place, and still does so through exact estimates of the probability of enforcement by the courts as organs of the political authority. The contracts to be concluded are being adapted to this estimate and the invention of new contractual forms proceeds by taking these estimates into account.

While changes in the meaning of the prevailing law are thus initiated by the parties or their professional counselors, they are consciously and rationally adapted to the expected reaction of the judiciary. As a matter of fact, this kind of activity, the *cavere* of the Romans,[16] constitutes the very oldest type of activity performed by "professional," rationally working lawyers. In a developing market economy, the calculability of the functioning of the coercive machinery constitutes the technical prerequisite as well as one of the incentives for the inventive genius of the cautelary jurists (*Kautelarjuristen*), whom we find as an autonomous element in legal innovation resulting from private initiative everywhere, but most highly developed and most clearly perceptible in Roman and English law.[17]

On the other hand, the spread of consensual and rational agreements of a certain type naturally exercises a marked influence upon the probability of their coercive enforcement by the law. While under normal circumstances only the unique case lacks the guaranty of enforcement, established custom and type agreement, once they enjoy universal diffusion, cannot be persistently ignored except under the compelling necessity of certain formal considerations or because of the intervention of authoritarian powers, or where the agencies of legal coercion have no contact with the life of business as is the case where they are imposed by an ethnically or politically alien authority, or where, in consequence of extreme vocational specialization, the organs of legal coercion have become far removed from private business as occasionally happens under conditions of sharp social differentiation. The intended meaning of an agreement may be in dispute or its use may be an as yet unstabilized innovation. In such situations the judge, as we shall call the agency of legal coercion *a potiori*, is a second autonomous authority. But even in

more normal cases the judge is doing more than merely placing his seal upon norms which would already have been binding by consensual understanding or agreement. His decision of individual cases always produces consequences which, acting beyond the scope of the case, influence the selection of those rules which are to survive as law. We shall see that the sources of "judicial" decision are not at first constituted by general "norms of decision" that would simply be "applied" to concrete cases, except where the decision relates to certain formal questions preliminary to the decision of the case itself. The situation is the very opposite: in so far as the judge allows the coercive guaranty to enter in a particular case for ever so concrete reasons, he creates, at least under certain circumstances, the empirical validity of a general norm as "law," simply because his maxim acquires significance beyond the particular case.

3. *From Irrational Adjudication to the Emergence of Judge-Made Law*

The phenomenon just described is in no way aboriginal or universal. It certainly does not exist at all in a primitive decision arrived at through the magical means of legal revelation. Indeed in all other adjudication which is not yet formally rationalized in a juristic way, even where it has passed beyond the stage of the ordeal, the irrationality of the individual case is still significant. No general "legal norm" is applied, nor does the maxim of the concrete decision, provided it exists and is perceived at all, obtain as a norm of decision in future cases. In the "suras" of the Koran, Mohammed repeatedly rejects earlier directives of his own, irrespective of their divine origin, and even Jehovah "regrets" some of his decisions, including some of a legal character. Through an oracle, Jehovah ordained the daughters' right of inheritance (Num. 27), but upon remonstration by the interested parties, the oracular pronouncement was corrected (Num. 36). Thus even a *Weistum*[18] of a general character is unstable, and where the individual case is decided by drawing lots (as among the Jews by the *Urim* and *Thummim*), combat, or some other ordeal, or by concrete oracular pronouncement, we cannot, of course, find any "rule-orientation" in a decision either in the sense of rule application or of rule creation. The decisions of lay judges, too, require a long development and much travail to reach the idea that they represent "norms" going beyond the individual case; this has been shown, for instance, by the investigations of Vladimirski-Budanov.[19] As a matter of fact, the greater the degree to which the

decision is a concern of "laymen," the less it proceeds upon purely objective lines and the more it takes into account the persons involved and the concrete situation. A certain measure of stabilization and stereotyping in the direction of the formation of norms emerges inevitably, however, as soon as the decision becomes the subject matter of discussion, or whenever rational grounds for the decision are being sought or presupposed. In other words, norm-formation occurs wherever there is a weakening of the originally purely oracular character of the decision. But, within certain limits, it was just the magical character of the primitive law of evidence which tended to more rational norm-formation, because it required that the question to be asked had to be precisely formulated.

There also exists another intrinsic element. Obviously, it is difficult, and often impossible, for a judge who wishes to avoid the charge of bias to disregard in a later case a norm which he has consciously used as his maxim in an earlier similar decision, and to deny his power of enforcement when he has once granted it before. The same considerations hold true for the judges who succeed him. The more stable the tradition, the more the judges will depend on those maxims which guided their predecessors, because it is just then that every decision, regardless of how it came into existence, appears as being derived from the exclusively and persistently correct tradition, as part of it or as its manifestation. It thus becomes a pattern which has, or at least lays claim to, permanent validity. In that sense, the subjective conviction that one is applying only norms already valid is in fact characteristic of every type of adjudication which has outgrown the age of prophecy, and it is in no way peculiarly modern.

New legal norms thus have two primary sources, viz., first, the standardization of certain consensual understandings, especially purposive agreements, which are made with increasing deliberateness by individuals who, aided by professional "counsel," thereby demarcate their respective spheres of interest; and, second, judicial precedent. In this way, for example, most of English common law developed.[29] The extensive participation in the process of juridically experienced and trained experts, who to an ever increasing degree devoted themselves "professionally" to the tasks of "counsel" or judge, has placed the stamp of "lawyers' law" upon the type of law thus created.

There is not excluded, of course, the role played in the development of the law by purely "emotional" factors, such as the so-called "sense of justice." Experience shows, however, that the "sense of justice" is very unstable unless it is firmly guided by the *pragma* of objective or subjective interests. It is, as one can still easily see today, capable of sudden

fluctuations and it cannot be expressed except in a few very general and purely formal maxims.[21] No national legal peculiarities, in particular, can be derived from any differences in the operation of the "sense of justice," at least not as far as present knowledge goes.[22] Being mainly emotional, that "sense" is hardly adequate for the maintenance of a body of stable norms; it rather constitutes one of the diverse sources of irrational adjudication. Only upon this basis can one ask to what extent "popular" attitudes, i.e., attitudes widely diffused among the legal clientele, can prevail against the "lawyers' law" of the professionals (attorneys and judges) who are continuously engaged in the invention of new contracts and in adjudication. The answer to this question depends, as we shall see, upon the type of adjudicative procedure prevailing in a given situation.

4. *Development of New Law Through Imposition from Above*

But aside from the influence and, mostly, the confluence of these factors, innovation in the body of legal rules may also occur through their deliberate imposition *from above*.[23] Of course, this took place at first in ways very different from those we know in our present society. Originally there was a complete absence of the notion that rules of conduct possessing the character of "law," i.e., rules which are guaranteed by "legal coercion," could be intentionally created as "norms." As we have seen, legal decisions did not originally have any normative element at all. Today, we take it for granted that legal decisions constitute the "application" of fixed and stable rules.[24] But where there had emerged the conception that norms were "valid" for behavior and binding in the resolution of disputes, they were at first not conceived as the products, or as even the possible subject matter, of human enactment. Their "legitimacy" rather rested upon the absolute sacredness of certain usages as such, deviation from which would produce either evil magical effects, the restlessness of the spirits, or the wrath of the gods. As "tradition" they were, in theory at least, immutable. They had to be correctly known and interpreted in accordance with established usage, but they could not be created. Their interpretation was the task of those who had known them longest, i.e., the physically oldest persons or the elders of the kinship group, quite frequently the magicians and priests, who, as a result of their specialized knowledge of the magical forces, knew the techniques of intercourse with the supernatural powers.

Nevertheless, new norms have also emerged through explicit imposi-

tion. But this could happen in one way only, viz., through a new charismatic revelation which could assume two forms. In the older it would indicate what was right in an individual case; in the other, the revelation might also point to a general norm for all future similar cases. Such revelation of law constitutes the primeval revolutionary element which undermines the stability of tradition and is the parent of all types of legal "enactment." The revelation could, and indeed often was, revelation in the literal sense; the new norms found their source in the inspiration or impulses, either actual or apparent, of the charismatically qualified person, and without being in any way required by new external conditions. But usually revelation was an artificial process. Various magical devices were used to obtain new rules when a change in economic or social conditions had created novel and unsolved problems. The men who normally used these primitive methods of adapting old rules to new situations were the magicians, the prophets, or the priests of an oracular deity. Of course, the line where interpretation of old tradition slides into the revelation of new norms is unprecise. But the transition must take place once the interpretative wisdom of the priests or elders proves inadequate. A similar need may also arise for the determination of disputed facts.

What is now of interest are the ways in which these modes of inventing, finding, or creating law affect its formal characteristics. The presence of the magic element in the settlement of disputes and in the creation of new norms results in the rigorous *formalism* so peculiar to all primitive legal procedure. For, unless the relevant question has been stated in the formally correct manner, the magical technique cannot provide the right answer. Furthermore, questions of right or wrong cannot be settled by any magical method indiscriminately or arbitrarily selected; each legal problem has its own technique appropriate to it. We can now understand the fundamental principle characteristic of all primitive procedure once it has become regulated by fixed rules, viz., that even the slightest error by one of the parties in his statement of the ceremonial formula will result in the loss of the remedy or even the entire case, as, for instance, in the Roman procedure by *legis actio* or in early medieval law.[25] The lawsuit, however, was, as we have seen, the oldest type of "legal transaction," because it was based upon a contract, i.e., the contract of composition.[26] Accordingly, we find the corresponding principle in the solemn private transactions of the early Middle Ages as well as in the Roman *negotia stricti juris*.[27] Even the slightest deviation from the magically effective formula renders the whole transaction void. Above all, however, a formalistic "law of evidence" constitutes the beginning of legal formalism in the lawsuit;

such law was not at all to regulate procedural proof in the modern sense. No proof was offered to show the allegation of a particular fact to be either "true" or "false." The issue was rather which party should be allowed or required to address to the magical powers the question of whether he was right and in which of the several ways this might or ought to be done.[28] The formal character of procedure thus stands in sharp contrast to the thoroughly irrational character of the technique of decision. Hence, the "law" that found expression in these decisions was entirely fluid and flexible, unless rigorously traditional norms had come to be generally acknowledged. Logical or rational grounds for a concrete decision were entirely lacking not only where the decision was given by a divine power or found through magical means of proof, but also where it consisted in the verdict of a charismatically qualified sage or, later, by an elder steeped in tradition, or an elder of the kinship group, or an arbitrator selected *ad hoc*, or a permanently elected expounder of the law (*lag saga*),[29] or a judge appointed by a political ruler. The verdict had to state that the particular problem had always been dealt with in the particular way; or it had to state that a divine power had decreed that the problem should be dealt with in that way in the specific case in hand or in all future cases, too. Such also was the nature of that great innovation of King Henry II, which was to become the origin of all civil trial by jury. The *assisa novae disseisinae*,[30] which was granted to the petitioning party by royal writ, replaced in real actions[31] the older magical-irrational modes of proof, i.e., wager of law and combat, by the interrogation of twelve neighbors sworn to tell whatever they knew about the seisin in question. The "jury" emerged when the parties voluntarily or, shortly afterwards, under the pressure of compulsion,[32] agreed in all types of litigation[33] to accept the verdict of twelve jurors rather than to derive the finding of guilt from the extraction of the assize and the old irrational modes of trial.[34] The jury, as it were, thus took the place of the oracle, and indeed it resembles it inasmuch as it does not indicate rational grounds for its decision. There was to be a distribution of functions between presiding "judge" and jury. The popular view which assumes that questions of fact are decided by the jury and questions of law by the judge is clearly wrong. Lawyers esteem the jury system, and particularly the civil jury, precisely because it decides certain concrete issues of "law" without creating "precedents" which might be binding in the future, in other words, because of the very "irrationality" in which a jury decides questions of law.

Indeed, it is this aspect of the civil jury's function which explains the very slow development in English law of certain rules of long-time practical validity to the status of fully recognized rules of law. As the

verdicts intermingled issues of law with questions of fact, it was only to the extent that the judges freed the properly legal from the factual portions of a verdict and articulated the former as legal principles, that these verdicts could become part of the growing body of law. It was in this manner that a major part of English commercial law was formulated by Lord Mansfield in the course of his judicial career. He endowed with the dignity of legal propositions what had hitherto been but the "feeling for law and justice" of the juries when they settled legal problems without distinguishing between law and fact.[35] Incidentally, the jury performed this task quite well, at least when it included experienced businessmen. Similarly, in Roman law the creative function of the "responding jurists" emerged from their giving advice to civil jurors; but in this case the legal problems were analyzed outside the court by an independent and legally competent agency.[36] This in due course produced a tendency to shift the work of the jurors onto the responding jurists and promoted in Rome the extraction of rational propositions of law from vaguely felt ethical maxims, just as in England the temptation to shift the work from the judge to the jury could, and probably often did, produce the opposite effect. Because of the jury, some primitive irrationality of the technique of decision and, therefore, of the law itself, has thus continued to survive in English procedure even up to the present time.[37]

Again, in so far as settled ways of judging typical fact situations have developed from the interaction of private business practices and judicial precedents, they do not possess the rational character of "legal propositions" as evolved by modern legal science. The legally relevant fact situations were distinguished from each other in a thoroughly empirical way in accordance with their objective characteristics rather than in accordance with their meanings as disclosed by formal legal logic. Certain distinctions were made, but only in the context of determining in a particular case which question should be addressed to the god or the charismatic authority, how this question should be put, and upon which of the parties it should be incumbent to apply the appropriate means of proof. As primitive legal coercion had for this purpose become rigorously formal and consistent, it always led to the "conditional judgment."[38] One of the parties was declared to have the right or the duty to furnish proof in a certain way, and success or failure in the case was, explicitly or by implication, declared to depend upon the result of his proof. Although different in many technical respects, the procedural dichotomy of both the praetorian formulary procedure[39] of Rome and the English procedure by writ and jury trial were connected with this basic phenomenon.

The problem of just what question was to be addressed to the magical powers constituted the first stage in the development of technical-legal concepts. But there is as yet no distinction between questions of fact and questions of law; or between objective norms and subjective "claims" of individuals which they guarantee; or between the claim for performance of an obligation and the demand for vengeance for a wrong—since originally everything which could constitute the basis of a suit was a wrong—; or between public and private rights; or between the making and the application of the law. Nor, in spite of what we have said earlier [sec. 1:2–3], is a distinction always made between "law," in the sense of norms which allot "claims" to the individual interested party, and "administration," in the sense of purely technical dispositions which "by reflection" benefit the individual by giving him access to certain opportunities.

Of course, all these distinctions exist in a latent and primitively inarticulate form. For, when seen from our point of view, the different kinds of coercion or of coercive authorities to some extent correspond to these distinctions. Thus the distinction between the religious lynch justice (employed by a community which feels threatened by magical dangers because of the conduct of one of its members) and the composition proceedings between kinship groups corresponds in a certain sense to the present-day distinction between criminal prosecution *ex officio* and civil proceedings initiated by private parties. Likewise we have come to see the original seed bed of "administration" in the arbitration of disputes by the master of the household, unbound by formal restraints or principles; and we distinguished this type of "administration" from the first steps toward an organized "administration of justice" which evolved in disputes between kinship groups by way of the rigorously formal composition procedure and its strict tendency to apply only existing rules. Furthermore, wherever there arose an *imperium* (i.e., an authority whose functions are specifically particularized as distinguished from the unlimited domestic authority), we find the beginnings of the distinction between "legitimate" command and the norms by which it is "legitimated." Both sacred tradition and charisma bestowed upon an individual command either an impersonal or a personal legitimacy, as the case may be, and thus also indicated the limits of their "lawfulness."[40] But since *imperium* conferred upon its holder a specific "legal quality" rather than impersonal jurisdiction, there was for a long time no clear-cut distinction between the legitimate command, the legitimate claim, and the norm by which both are legitimated. Again, what separated immutable tradition from *imperium* was also rather vague. The reason is that the *imperium*-holder made no important decision,

however great the power he might claim, without resorting as nearly as possible to the method of obtaining a revelation of the law.

5. *Approaches to Legislation*

(a) Even within the framework of tradition, the law that is actually applied does not remain stable. As long, at least, as the tradition has not yet fallen into the domain of a group of specially trained "preservers," who are at first usually the magicians and priests developing empirically fixed rules of operation, it will be relatively unstable in wide areas of social life. Valid "law" is what is "applied" as such. The decisions of the African "palavers" have been transmitted over generations and been treated as "valid law."[41] Munzinger reports the same phenomenon as to the Northeast African dooms (*buthas*).[42] "Case law" is the oldest form of changing "customary law." As far as subject matter is concerned, we have seen that, at first, this kind of legal development is limited to the tested devices of the art of magical inquiry. Only as the importance of the magicians declined did tradition acquire that character which it possessed, for example, in the Middle Ages and under which the existence of a legally valid usage could, just like a fact, become the subject matter of proof by the interested party.

(b) The most direct path of development led from the charismatic revelation of new commandments over the *imperium* to the conscious creation of law by compact or imposed enactment. The heads of kinship groups or local chieftains are the earliest parties to such compacts. Where in addition to villages and kinship groups, territorially more inclusive political or other associations come into existence for some political or economic reason, their affairs were managed through the regular or *ad hoc* meetings of the authorities just referred to. The compacts at which they arrived were of a purely technical or economic nature, that is, they concerned themselves, according to our notions, with mere "administration" or strictly private settlements. These compacts expanded, however, into the most diverse spheres. The assembled authorities might, in particular, incline toward imputing to their common declarations a particularly high authority for the interpretation of the sacred tradition. Under certain circumstances they might even dare to interfere, through their interpretation, with magically sanctioned norms, for instance, those ordering kinship exogamy. At first this process would be initiated mostly by the charismatically qualified magician or sage presenting the assembly with the revelation of the new principle with which he had been inspired in a state of ecstasy or in a dream; then the

members, acknowledging the charismatic qualification, would accept this revelation and would communicate it to their own groups as a new principle to be observed. However, the boundaries between technical decree, interpretation of tradition by individual decision, and revelation of new rules were vague and the magicians' prestige was unstable. Hence, the creation of law could, as for instance in Australia, be increasingly secularized[43] and revelation could be either completely excluded or applied only as an *ex post facto* legalization of the compacts. As a result, wide areas in which lawmaking was once possible only through revelation become subject to regulation by the simple consensus of the assembled authorities. This notion of "enactment" of law is thus frequently found to be fully developed even among African tribes, although the elders and other *honoratiores* may not always be able to impose upon their fellow tribesmen the new laws upon which they have agreed. Monrad[44] has found, for instance, that on the Guinea Coast the agreements of the *honoratiores* are imposed upon the economically weak by means of fines, but that the new norms are disregarded by the wealthy and the eminent unless they had assented to them—an exact analogy to the behavior of the "great of the realm" in the Middle Ages. On the other hand, the Ahanta and the Dahomey Negroes would, either periodically or incidentally, revise their enacted statutes and decide upon new ones.[45] Such a situation, however, can no longer be called primitive.

(c) As a general rule, enactment of statutes was either entirely nonexistent, or, where it existed, the absence of any distinction between finding and making law usually prevented the emergence of any idea of the legislative act as a general rule to be "applied" by the judge. The doom simply carried the authority of precedent. This type of intermediate stage between the interpretation of an already prevailing law and the creation of new law is still to be found in the German "customals" (*Weistümer*), which are pronouncements regarding either concrete or abstract legal problems, issued by an authority legitimated by either personal charisma or age, knowledge, honorific family status, or official position. It is also exemplified by the pronouncements of the Nordic *lag saga*. These Germanic sources did not distinguish between laws and rights,[46] or between statutory enactment and judicial decision, or between private and public law, or even between administrative decree and normative rule. Depending on the case at hand, they fluctuated from one to the other. Even English parliamentary resolutions retained such an ambiguous character almost up to the threshold of the present. As indicated by the term *assisa*, not only in the Plantagenet era but, at least basically, even well into the seventeenth century, a parliamentary

resolution had the same character as any other doom.[47] Even the king did not regard himself as unconditionally bound by his own *assisae*. By various means Parliament sought to counteract that tendency. The keeping of records and "rolls" of various kinds was meant to serve the purpose of conferring the status of precedent upon those Parliamentary resolutions which had met with royal assent. Consequently, the resolutions of Parliament have always retained, even until today, the character of mere amendments to the existing law, in contrast to the codifying character of the modern continental legislative enactment, which, unless otherwise indicated, always purports to constitute a complete regulation of the subject matter in question. Hence, the principle that old law is completely repealed by new law has not yet been fully accepted in England even today.[48]

(d) That concept of statute which in England was favored by the rationalism of the Puritans and later of the Whigs derives from Roman law, where it had its source in the *ius honorarium*, i.e., in the originally military *imperium* of the magistrate. *Lex rogata* was that decree of the magistrate which had been rendered binding for the citizens by the consent of the citizens in arms and which was thus binding also for the magistrate's successor in office.[49] The original source of the modern concept of statute was, accordingly, Roman military discipline and the peculiar nature of the Roman military community. In medieval continental Europe, Frederick I of Hohenstaufen was the first to utilize the Roman conception of statute,[50] apart from the Carlovingians, to whom it had been of a merely incipient significance.[51] But even the early medieval, particularly English, conception of the statute as an enacted amendment to the law was by no means reached quickly.

(e) Characteristics of the charismatic epoch of lawmaking and lawfinding have persisted to a considerable extent in many of the institutions of the period of rational enactment and application of the law. Remnants still survive even at the present day. As late a writer as Blackstone called the English judge a sort of living oracle;[52] and as a matter of fact, the role played by decision as the indispensable and specific form in which the common law is embodied corresponds to the role of the oracle in ancient law: What was hitherto uncertain, viz., the existence of the particular legal principle, has now, through the decision, become a permanent rule. The decision cannot be disregarded with impunity unless it is obviously "absurd" or "contrary to God's will" and therefore lacking charismatic quality. The only distinction between the genuine oracle and the English precedent is that the oracle does not state rational grounds, but it shares this very feature with the verdict of the jury. Historically, of course, the jurors are not the successors of

the charismatic legal prophets; quite to the contrary, the jury represents a displacement of the irrational means of proof used in adjudication before the folk assembly by the testimony of the neighbors, especially in matters concerning property. In the King's court it is thus a product of princely rationalism. True cases of descent from charismatic declaration of law we can see, on the other hand, in the relationship between the Germanic aldermen (*Schöffen*)[53] and the "judge," and in the institution of the *lag saga* of Nordic law.

6. *The Role of the Law Prophets and of the Folk Justice of the Germanic Assembly*

Of striking importance is a fundamental principle which has had an extraordinary influence upon the development of corporative (*genossenschaftlich*) and estate autonomy in the medieval West.

(a) This principle, which was consistently observed for the political reasons already mentioned, required that the lord of the court or his deputy would not participate in the decision of the case but would only occupy the chair and keep order in the court; the decision was to be arrived at by charismatic "declarers" of the law or, later, by aldermen appointed from the community within which the decision was to stand as law. In certain respects, this principle partakes of the nature of charismatic adjudication. The judge, by whom the court is convoked and held in his official capacity, cannot participate in the lawfinding simply because in the charismatic view his office as such does not confer upon him the charismatic quality of legal wisdom. His task is done when he has brought the parties to the point where they choose composition in preference to vengeance and the peace of the court in preference to self-help, and where they are ready to perform those formalities which both force them to adhere to the trial agreement and, at the same time, constitute the correct and effective way of putting the question to the deity or to the charismatically qualified sages. Originally, these legal sages were men of some general magical qualifications who were called upon in individual cases because of their very charisma; or they were priests, as the Brehons in Ireland[54] or the Druids among the Gauls,[55] or special juridical *honoratiores* acknowledged as such by election as *lag sagas* among the Nordic tribes or as *rachimburgi* among the Franks.[56] The charismatic *lag saga* later became a functionary whose position was legitimated as such by periodic election and eventually by appointment; the *rachimburgi* gave way to the aldermen legitimated as juridical *honoratiores* by royal patent. Yet, the principle still survived

that the law could not be disclosed by the lord himself but only by persons qualified by the possession of charisma. Thanks to his charismatic status, many a Nordic *lag saga* or German alderman was a politically influential spokesman for his district with the sovereign, especially in Sweden.[57] Always, these men were descended from eminent families and quite naturally the office was often hereditary in a family regarded to be charismatically qualified. The *lag saga*, for whom we have historical evidence from the tenth century on, never was a judge. He had nothing to do with the enforcement of any judgment; originally he had no coercive powers at all and only later did he acquire a limited coercive power in Norway. Coercive power, to the extent that it existed in legal matters at all, lay rather in the hands of political officials. From one called upon from case to case to find the law, the *lag saga* developed into a permanent official; and with the growing need for a rational calculability and regularity of the law, he became responsible for stating annually before the assembled community all those rules in accordance with which he would declare or "find" the law from case to case. The purpose was to make these rules known to the whole community but also to keep them alive in the memory of the *lag saga* himself. In spite of certain differences, the similarity with the annual publication of the praetorian edict is considerable. The succeeding *lag saga* was not bound by the *saga* of his predecessor, since, by virtue of his charisma, every *lag saga* could "create" new law. He could, of course, take into account suggestions and resolutions of the popular assembly, but he was not required to do so, and such resolutions were not law until they were received into the *lag saga*. Law could only be revealed; this fundamental principle as well as its implications in regard to the creation and declaration of law must now have become quite obvious. As in the *Lex Thuringorum*, traces of similar institutions can be found in most Germanic legal systems, especially in Frisia (the *âsega*).[58] The "editors" mentioned in the Preamble to the *Lex Salica*[59] probably were such prophets of the law, and we may also reasonably assume that the specific origin of the Frankish *Capitula legibus addenda*[60] is connected with the "nationalization" of such legal prophecy.

(b) Similar developments, or traces of them, can be found everywhere. The primitive method of deciding legal disputes by resorting to an oracle was frequent in civilizations of otherwise highly rationalized political and economic structure as, for instance, Egypt (the oracle of Ammon) or Babylonia.[61] Certainly the practice also contributed to the power of the Hellenic oracles.[62] Similar functions were performed by the legal oracles of the Israelites.[63] Indeed, legal prophecy seems to have been universal. Everywhere the power of the priests rested largely

upon their activities as dispensers of oracles or as the "directors" of the procedure in ordeals. Their powers thus increased considerably with the growing pacification of society due to the increased replacement of vengeance, at first by compulsion and eventually by complaint and trial. In Africa, the significance of irrational means of proof has been greatly reduced by the "chieftain's trial"; nevertheless, the terrifying power of the fetish-priest still rests upon the partial survival of the older practice of the sacred magical trial and ordeal, which was not only held under his supervision but which also allowed him to bring charges of sorcery and thus to deprive of life and property anyone who had incurred his displeasure or that of one who knew how to win him to his side. Even purely secular forms of the administration of justice have under certain conditions retained important traces of the old charismatic methods of adjudication. It is probably correct to regard the Athenian *thesmothetai*[14] as a body of persons who, through a process of formalization, changed from a group of charismatic legal prophets into an elective council of officials. But we cannot say with any certainty to what extent the participation of the Roman *pontifices* in legal matters was originally organized in a way similar to that of other forms of legal prophecy. The principle of separating the formal direction of the lawsuit from the finding of law applied in Rome as well, although the technical details were different from those of Germanic law. As regards the edict of the *praetor* and the *aedilis*, their similarity with the *lag saga* is also evident from the fact that its binding effect upon the individual official himself was preceded by a stage in which the official enjoyed wide discretionary powers. The principle that the *praetor* should be bound by his own edict did not evolve into a rule of law until the imperial period; and we must assume that both the pontifical disclosure of the law as resting upon an esoteric body of technical rules and the praetor's instruction to the *iudex* were at first rather irrational. It is customary to explain the demand of the *plebs* for the codification and publication of the law as a result of their opposition to both an esoteric law and the power of the magistrate.

(c) The separation of lawfinding from law enforcement has often been claimed to be a peculiar trait of German law as well as the source of the special power of the German sodalities (*Genossenschaften*). Actually, however, it is anything but a German peculiarity. The German board of aldermen simply took the place of the old charismatic prophets. The unique feature of German legal development can rather be found in the maintenance of that separation, the way in which it was technically worked out, and its connection with certain other important peculiarities of German law. Of these, one must mention

particularly the continuous importance of the so-called *Umstand.*[65] This was the participation in the process of adjudication by members of the legal community who were not juridical *honoratiores,* whose concurrence by acclamation was indispensable for ratification of the verdict as found by the "lawfinders," and every one of whom could, by way of *Urteilsschelte,* challenge the verdicts proposed.[66] The phenomenon of participating in adjudication by way of concurring acclamation can be found outside the area of Germanic procedure. One is justified in assuming, for instance, that elements of this practice are contained in Homer's description of a trial as depicted upon the shield of Achilles;[67] or in the trial of Jeremiah [Jer. 26:7–24], and elsewhere. The right of every freeman to challenge the decision of the lawfinders, i.e., the so-called *Urteilsschelte,* is a peculiar feature of German law, however. Yet it is by no means necessary to regard it as rooted in immemorial, aboriginal Germanic tradition. It seems rather to be a product of special developments, largely military in nature.

(1) Among the most important factors which secularized the thinking about what should be valid as a norm and furthered its emancipation from magically guaranteed traditions, were war and its uprooting effects. Although the conquering warrior chief could not exercise the *imperium* in important cases without the free consent of the army, it was inevitably very wide. It was in the very nature of the situation that this *imperium* was in the vast majority of cases oriented towards the regulation of conditions which in times of peace could have been regulated only by revealed norms, but which in times of war required that new norms be created by agreed or imposed enactment. The war lord and the army disposed of prisoners, booty, and particularly of conquered land. They thus created new individual rights and, under certain circumstances, new law. On the other hand, the war lord, both in the interest of common security and to prevent breaches of discipline and the instigation of domestic disorder, had to have more comprehensive powers than a "judge" possessed in times of peace. These circumstances would alone have been sufficient to increase the *imperium* at the expense of tradition. But war also disrupts the existing economic and social order, so that it becomes clear to everyone that the things one has been accustomed to are not absolutely sacred. It follows that war and warlike expansion have at all stages of historical development often been connected with a systematic fixation of the law both old and new. Again, the pressing need for security against internal and foreign enemies induces a growing rationalization of lawmaking and lawfinding. Above all, those various social elements by whom legal procedure is guided and presided over, enter into new relationships with each

other. If the political association assumes a permanently military character because of war and preparation for war, the military as such increases its decisive influence over the settlement of disputes between its members and, consequently, upon the development of the law. The prestige of age and, to a certain extent, the prestige of magic tend to decrease. But many different solutions can be found for the problem of how to adjust the various claims for a share in the making of new law of the war lord, of the secular and spiritual guardians of sacred tradition, and of a military community likely to be comparatively free from the restraints of tradition.

From this point of view, the type of military organization is a highly important factor. The Germanic *thing* of the district and also the *gemot* (*Landesgemeinde*) of the total political community were assemblies of the men who were able to bear arms and, consequently, were owners of land. Similarly, the Roman *populus* consisted of the property-holders assembled in their tactical units. During the great upheavals of the migration of the Germanic tribes, the assemblies of the Germanic political communities seem to have assumed, as against the war lord, the right to participate in the creation of new law. Sohm's contention that all enacted law was the King's law is quite improbable.[68] In fact, the bearer of the *imperium* does not seem to have played a predominant role in this kind of lawmaking. Among more sedentary peoples, the power of the charismatic legal sage continued unbroken; among those who were faced with new situations in the course of their warlike wanderings, especially the Franks and the Langobards, the sense of power of the warrior class increased. They claimed and exercised the right of active and decisive participation in the enactment of laws and the formation of judgments.

In early medieval Europe, on the other hand, the Christian Church, by its example of episcopal power, everywhere strongly encouraged the interference of the princes in the administration and enactment of the law. Indeed, the church often instigated this intervention for its own interests as well as in the interests of the ethics it taught. The capitularies of the Frankish kings developed in the same way as the semi-theocratic courts of the itinerant justices.[69] In Russia, very shortly after the introduction of Christianity, the second version of the *Russkaya Pravda* is evidence of the prince's intervention in adjudication and enactment which had been lacking in the first version; the result was the development of a considerable body of new substantive law having its source in the prince.[70] In the Occident, this tendency of the *imperium* clashed with the firm structure of charismatic and corporative adjudication within the military community. By contrast, the Roman

populus could, in accordance with the development of discipline in the hoplite army,[71] only accept or reject what was proposed by the holder of the *imperium*, i.e., apart from legal enactments, nothing but decisions in capital cases brought before it by *provocatio*.[72] In the German *thing* a valid judgment necessarily required the acclamation of the audience (*Umstand*).[73] The Roman *populus*, on the other hand, was at first not concerned with any judgment save its power to rescind, by way of grace, a death sentence rendered by a magistrate. The right of every member of the German *thing* assembly to challenge the decision proposed (*Urteilsschelte*) was due to its lesser degree of military discipline. The charismatic quality of adjudication was not the exclusive possession of a special occupational group, but every member of the *thing* community could at all times express his superior knowledge and attempt to have it prevail over the judgment proposed. Originally, a decision between them could only be arrived at by an ordeal, frequently with penal sanctions for the one whose "false" judgment constituted blasphemy against the divine guardians of the law. In fact, of course, the murmur of approval or disapproval by the community, whose voice was, in this sense, the "voice of God," would always carry considerable weight. The strict discipline of the Romans found expression in the magistrate's exclusive right of guiding the course of the lawsuit as well as in the exclusive right of initiative (*agere cum populo*) of the several magistrates who were competing with each other.

The Germanic dichotomy between lawfinding and law enforcement constitutes one type of separation of powers in the administration of justice; another is represented by the Roman system of concurrent powers of several magistrates entitled to "intercede" against each other and of division of functions in a law suit between magistrate and *iudex*. Separation of powers in the administration of justice was also guaranteed by the necessity of collaboration in various forms among magistrates, juridical *honoratiores*, and the military or political assembly of the community. It was on this basis that the *formalistic* character of the law and its administration was preserved.

(2) Where, however, "official" authorities, that is, the *imperium* of the prince and his officials or the power of the priests as the official guardians of the law, succeeded in eliminating the independent bearers of charismatic legal knowledge on the one side, and the participation of the popular assembly or its representatives on the other, the development of law acquired quite early that theocratic-patrimonialistic character which, as we shall see, produced peculiar consequences for the formal aspects of the law. Although a different course developed where, as for instance in the Hellenic democracies, a politically omnipotent

popular assembly completely displaced the old magisterial and charismatic agents of adjudication and set itself up as the sole and supreme authority in the creation and the finding of the law, the effects upon the formal qualities of the law were similar. We shall speak of "law-finding by the folk assembly" (*dinggenossenschaftliche Rechtsfindung*) whenever the folk assembly, while it participates in adjudication, does not have supreme authority over it but can accept or reject the decision recommended by the charismatic or official possessor of legal knowledge and can influence the decision in some particular way, for instance, through the challenge of the judgment proposed. Illustrations of this situation are the Germanic military community as well as, although in a highly rationally modified way, the military community of Rome. The type is not characterized, however, by the mere fact of the popular assembly participating in adjudication, examples of which occur frequently, e.g., among the Negroes of Togoland[74] or among the Russians of the period of the first pre-Christian version of the *Russkaya Pravda*.[75] In both these situations we can find a small body of "judgment finders"—twelve among the Russians—corresponding to the Germanic council of aldermen. Among the inhabitants of Togoland the members of this body are taken from among the elders of the kinship or neighborhood groups, and we may assume a similar basis more generally for the origin of the council of judgment finders. In the *Russkaya Pravda*, the prince did at first not participate at all; among the Togoland Negroes, however, he presides over the deliberations, and the judgment is arrived at by the joint and secret consultation between him and the elders. In neither case, however, does the participation of the people impart any charismatic character to the process of decision finding. Cases where popular participation does have that character seem to be rare in Africa and elsewhere.

(3) Where the community participates in the form of the *Umstand*, the formal character of the law and of lawfinding is largely preserved because the lawfinding is the product of revelation of the legal sage rather than the whimsical or emotional enunciation of those for whom the law is effective, i.e., those whom it purports to dominate rather than to serve. On the other hand, the sage's charisma, like every other genuine charisma, must "prove" itself by its own persuasive and convincing power. Indirectly, the sense of fairness and the everyday experience of the members of the legal community can thus make themselves felt strongly. *Formally*, the law remains here, too, "lawyers' law," for without specific expert knowledge and skill it cannot assume the form of a rational rule. However, as far as its *content* is concerned, it is at the same time also "popular law."

It is most probable that the origin of the institution of the "legal proverbs" may be ascribed to the epoch of administration of justice by the folk assembly. It should be realized, however, that the folk assembly was not a universal phenomenon, if we use the term in the precise sense of a peculiar variety of several possible ways of dividing power between the authority of legal charisma and ratification by the popular and military community. The specific feature of such legal proverbs is usually a combination of the formal legal norms with a concrete and popular reason, as, for example, in such sayings as these: "Where you have left your faith, there you must seek it again," or "Hand must warrant hand" [cf. sec. i:5, n. 26]. They originate, on the one hand, in the popular character of the law which arises both from the participation of the community and the relatively considerable knowledge which it has of the law. On the other hand, legal proverbs also originated in certain maxims formulated by individuals, who, either as experts or as interested observers, gave thought to the common features of frequently recurring decisions. It is certain that legal prophets must have coined many a maxim in this fashion. In short, legal proverbs are fragmentary legal propositions expressed as slogans.

7. *The Role of the Law Specialists*

Yet, formally elaborated law constituting a complex of maxims consciously applied in decisions has never come into existence without the decisive coöperation of trained specialists. We have already become acquainted with their different categories. The stratum of "practitioners of the law" concerned with adjudication comprises, in addition to the official administrators of justice, the legal *honoratiores*, i.e., the *lag sagas, rachimburgi, Schöffen,* and, occasionally, priests. As the administration of justice requires more and more experience and, ultimately, specialized knowledge, we find as a further category private counselors and attorneys, whose influence in the formation of the law through "legal invention" has often been considerable. The conditions under which this group has developed will be discussed further below [in the next section]. The increased need for specialized legal knowledge created the professional lawyer. This growing demand for experience and specialized knowledge and the consequent stimulus for increasing rationalization of the law have almost always come from increasing significance of commerce and those participating in it. For the solution of the new problems thus created, specialized, i.e., rational, training is an ineluctable requirement. Our interest is centered upon

the ways and consequences of the "rationalization" of the law, that is the development of those juristic qualities which are characteristic of it today. We shall see that a body of law can be rationalized in various ways and by no means necessarily in the direction of the development of its "juristic" qualities. The direction in which these formal qualities develop is, however, conditioned directly by "intrajuristic" conditions: the particular character of the individuals who are in a position to influence by virtue of their profession the ways in which the law is shaped. Only indirectly is this development influenced, however, by general economic and social conditions. The prevailing type of legal education, i.e., the mode of training of the practitioners of the law, has been more important than any other factor.

NOTES

1. The classical formulation of the German Pandectist doctrine of customary law is that by PUCHTA, DAS GEWOHNHEITSRECHT, 2 vols. (1828/37); for a concise modern treatment, see 1 ENNECCERUS, ALLGEMEINER TEIL (1928) 31, 64, 79; see also MAINE (1861), c. i; J. C. GRAY, NATURE AND SOURCES OF LAW (2nd ed. 1927), c. XII; Vinogradoff, *The Problem of Custom*, COLLECTED PAPERS, II, 410; furthermore, ALLEN (5th ed. 1951), cc. i and ii, where the rather different tests of the legal validity of customs in the common law are fully discussed.

2. E. Zitelmann, *Gewohnheitsrecht und Irrtum* (1883), 66 ARCHIV FÜR DIE CIVILISTISCHE PRAXIS, 323; O. GIERKE, PRIVATRECHT, I, 1569.

3. E. LAMBERT, LA FONCTION DU DROIT CIVIL COMPARÉ (1903), 172, 216; EHRLICH, 436; see also GRAY, *op. cit. supra* n. 1, at 297. Both Lambert and Ehrlich argued that the origin of custom was not to be found in VOLKSRECHT but predominantly in JURISTENRECHT. More particularly, their argument (especially Lambert's) was that custom becomes only then established when those who use the custom have become clearly convinced that the courts will not depart from the line of conduct which the judges have laid down and that it is better to adapt oneself to these rules in the same way as one has to adapt himself to the rules laid down by the legislature. This view of custom was meant to drive another nail into the coffin of the Historical School, whose arguments were that custom derived first and foremost from the *consensus utentium* before receiving judicial and legal recognition. Ehrlich was less radical than Lambert, although he too insisted strongly on the creative agency of judge-made law. He distinguished between *Rechtssätze*, i.e., rules for decision, and *Rechtsverhältnisse*, i.e., the legal arrangements actually existing in society, such as property, family, etc. In dealing with *Rechtsverhältnisse* the judge's function might be less original and more restricted, for the judge must always give due attention to the private arrangements or conventions existing in society; but according to Ehrlich, the process of judicial law-making was still clearly discernible.

4. On the medieval doctrines about *consuetudo* as a source of law, see BRIE, LEHRE VOM GEWOHNHEITSRECHT (1899), §§ 12 *et seq.*; ENGELMANN (1938) 81; for England, see POLLOCK AND MAITLAND 183; ALLEN; HOLDSWORTH, III, 167–170.

5. For a discussion of this conflict, see MITTEIS, REICHSRECHT (1891); JOLOWICZ, 66–71.

6. Cf. 1 POLLOCK AND MAITLAND 107, 184, 186, 220, 222; HOLDSWORTH I, 1–20; II, 3–21; 206–207; ALLEN, 86–88.

7. Cf. *supra* n. 4, see also SAVIGNY, GESCHICHTE DES RÖMISCHEN RECHTS IM MITTELALTER (2nd ed. 1850) esp. I, 115, 178.

8. *Ijmā'*—in Mohammedan law that consent of the scholars which has been held necessary to establish law supplementary to the word of the Prophet as expressed in the Koran and his other alleged sayings (*hadith*).

9. On the Historical School, see the full treatment by STONE, 421.

10. K. KNIES, DIE POLITISCHE OEKONOMIE VOM GESCHICHTLICHEN STANDPUNKTE (1883). Cf. also WEBER'S *Roscher und Knies und die logischen Probleme der historischen Nationalökonomie*, SCHMOLLERS JAHRBÜCHER (1903, 1905, 1906), reprinted in *GAzW*, 1–145.

11. *Zadruga* (accent on the first syllable) is the south-Slavic variety of the very widely spread phenomenon of the house community (cf. PEAKE, *Village Community*, 15 ENCYC. SOC. SCI. 253, 256). According to TROYANOVITCH, MANNERS AND CUSTOMS IN SERBIA, ed. Stead, London, 1909, c. xii, it was a large family or clan, organized on a patrilineal basis, dwelling in one large house and holding all its land, livestock, and money in common. These *zadrugas* continued for several generations without division, often including as many as 100 individuals. They were ruled by an elder (*stareshina*), usually the oldest member of the household capable of exerting authority, who apportioned the work among the different members. When a *zadruga* broke up, the stores were divided equally among all the members, but the land among the males only.

The *zadruga* has been regarded as evidence for the Marxist theory of "aboriginal" communal property or as a model for the communist society of the future (S. Marcovic, 10 ENCYC. SOC. SCI. 144). Quite particularly has the *zadruga* been used as the prime illustration for the superfluousness or ineffectiveness of state law as a means of social regulation. This notion seems to derive from the use which Ehrlich made of the investigation of South Slavic law by Bogišić (see Demelic, *Le droit coutumier des Slaves méridionaux d'après les recherches de v. Bogišić*, 6 REV. LÉGISL. ANCIENNE ET MODERNE (1876) 253). The famous passage in Ehrlich (at 371) is as follows:

"Bogišić's investigation revealed that among all the Southern Slavs within the territory within which the Austrian Civil Code is in effect the well-known South Slavic family community, the Sadruga, is in existence; this is altogether unknown to the Civil Code and absolutely irreconcilable with its principles."

This proposition, which has been taken over by Weber, is not tenable, however.

In the former Austro-Hungarian Monarchy the kingdom of Croatia-Slavonia, a semi-autonomous part of Hungary, constituted the area of principal occurrence of the *zadruga*. The Austrian Civil Code of 1811 was introduced there in 1852 (Law of November 29, 1852, Austrian REICHS-GESETZ-BLATT 1852, No. 246). In the course of the implementation of the Code as the law of Croatia-Slavonia, the Decree of the Austrian Minister of Justice of April 18, 1853 (R.G. Bl. 1853, No. 65) provided for the introduction of the Austrian system of registration of land titles. Section 29 of this decree provided expressly that in the case of lands owned by a "house communion" the family as such was to be entered as the owner rather than any single individual. This decree constituted a clear recognition of the *zadruga* by the official law. It continued a tradition which had been established by official Austrian legislation from the beginning of the Austrian rule over the regions of the so-called *Militär-Grenze* ("Military Border Region," i.e.,

the region adjacent to the Turkish border). The *zadruga* is expressly mentioned in the very statute of 1754 by which the *Militär-Grenze* was established (*Militär-Grentz-Recht für das Carlstädter und Varasdiner Generalat*, Part IV, § 37; see also *Grenz-Grundgesetz* of 1807; cf. M. STOPFER, ERLÄUTERUNGEN DER GRUNDGESETZE FÜR DIE CARLSTÄDTER 1, VARASDINER, BANAT, SLAVONISCHE UND CROATISCHE MILITÄRGRENZE [Vienna, 1830]; see also VANICEK, GESCHICHTE DER MILITÄRGRENZE, 4 vols. [1875]; HOSTINEK, DIE K.K. MILITÄRGRENZE, 2 vols. [1861]).

The Basic Law of 1850 (*Kaiserl. Patent v. 7. Mai, 1850, R.G. Bl. 1850, No.* 243) stated expressly that "The patriarchal life of the border population is placed under the protection of the law" (§ 31); in accordance with this maxim an extensive set of provisions was established to clarify the internal structure of the "family houses" and their relation to outsiders (§§ 16, 22, 27, 33–45). By a later Croatian Statute of 1870, the disciplinary powers of the family head and the village authorities over *zadruga* members were again expressly recognized and regulated (cf. Bidermann, *Législation autonome de la Croatie* [1876], 8 REV. DR. INTL. ET LEGISL. COMP. 215, 266). In Austria proper the *zadruga* existed only in the small district of White Carniola. There, too, judicial practice regarded *zadruga* lands as owned, not by individuals, but by the family. Official Austrian, including Croatian-Slavonian, law was thus far from hostile to the *zadruga*. It would also be difficult to see in what respects the *zadruga* would have been incompatible with any of the provisions of the Austrian Civil Code. Like all modern codifications, the Austrian code leaves wide room for private parties to regulate their affairs according to their own wishes. The majority of its rules on contracts are stopgap law (*ius dispositivum*) to be applied only in so far as the parties have failed to make their own arrangements. Its rules on real property and decedents' estates are so formulated that they can easily be adapted to various forms of joint tenancy. It is thus difficult to see how the *zadruga* can be used as an illustration for the ineffectiveness of legal regulation.

For further information on the *zadruga* see MAINE, EARLY LAW 232–282; WEBER, HISTORY (1950) 12, 47; Y. PERITCH, *Opposition between communism and bourgeois democracy as typified in the Serbian Zadruga Family* (1922) 16 ILL. L. REV. 423; S. H. CROSS, *Primitive Civilization of the Eastern Slavs* (1946) 5 AMERICAN SLAVIC AND EAST-EUROPEAN REV. 50; P. E. MOSELEY, *Adaptation for Survival: The Varzic Zadruga* (1942/43) 2 SLAVONIC AND EAST-EUROPEAN REV. 147–170; for recent developments concerning the *zadruga* see M. ISIC, LES PROBLÈMES AGRAIRES EN YOUGOSLAVIE (1926) 32, 48, 319.

12. The four orthodox schools of Islamic jurisprudence are the Hanefite, Shafiite, Malekite, and Hanbalite; see Schacht 8 ENCYC. SOC. SCI. 344, and literature there cited.

13. For the system of "personal laws" in the Frankish empire, see Maitland, *Prologue to a History of English Law* (1907) SELECTED ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 20; see also 1 BRUNNER, 259; SMITH, 115 *et seq.*; K. SCHRÖDER, DIE FRANKEN UND IHR RECHT (1881) 36.

14. The reference is to the school of El-Azhar, Islam's most celebrated center of learning, founded in Cairo in A.D. 988.

15. Weber's reference is to the old Turkey of the time before the Kemalist reforms of the 1920's; cf. VESEY-FITZGERALD, MUHAMMEDAN LAW (1931) 36ff.

16. Traditionally one enumerates three main types of lawyers' activity in ancient Rome: *respondere, agere* and *cavere*. *Respondere* was the exposition of a point of law, especially in the answer to a question addressed to the jurist (*responsa prudentium*); *agere* was the activity on behalf of a client in a court of law; *cavere* meant the drafting of contracts, wills, and other transactions. A distinction

was made between the "jurisconsult" and the "advocate" (orator, rhetor). The latter would act in those courts, especially criminal, in which oratory would be counted on to be helpful. Legal training was neither necessary nor usual for an orator. Cicero's knowledge of the law, for instance, does not seem to have surpassed that of the well-educated citizen and statesman in general. Cf. SCHULTZ, HISTORY; see also the popular account of "how the Roman law factory worked" by WORMSER, THE LAW (New York, 1949), c. ix; for further discussion by Weber, see *infra*, sec. *iv*:3.

17. *Kautelarjuristen*—those lawyers who, like the English conveyancer or the modern American corporation lawyer, are using their skill in drafting instruments and especially in inventing new clauses for the purpose of safeguarding their clients' interests and of preventing future litigation. The term has been used with special reference to the German seventeenth- and eighteenth-century specialists in that art, and also to characterize the early period of Roman legal development (cf. *infra*, ch. XI, n. 5).

18. *Weistum* (pl. *Weistümer*), similar to the costumals or customaries of England, is a collection of legal customs of a particular locality, especially a manor. "As far back as into the Carlovingian period we can trace the practice of an *inquisitio* into existing customs to be made annually by an officer of the manor. The materials so collected were recited every year or, later, reduced to writing and annually read in public. From the manorial communities this custom spread to communities of free peasants and to free villages." (VON SCHWERIN, DEUTSCHE RECHTSGESCHICHTE [2nd ed. 1915], with bibliography).

19. Vladimirski-Budanov, Mikhail Flegontovich, 1838–1916, Russian legal historian; cf. the biographical article on him in 15 ENCYC. SOC. SCI. 271; see his Russian Legal History (OBZOR ISTORII RUSSKAGOPRAVA, 1907) 59, 88.

20. For the latest and most comprehensive presentation of the development of the principle of *stare decisis* in English law, see ALLEN 43, 150ff, 525ff.

21. For recent discussions of the "sense of justice," see E. N. CAHN, THE SENSE OF INJUSTICE (1949); E. RIEZLER, DAS RECHTSGEFÜHL (2nd ed. 1946); HOCHE, DAS RECHTSGEFÜHL IN JUSTIZ UND POLITIK (1932); H. COING, GRUNDZÜGE DER RECHTSPHILOSOPHIE (1950) 48.

22. Weber's remark is directed against those scholars of the historical school of jurisprudence who regarded all law as the emanation of every nation's peculiar "national spirit" (*Volksgeist*), see especially SAVIGNY, VOM BERUF UNSERER ZEIT FÜR GESETZGEBUNG UND RECHTSWISSENSCHAFT (1814), translated by HAYWARD (ON THE VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE, 1831); cf. STONE 421. The theory of the national peculiarity of the sense of justice was taken up by the National-Socialists and used by them as one of the foundations of their legal theory.

23. On the slow development of conscious creation of new law by legislation in England, see ALLEN 354, 365 *et seq.*; S. THORNE, INTRODUCTION TO A DISCOURSE UPON THE EXPOSITION AND UNDERSTANDING OF STATUTES, WITH SIR THOMAS EGERTON'S ADDITIONS (1942).

24. The view expressed here by Weber is typically that of continental legal thinking; for the radically different view of the American realists, see especially JEROME FRANK, LAW AND THE MODERN MIND (1930); for a more realistic description of the American approach, see EDWARD LEVI, INTRODUCTION TO LEGAL REASONING (1949); cf. also STONE 192; and see *infra*, sec. *viii*:2.

25. For the formalistic features of the *legis actio*, see JOLOWICZ 87, 181; WENGER 123; ENGELMANN AND MILLAR 269, 281; 2 JHERING, 496–695. As to formalism in medieval procedure, see Brunner, *Wort und Form im altfranzösischen Prozess* in SITZUNGSBER. DER AKAD. DER WISS. ZU WIEN, PHIL-HIST.

CLASSE LVII (1867), 655; ENGELMANN AND MILLAR 174, 386, 649; O. v. ZALLINGER, WESEN UND URSPRUNG DES FORMALISMUS IM ALTDEUTSCHEN PRIVATRECHT (1898); SCHROEDER, §§ 13, 25, 37, 63. See also *infra*, sec. iv:1 and n. 4 (*fautes volent exploits*).

26. See *supra*, sec. i:5.

27. In classical Roman law a distinction was made between *negotia stricti iuris* and *negotia bonae fidei*. In the former the debtor has to perform exactly as he has promised, no more and no less. The principal example is the formalized promise of the solemn *stipulatio*. In the latter, which are a product of later development, the debtor has to do whatever is required by good faith and fair dealing, especially in view of local or mercantile custom. Cf. SOHM, 367; JÖRS AND KUNKEL 165 (with bibliography); see also SCHULZ, PRINCIPLES 223 *et seq.*

28. Among the historians of the Germanic laws it has become customary to speak of the "right" to offer proof and to contrast it with the modern "burden" of proof. Cf. 2 BRUNNER, RECHTSGESCHICHTE §105; SCHROEDER 84; AMIRA, 130, 161; MAURER, GESCHICHTE DES ALTGERMANISCHEN GERICHTSVERFAHRENS (1824); see also 1 POLLOCK AND MAITLAND 39; 2 HOLDSWORTH 107, 112. In England the right of the defendant in the more archaic forms of action to prove his case by wager of law survived, at least formally, until its official abolition by the statute 3 and 4 William 4 c. 42, Sec. 13 (1833). On proof in archaic procedure in general, see Declareuil, *Preuves judiciaires dans le droit franc* (1898) 22 NOUVELLE REVUE HISTORIQUE DE DROIT 220.

29. "Lag saga" was the recitation of the laws, occasionally in poetic form, at the periodically held popular assemblies of Scandinavia and Iceland. The same word applies to the person by whom the law is thus recited. See BRYCE, 327; see *infra* n. 57.

30. For the Assize of Novel Disseisin, established at the Assize of Clarendon in 1166, see POLLOCK AND MAITLAND 145–147; PLUCKNETT 339–342; cf. also JOÜON DES LONGRAIS, LA SAISINE (1925), and by the same author, *La portée politique des réformes d'Henri* II (1936) REVUE HISTORIQUE DE DROIT 540.

31. The "real actions" were those common law actions which were brought for the recovery of land. They were cumbersome and subject to numerous delays (*essoins*) and became obsolete in the sixteenth century, when the action of ejectment largely took their place. Cf. MAITLAND, FORMS 7; PLUCKNETT 336–337, 354.

32. The form of compulsion referred to is the *peine forte et dure*. This was first imposed by the Statute of Westminster (1275) upon felons who refused to submit to trial by jury. In the sixteenth century, the *peine* became a form of torture: the accused was placed between two boards and weights were piled upon him until he accepted trial by jury or finally succumbed.

33. Compulsion was only used in the case of felonies. Jury trial soon became the normal mode of trial in civil cases. See especially PLUCKNETT 125; BRUNNER, SCHWURGERICHTE (1876); HOLTZENDORFF'S RECHTSLEXICON 559, repr. 1 ABHANDLUNGEN ZUR RECHTSGESCHICHTE (1931) 82.

34. The classical work on the origins of the jury is BRUNNER, ENTSTEHUNG DER SCHWURGERICHTE (1872); for a comprehensive presentation see 1 POLLOCK AND MAITLAND 138; 1 HOLDSWORTH 298; THAYER, THE JURY AND ITS DEVELOPMENT (1892) 5 HARV. L. REV. 249; see also RADIN, 204.

35. On Lord Mansfield, see 12 HOLDSWORTH 464–560; also C. H. S. FIFOOT, LORD MANSFIELD (1936), esp. 82–117.

36. *Infra* sec. iv:3 and n. 39.

37. Cf. in this respect the opinion of Jerome Frank as expressed in LAW AND THE MODERN MIND, c. xvi and App. 5; also in COURTS ON TRIAL (1949), c. viii.

38. The conditional or proof-judgment of early German procedure (i.e., before the reception of Roman law) merely decided which allegations were decisive of the cause, which allegations had therefore to be proved, and which of the parties was to make the proof. Failing proof, judgment went automatically to the other party. In other words, "the legal consequences of such success or failure in the proof needed no express statement: the nature of the proof-judgment was such as to leave not the slightest doubt on this score" (ENGELMANN AND MILLAR 143–144). This type of judgment differed from Roman procedure, where the plaintiff sought to establish conclusively his claim and thus to secure authority to have his claim enforced in case judgment was given in his favor. In the Germanic system, the claim and its enforcement were, as it were, left open, and the defendant, in case he was unsuccessful as against the plaintiff's proof, was bound to give satisfaction not by virtue of the judgment itself but by virtue of his undertaking to accept the results of the proofs which were directed by the court. ENGELMANN AND MILLAR, *ibid.*

In his text, Weber continues as follows: "in close correspondence to our present practice in those cases where one party is charged with swearing a decisory oath." The reference is to Sections 445–463 of the German Code of Civil Procedure in its original version of 1877. Under these provisions the party who has the burden of proof and would otherwise be unable to prove a material fact within the knowledge of the other, could challenge the latter to swear that the former's factual allegation is not true. In such cases the court would render a conditional final judgment to the effect that decision would go to the party challenged if he would swear the oath, but to the challenger if the oath were not sworn. One or the other alternative would take effect immediately depending on whether or not the oath would be sworn. This kind of procedure was abolished by the Law of October 27, 1933 (R.G. Bl. 1933 I 779, 781).

39. The parallel drawn by Weber is first that between the Roman *litis contestatio* on the one hand and the Germanic *Urteilserfüllungsgelöbnis* on the other. The similarity between them is that both constituted, as it were, agreements between the parties to submit to the decision that would be rendered. The second parallel seems to be that between the Roman *litis contestatio* and the Germanic conditional or proof judgment (see n. 38 *supra*), which also existed in England until trial by jury replaced the other modes of proof such as the ordeal and trial by combat.

40. Cf. *infra*, ch. IX:1 and ch. X:3.

41. *Palaver*—"A talk, parley, conference, discussion; chiefly applied to conferences, with much talk, between African or other uncivilized natives, and traders or travellers," 7 OXFORD ENGLISH DICTIONARY (1933) 390; cf. LETOURNEAU, L'ÉVOLUTION JURIDIQUE (1891) 78, 89.

42. W. MÜNZINGER, OSTAFRIKANISCHE STUDEN (1864) 478.

43. See A. ELKIN, THE AUSTRALIAN ABORIGINES (1938) 28–31, 36–37, 102; and literature there cited; SPENCER, THE ARUNTA (1927) I, 11–13.

44. Hans Christian Monrad, *Gemälde der Küste von Guinea und der Einwohner derselben.* Trans. from the Danish by H. E. Wolf, 1824 (describes a journey in 1805–1809). (W)

45. M. J. HERSKOVITS, DAHOMEY, AN ANCIENT WEST AFRICAN KINGDOM (1938) II, 5–16; R. RATTRAY, ASHANTI LAW AND CONSTITUTION (Oxford, 1929); D. WESTERMANN, THE AFRICAN TO-DAY AND TO-MORROW (3rd ed. 1949) 72; E. C. MECK, LAW AND AUTHORITY IN A NIGERIAN TRIBE (1937) 247 *et seq.*

46. In the German language this distinction is obscured by the fact that the same word "Recht" means both "law" and "right."

47. On the slow development of the English "statute" from a specific royal grant or command into an act of legislation in the modern sense, see ALLEN 357; PLUCKNETT, STATUTES AND THEIR INTERPRETATION IN THE FIRST HALF OF THE 14TH CENTURY (1922); THORNE, *op. cit. supra* n. 23; Richardson and Sayles, *The Early Statutes* (1934) 50 L.Q. REV. 201, 540; see also the concise survey in RADIN 327 *et seq.*

48. "Statutes in derogation of the common law are to be interpreted narrowly!"

49. The decree of a Roman magistrate was not binding upon his successor; the *praetor's* edict had thus to be repromulgated whenever a new *praetor* took office. The situation was different, however, where the magistrate had asked for (*rogare*) and obtained the assent of the popular assembly (*comitia*). In that case his act was formally elevated to the rank of a *lex* or, more specifically, a *lex rogata*. It was distinguished from the *lex data*, which was a decree issued by the magistrate alone and without the assent of the popular assembly. It was used mostly for purposes of provincial and local government and of emergency legislation. It was characteristic of the Roman legislative process that the popular assemblies could neither initiate legislation nor discuss it. The draft law was placed before the assembly by the moving magistrate (*rogatio*) and the assembly would only express its assent (*uti rogas*) or its refusal. Cf. 3 MOMMSEN, 310 *et seq.*

50. Frederick I (Barbarossa), Emperor 1152–1190. Whether it can really be said that he was "the first" to utilize the Roman conception of statute is open to doubt. The idea that the Germanic emperors were the successors of the Roman caesars can be found ever since the renewal of the Empire by Charlemagne in A.D. 800; cf. C. DAWSON, THE MAKING OF EUROPE (1935) 214 *et seq.*; P. KOSCHAKER, EUROPA UND DAS RÖMISCHE RECHT (1947) 6–54, and the vast literature cited there.

Frederick I was particularly outspoken in this idea and in his insistence upon Roman law constituting the continuing law of the Empire, in which his own *constitutiones* were to occupy the same position as those of his predecessors of Antiquity. Cf. 1 STOBBE 617.

51. For a concise account of the "written law" in the Frankish Empire see SMITH 124 *et seq.*

52. BLACKSTONE I, 172, 173.

53. As to the *Schöffen* see BRUNNER I, 209; II, 296–303; ENGELMANN AND MILLAR 98 *et seq.*, 144 *et seq.*; SMITH 135, 247, *et seq.*

54. As to the ancient laws of Ireland and the so-called Brehon laws, see MAINE, INSTITUTIONS 9, 24, 279 *et seq.*; J. H. WIGMORE, PANORAMA OF THE WORLD'S LEGAL SYSTEMS (1936) 669–713, and literature cited at 730: E. MacNeill, *Law—Celtic* 9 ENCYC. SOC. SCI. 246, 266 (bibliography).

55. MAINE 662–669; MACNEILL, *loc cit.*

56. BRUNNER, RECHTSGESCHICHTE I, 204, 209; II, 295–300, 302, 472; SMITH, 134; see also Haff, *Der germanische Rechtsprecher* (1948) 66 SAV. Z. GERM. 364.

57. The "law speaker" in Sweden was the *laghmather;* see E. Künssberg, *Germanic Law* 9 ENCYC. SOC. SCI. 237; v. AMIRA; NORDGERMANISCHES OBLIGATIONENRECHT (1882) 5, 15, 20, 143; see also WIGMORE, *op. cit. supra* n. 54, at 818; BRYCE 328, 329, 332; MAURER, VORLESUNGEN ÜBER ALTNORDISCHE RECHTSGESCHICHTE (1907/10) IV, 263 *et seq.*, 280; v. AMIRA, *op. cit.*; R. Schröder, *Gesetzsprecheramt und Priestertum bei den Germanen* (1883) 4 SAV. Z. GERM. 215, and literature there cited; K. Haff, *Der germanische Rechtsprecher als Träger der Kontinuität* (1948) 66 SAV. Z. GERM. 364.

58. The elected *iudex—ôsega—*had to find the appropriate law and to submit

it to the community for approval. BRUNNER I, 205; SMITH 37; see also SCHRÖDER 221. (On the *âsega* in Fiisia and "law speakers" in other German territories of the Carolingian period, cf. also P. Heck, DIE ALTFRIESISCHE GERICHTSVERFASSUNG (Weimar 1894); *id.*, "Die friesische Gerichtsverfassung u. die mittelfriesischen Richtereide," MITT. D. INSTITUTS F. ÖSTERR. GESCHICHTSFORSCHUNG, Suppl. VII (1907), 741ff.; *id.*, ÜBERSETZUNGSPROBLEME IM FRÜHEN MITTELALTER (Tübingen 1931), 36–43 and *passim*.—[Wi])

59. Weber speaks of the Introduction to the "Lex Salica." The older version of the Salic Laws, which alone is prefaced by the Introduction mentioned in the text, is more correctly referred to as the "Pactus legis Salicae." Its text is as follows:

"Between the Franks and their great ones it was agreed and resolved that one should cut down all causes of quarrels in order to preserve the zeal for peace among them. As they surpass all neighboring tribes by the strength of their arms, so they should also surpass them by the authority of their laws. Claims for amends should thus be terminated according to the kinds of dispute. Hence there were chosen from among several men those called Visogast, Salegast, Arogast, and Vidogast, from places on the other side of the Rhine, to wit, Bodoheim, Saleheim, and Vidoheim. They assembled at three gemots, carefully discussed all causes of disputes, and decreed the decisions for every one of them." (Prologue to the "Lex Salica," translated from the Latin text in K. A. ECKHARDT, DIE GESETZE DES MEROWINGERREICHES (1935) 481.

60. *Capitula legibus addenda*—royal acts (*capitula*) amending those popular laws which had been officially compiled, such as the *lex Salica* or the *lex Ribuaria*; cf. BRUNNER I, 543–550; on the Frankish capitularies in general, see POLLOCK AND MAITLAND I, 16.

61. P. CARUS, ORACLE OF YAHVEH (1911) 22–26, 32; S. A. STRONG, ON SOME ORACLES TO ESARHADDON AND ASURBANIPAL (1893).

62. F. W. H. Myers, *Greek Oracles* (in E. ABBOTT, HELLENICA, 1880) 425, 453–465; W. HALLIDAY, GREEK DIVINATION (1913), cc. iv, x; BOUCHÉ-LECLERQ, HISTOIRE DE LA DIVINATION DANS L'ANTIQUITÉ (1879), 4 vols; see esp. III, 147, 149–152, 156–161.

63. See CARUS, *op. cit.* 1–21, 33, 35. For a comparison of Israel and Egypt, *ibid.*, pp. 11–12.

64. The college of *thesmothetai* seems to have been a judicial body in Athens, created for the purpose of relieving the executive magistrates (*archontes*) of some of the burden of their judicial duties. See I BONNER AND SMITH, 85.

65. The *Umstand* are the members of the popular assembly (*thing, gemot*) who surround the judgment place and give or refuse their assent to the judgment proposed.

66. On *Urteilsschelte* see BRUNNER II, 471.

67. This is Homer's famous description in the *Iliad* (Σ497–508); cf. MAINE, 385, and note "S" (by F. POLLOCK) at 405–407; and especially, H. J. Wolff, *The Origin of Judicial Litigation among the Greeks* 4 TRADITIO (1946) 34–49, with bibliography on p. 82.

68. Sohm, *Fränkisches Recht und römisches Recht* (1880) 1 SAV. Z. GERM. 1, 9.

69. Annual visitation of the diocese by the bishop seems to have been an ancient custom in the church. In the Frankish empire this custom seems to have been neglected during the later Merovingian period. It was revived under the Carlovingians in the seventh century, and there was separated from the general visitation a special institution for the discovery and punishment of ecclesiastical crimes, the so-called itinerant court (*Sendgericht*). It was held as an inquest at

which in each parish a group of "mature, honest, and truthful men" (*iuratores*) were required under oath to inform the bishop's itinerant judge of all crimes of which they had knowledge. Cf. 5 HINSCHIUS, SYSTEM DES KATHOLISCHEN KIRCHENRECHTS (1895) 425. On the role of the ecclesiastical *Sendgericht* as a model for the royal inquest and thus for the development of the jury system, see BRUNNER, SCHWURGERICHTE (1876).

70. Weber's assumption of the existence of successive versions of the RUSSKAYA PRAVDA seems to be based upon the writings of Goetz (*Das russische Recht* [1910] 24 Z.F. VGL. RW. 241; [1914] 31 Z.F. VGL. RW. 1) and Kohler (*Die Russkaja Prawda und das altslawische Recht* [1916] 33 Z.F. VGL. RW. 289). Upon these studies doubt has been thrown by the latest investigation (Academy of the U.S.S.R., PRAVDA RUSSKAYA 1940, I, 29, 55), where it is pointed out that the oldest existing manuscript dates from 1282 and that all earlier dates ascribed to later editions have been purely conjectural. Controversy also exists with reference to the nature of the RUSSKAYA PRAVDA. According to KLUCHEVSKY (HISTORY OF RUSSIA, trans. Hogarth [1911], cc. ix and x) the book is neither a princely enactment nor a private law book but a collection of secular customs which was made by the Church to be applied in its courts when they had to exercise general jurisdiction over its nonclerical subjects. For an English translation of the RUSSKAYA PRAVDA see VERNADSKY, MEDIEVAL RUSSIAN LAWS (1947).

71. Hoplite army (Greek): an army composed of heavily armed soldiers. The term is used by Weber as a term of art.

72. *Provocatio*—the right of a Roman citizen convicted of a capital crime to appeal to the people assembled in the *comitia centuriata*. See JOLOWICZ 320 *et seq.*

73. See BRUNNER I, 204; SMITH 38; ENGELMANN AND MILLAR 96.

74. Cf. L. ASMIS, *Die Stammesrechte der Bezirke Misahöhe, Anecho und Lomeland (Schutzgebiet Togo)* (1911) 26 Z.F. VLG. RW. 1.

75. See *supra* n. 70; cf. J. Kohler, *Die Russkaja Pravda und das altslawische Recht* (1916) 33 ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT 289; but see *infra* sec. *vi*:1 and n. 8.

IV

The Legal Honoratiores and the Types of Legal Thought[1]

FOR the development of a professional legal training and, through it, of specifically legal modes of thinking two different lines are possible. The first consists in the empirical training in the law as a craft; the apprentices learn from practitioners more or less in the course of actual legal practice. Under the second possibility law is taught in

special schools, where the emphasis is placed on legal theory and "science," that is, where legal phenomena are given rational and systematic treatment.

1. *Empirical Legal Training: Law as a "Craft"*

A fairly pure illustration of the first type is represented by the guildlike English method of having law taught by the lawyers. During the medieval period a sharp distinction was made between advocate and attorney.[2] The need for an advocate was due to the peculiarities of procedure before the popular assemblies; the attorney emerged when procedure began to be rationalized in the royal courts with their jury trial and the increasing evidentiary importance of the record.[3] In the French procedure, the verbal formalism which grew out of the strict application of the accusatorial principle before the popular assembly, gave rise to the need of an *avant-rulier* (*avant-parlier*). The legal maxim *fautes volent exploits*[4] and the formalistic effect of the words spoken compelled the layman to seek the assistance of an *avant-rulier* or *prolocutor* who, upon the party's request, would be assigned to him by the judge from among the judgment-finders,[5] and who would publicly "speak for," and in the name of, the party the words required for the progress of the case. Among other advantages there was thus conferred upon the litigant, since the formalistic words had not been pronounced by the litigant himself, the advantage that he could "amend" the verbal mistakes that might have been committed.[6] Originally, the advocate stood before the court next to the party litigating. His position was thus quite different from that of the attorney (*avoué, Anwalt, procurator*, solicitor), who assumed the technical tasks of preparing the case and obtaining the evidence. But the attorney could not assume these functions until procedure had undergone a considerable degree of rationalization. Originally an attorney in the modern sense was not possible at all. He could not function as the "representative" of the party until procedural representation had been made possible, as in England and France, by the development of the royal law; as a general rule, an attorney's appointment to such a representative function rested upon special privilege.[7] The advocate was not prevented by his acting for the party from participating in the actual finding of the judgments; indeed, he would not have been able to propose a judgment unless he was one of the judgment-finders. The attorney, however, became exclusively the representative of the party and nothing else. In the

royal courts of England, attorneys were originally recruited, almost without exception, from among those persons who could write, i.e., the clergy, for whom this activity constituted a major source of income.[8] But the preoccupations of ecclesiastical service on the one hand, and the expansion of legal training among the upper classes on the other, resulted not only in the progressive exclusion of the clergy from the legal profession, but also in the organization of the lay lawyers in the four Inns of Court, and in the pronounced movement on their part to monopolize the judicial positions as well as those other official jobs which required legal knowledge; the lawyers indeed succeeded in the course of the 15th and 16th centuries. With the coming to the fore of rational modes of procedure, the old *prolocutores* disappeared. But a new aristocracy of legal *honoratiores* came into being, consisting of counsels, serjeants, and barristers, i.e., of those admitted to represent, and plead for, litigants before the royal courts.[9] Indeed, this new type of lawyer took over many of the characteristics of the old "prolocutors." He was subject to a strict professional etiquette. He refused to have anything to do with the technical services required in the case, and ultimately he lost all personal contact with the party whom he would not even see face to face.[10] The handling of the case lay in the hands of "attorneys" or "solicitors," a stratum of business people, neither organized in guilds nor possessing the legal education provided by the guilds; they were the intermediaries between the party and the "barrister" to prepare the "brief" or *status causae* so that the barrister could present it before the court. The practicing barristers lived together in communal fashion in the corporate and closed guildhouses. The judges were exclusively chosen from among them and continued to share the communal life with them. "Bar" and "bench" were two functions of the corporate and later highly exclusive legal profession; in the Middle Ages its members came largely from the nobility, and admission to the guild was regulated with an ever increasing measure of autonomy. There was a four-year novitiate, connected with instruction at the guild school; the call to the bar conferred the right to plead; for the rest, training was purely practical. The profession insisted on the maintenance of the code of etiquette, especially with regard to the observance of minimum fees, all fees, however, to be paid voluntarily and not to be actionable. The lecture courses in the Inns were only introduced as the result of the competitive struggle with the universities.[11] As soon as the monopoly was achieved, the lectures began to decline, to be ultimately discontinued altogether. Thereafter, training was purely empirical and practical and led, as in the craft guilds, to pronounced specialization.

This kind of legal training naturally produced a formalistic treatment of the law, bound by precedent and analogies drawn from precedent. Not only was systematic and comprehensive treatment of the whole body of the law prevented by the craftlike specialization of the lawyers, but legal practice did not aim at all at a rational system but rather at a practically useful scheme of contracts and actions, oriented towards the interests of clients in typically recurrent situations. The upshot was the emergence of what had been called in Roman law "cautelary jurisprudence," as well as of such practical devices as procedural fictions which facilitated the disposition of new situations upon the pattern of previous instances.[12] From such practices and attitudes no rational system of law could emerge, nor even a rationalization of the law as such, because the concepts thus formed are constructed in relation to concrete events of everyday life, are distinguished from each other by external criteria, and extended in their scope, as new needs arise, by means of the techniques just mentioned. They are not "general concepts" which would be formed by abstraction from concreteness or by logical interpretation of meaning or by generalization and subsumption; nor were these concepts apt to be used in syllogistically applicable norms. In the purely empirical conduct of legal practice and legal training one always moves from the particular to the particular but never tries to move from the particular to general propositions in order to be able subsequently to deduce from them the norms for new particular cases. This reasoning is tied to the word, the word which is turned around and around, interpreted, and stretched in order to adapt it to varying needs, and, to the extent that one has to go beyond, recourse is had to "analogies" or technical fictions.[13]

Once the patterns of contracts and actions, required by the practical needs of interested parties, had been established with sufficient elasticity, the official law could preserve a highly archaic character and survive the greatest economic transformations without formal change. The archaic case analysis of the law of seisin, for example, which originally corresponded to the conditions of peasant tenure and manorial lordship of the Norman period, persisted to the very threshold of the present epoch with, what were from a theoretical point of view, often grotesque results in the American Middle West.[14] No rational legal training or theory can ever arise in such a situation. Wherever legal education has been in the hands of practitioners, especially attorneys, who have made admission to practice a guild monopoly, an economic factor, namely, their pecuniary interest, brings to bear a strong influence upon the process not only of stabilizing the official law and of adapting it to changing needs in an exclusively empirical way but also of preventing

its rationalization through legislation or legal science. The lawyers' material interests are threatened by every interference with the traditional forms of procedure, and every interference menaces that situation in which the adaptation of the scheme of contracts and actions to both the formal norms and the needs of the interested parties is left exclusively to the legal practitioners. The English lawyers, for example, were largely successful in preventing both a systematic and rational type of lawmaking and a rational legal education, such as exists in the Continental universities;[15] the relationship between "bar" and "bench" is still fundamentally different in the English-speaking countries from what it is on the Continent. In particular, the interpretation of newly made laws lay, and still lies, in the hands of judges who have come from the bar. The English legislator must, therefore, take special pains with every new act to exclude all sorts of possible "constructions" by the lawyers which, as has so frequently happened, would be directly contradictory to his intentions.[16] This tendency, partly immanent, partly caused by economic considerations, and partly the result of the traditionalism of the legal profession, has had the most far-reaching practical consequences. For example, the absence of a system of registration of title, and consequently the absence of a rationally organized system of real estate credit, has been largely due to the lawyers' economic interest with regard to the fees for that title examination which must in every transaction be made because of the uncertainty of all land titles. It has also had a deep influence upon the distribution of land ownership in England and, quite particularly, upon the peculiar form of the land lease as a "joint business."[17]

In Germany this type of legal profession with a clearly defined status or guild organization did not exist; for a long time it was not even necessary for a litigant to be represented by a lawyer. In France the situation was similar. It is true that the formalism of the procedure before the popular tribunals had necessitated the use of a *prolocutor*, and the regulation of their duties had become universally necessary; the earliest such regulation was promulgated in Bavaria in 1330. But the separation of the counsel from the attorney was achieved in Germany quite early, as the result essentially of the spread of Roman law.[18] The requirement of special legal training established itself relatively late and was usually caused by complaints of the Estates at a time when the Roman-law oriented university education already determined the standard of the upper-class legal practitioners.[19] A powerful guild organization was prevented from arising because of the decentralization of the administration of justice. Thus the status of the lawyers was determined by governmental regulation rather than by professional autonomy.[20]

2. *Academic Legal Training: Law as a "Science"—Origins in Sacred Law*

Modern legal education in the universities represents the purest type of the second way of legal training. Where only law-school graduates are admitted to legal practice, the universities enjoy a monopoly of legal education.[21] At the present time it is supplemented by apprenticeship in legal practice and another examination; it is in this manner that legal education is nowadays everywhere combined with empirical training. The Hanseatic cities were the only places in Germany where the academic degree alone was sufficient for admission to the bar, but even there the requirement of apprenticeship has recently been introduced.[22]

The legal concepts produced by academic law-teaching bear the character of abstract norms, which, at least in principle, are formed and distinguished from one another by a rigorously formal and rational logical interpretation of meaning. Their rational, systematic character as well as their relatively small degree of concreteness of content easily result in a far-reaching emancipation of legal thinking from the everyday needs of the public. The force of the purely logical legal doctrines let loose, and a legal practice dominated by it, can considerably reduce the role played by considerations of practical needs in the formation of the law. It took some effort, for instance, to prevent the incorporation into the German Civil Code of the principle that a lease is terminated by the sale of the land.[23] That principle had originated in the distribution of social power in Antiquity. However, the plan of taking it over into the new Code was entirely due to a blind desire for logical consistency.

A peculiar special type of rational, though not juristically formal, legal education is presented in its purest form in the legal teaching in seminaries for the priesthood or in law schools connected with such seminaries. Some of its peculiarities are due to the fact that the priestly approach to the law aims at a material, rather than formal, rationalization of the law. This point will be discussed at a later stage [see section v]; at this place we shall only deal with those results which are produced by certain general characteristics of this type of legal education. The legal teaching in such schools, which generally rests on either a sacred book or a sacred law fixed by a stable oral or literary tradition, possesses a rational character in a very special sense. Its rational character consists in its predilection for the construction of a purely theoretical casuistry oriented less to the practical needs of the groups concerned than to the needs of the uninhibited intellectualism of scholars

Where the "dialectical" method is applied it may also create abstract concepts and thus approximate rational, systematic legal doctrine. But like all priestly wisdom, this type of legal education is bound by tradition. Its casuistry, inasmuch as it serves at all practical rather than intellectual needs, is formalistic in the special sense that it must maintain, through re-interpretation, the practical applicability of the traditional, unchangeable norms to changing needs. But it is not formalistic in the sense that it would create a rational system of law. As a rule it also carries with it elements which represent only idealistic religious or ethical demands on human beings or on the legal order, but which involve no logical systematization of an actually obtaining legal order.

The situation is similar in the case of law schools which, while not, or not entirely, under immediate priestly control, are yet bound to a sacred law.

In their purely external form, all "sacred" laws tend to approximate a type which is shown most purely in Hindu law.[24] Insofar as commandments are not fixed, as in scriptural religion, by revelation in writing or by an inspired recording of revelations, sacred law must be transmitted "authentically," i.e., by a closed chain of witnesses. But in the scriptural religion, the authentic interpretation of the sacred norm, as well as its supplementation by other traditions, must also be guaranteed in written form. This is one of the most important reasons why Hindu law, in common with Islamic law,[25] has rejected the purely scriptural tradition. The tradition must have passed by word of mouth directly from one reliable holy man to the next. Reliance on the written word would mean that one believed more strongly in parchment and ink than in the prophets and the teacher, i.e., those persons who are charismatically qualified. The fact that the Koran itself was a written work, whose chapters (*suras*) were believed to be promulgated by Mohammed, after consultation with Allah, in carefully written form, was explained in Islamic teaching by the dogma of the physical creation by Allah himself of the individual copies of the Koran. For the *hadiths*[26] orality was a condition of validity. It normally is only at a late stage that a scriptural text will come to be preferred, viz., when the unity of traditional interpretation is endangered by purely oral transmission. At this stage new revelations are then rejected, typically with the argument that the charismatic age has long since come to an end. In such situations great emphasis is laid upon the proposition which is basic to the "institutional" character of a religious community and which has well been formulated recently by Freiherr von Hertling,[27] namely, that it is not the holy writ which guarantees the truth of the tradition and of ecclesiastical doctrine but rather the holiness of the church and its tradition, to which God has given the truth in trust and which thus

guarantees the genuineness of the holy writ. This position is consistent and practical: the opposite principle, as it was held by the early Protestants, exposes the sacred writ to philological and historical criticism.

The Vedas are the sacred books of Hinduism. They contain little "law," even less than the Koran or the Torah. The Vedas were considered as *shruti* ("revelations"), while all derived sacred sources were viewed as *smriti* ("recollection" or tradition). The most important categories of secondary literature, the prose Dharma-Sutras and the versified Dharma-Shastras[28] (the last ranking entirely as *smriti*, while the former occupy a middle position), are, on the contrary, compendia of dogmatics, ethics, and legal teaching standing alongside the tradition of the exemplary lives and teachings of holy men. The Islamic *hadiths* correspond exactly to this latter source; they are traditions concerning the exemplary deeds of the prophet and his companions, and those sayings of the former which have not been incorporated into the Koran. The difference is that in Islam the prophetic age is regarded as having ended with the prophet.

For the Hindu Dharma books one can find a counterpart neither in Islam or Christianity, which are book religions with only one holy writ. The Dharma books, and especially one of the latest, viz, that of Manu, were important for a long time in the courts as "books of authority," i.e., private works of legal scholars, until they were displaced in legal practice by the systematic compilations and commentaries of the schools. This displacement was so complete that by the time of the British conquest legal practice was dominated by one such tertiary source, the *Mitakshara*, dating from the eleventh century. A similar fate befell the Islamic Sunna through those systematic compendia and commentaries which achieved canonical status. The same is also true, though to a somewhat lesser extent, of the Torah in relationship to the rabbinical works of Antiquity (the Talmud) and the Middle Ages. Rabbinical lawmaking in Antiquity, and, to a certain extent, even up to the present, and Islamic lawmaking in a great measure even today, have rested in the hands of the theologian jurists responding to concrete questions. This feature was unknown both to Hinduism and to the Christian church, at least after the extinction of charismatic prophecy and the Didaskalia, which were, however, of an ethical rather than a legal character.[29]

The reasons why Christianity and Hinduism did not have this type of lawmaking were quite different. In Hindu law, the house priest of the king is a member of his law court, and he atones for wrong judgments by fasting. All important cases have to come before the king's court. The unity of the secular and the religious administration of justice is thus guaranteed, and there is, therefore, no place for any

licensed class of responding legal honoratiores. The Occidental Christian church, on the other hand, had created for itself organs of rational lawmaking in the Councils, the bureaucracies of the dioceses, and the Curia, and, quite particularly, in the papal powers of jurisdiction and infallible exposition of doctrine. No other of the great religions has ever possessed such institutions. Thus in Occidental Christianity, the legal opinions and decrees of the ecclesiastical authorities, together with the Conciliar Canons and the papal decretals, have played the role which is played in Islam by the *fetwa* of the mufti, and in Judaism by the opinions of the rabbis.[30] Hindu legal erudition was to a great extent purely scholastic, theoretical, and systematizing; it was the work of philosophers and theorists and strikingly possessed those features of a sacrally bound, theoretical, and systematizing legal thinking which has little contact with legal practice. In all these respects it differs from Canon law. All typically "holy" laws, and thus quite particularly that of India, are products of the schools. The treatises always present an abundance of casuistry about completely obsolete institutions. Examples are provided by Manu's treatment of the four castes, or the presentation of all the obsolete parts of the *sharî'ah*[31] in the works of the Islamic schools.[32] But because of an overriding dogmatic objective and the rational nature of priestly thinking, the systematic structure of such law books frequently tends to be more rational than that of similar creations unconnected with priesthood. The Hindu law books, for example, are more systematic than the *Mirror of Saxon Law*. But the systematization is not a legal one but one concerned with the position of status groups and the practical problems of life. Since the law is to serve holy ends, these law books are therefore compendia not of law alone but also of ritual, ethics, and, occasionally, of social convention and etiquette. The consequence is a casuistic treatment of the legal data that lacks definiteness and concreteness, thus remaining juridically informal and but moderately rational in its systematization. For in all these cases, the driving force is neither the practicing lawyer's businesslike concern with concrete data and needs, nor the logical ambitions of the jurisprudential doctrinaire only interested in the demands of dogmatic logic, but is rather a set of those substantive ends and aims which are foreign to the law as such.

3. *Legal Honoratiores and the Influence of Roman Law*

The effects of legal training are bound to be different again where it is in the hands of *honoratiores* whose relations with legal practice are professional but not, like those of English lawyers, specifically

guild-like or income-oriented. The existence of such a special class of honoratiores is, generally speaking, possible only where legal practice is not sacredly dominated and legal practice has not yet become too involved with the needs of urban commerce. The medieval empirical jurists of the Northern European continent fall into this class. It is, of course, true that where commercial activity is intense the function of the legal honoratiores is merely shifted from the consultants to the cautelary jurists; and even this shift occurs under special conditions only. After the decline of the Roman Empire, the *notaries* were the only remaining group in Italy by whom the traditions of a developed commercial law could be perpetuated and transformed.[38] They were, for a long time, the specific and dominant class of legal honoratiores. In the rapidly growing cities they formed themselves into guilds and constituted an important segment of the *popolo grasso*, that is, they were also a politically important class of honoratiores. Indeed, mercantile relations operated here from the very beginning through notarial documents. The procedural codes of the cities, such as Venice, preferred the rationality of documentary evidence to the irrational means of evidence of the ancient procedure of the popular courts. We have already spoken of the notaries' influence upon the development of commercial paper [sec. *ii*:3], but the notaries were one of the most decisive strata in the development of the law in general, and until the emergence of the class of legally trained judges in Italy they were probably *the* most decisive stratum. Like their forerunners in the ancient Hellenistic East, they took a decisive part in the interlocal assimilation of the law and, above all, in the reception of Roman law, which, here as there, was first brought about in the documentary practice. Their own traditions, their long-lasting connection with the imperial courts, the necessity of quickly having on hand a rational law to meet the needs of the rapidly growing requirements of trade, and the social power of the great universities caused the Italian notaries to receive Roman law as the very law of commerce, especially since, in contrast to England, no corporate or fee interests were standing in the way. Thus the Italian notaries were not only the oldest but also one of the most important of the classes of legal honoratiores who were interested and directly participated in the creation of the *usus modernus* of Roman law. Unlike the English lawyers, they did not act as the bearers of a national body of law. Again, they could not compete with the universities through a guild system of legal education of their own simply because, unlike the English lawyers, they did not enjoy that nation-wide organization which was made possible in England by the concentration of the administration of justice in the royal courts. But thanks to the universities, Roman law in Italy continued as a world force, influencing the formal

structure of law and legal education even after its original political sponsor and interested protector, the Emperor, had become politically unimportant. The *podestà* of the Italian cities were often chosen from among the honoratiores who had been trained in the universities; the *signorie* were based completely on political doctrines derived from Roman law.[34] In the cities of the French and Eastern Spanish coasts the notaries' position was quite the same.[35] Essentially different, however, was the status of the honoratiores in Germany and Northern France. They were, at least at first, involved less in urban legal relations than as aldermen (*Schöffen*) or officials in the legal affairs and the administration of justice of rural manors.[36] Their most influential types, such as for example, Eike von Repgow or Beaumanoir,[37] created a systematization of the law which was based on the concrete problems of everyday practice and their essentially empirical concepts, slightly refined by abstraction. The "law books" which they compiled aimed at the restatement of the existing tradition; although they contained some occasional argumentation, they had little specifically juridical *ratio*. Indeed, the most important of these works, the *Mirror of Saxon Law*, contained a good many constructions of legal institutions which were not parts of the existing law at all but rather constituted fanciful attempts, inspired by the author's desire for completeness or his predilection for sacred numbers, to fill in gaps or complement other inadequacies.[38] Formally, their systematic records were private works just like those of the Hindu, Roman, and Islamic jurists. Like these, they have influenced legal practice considerably as convenient compendia and some of them even came to be recognized by the courts as authoritative source books. Their creators were representatives of a system of administration of justice by honoratiores but, unlike the English lawyers and the Italian notaries, they did not constitute a strong organized guild which, by corporate and economic interests, through a monopoly of the bench and a central position at the seat of the central courts, could have given them a measure of power which neither King nor Parliament could have easily brushed aside. Hence they could not, like the English lawyers, become the bearers of a corporate legal education and were thus unable to produce a fixed empirical tradition and a legal development that could have provided an enduring resistance against the subsequent encroachment of the jurists trained by rational university education. Formally, the law of the empirical law books of the Middle Ages was fairly well organized; systematically and casuistically, however, it was less rational, and oriented more towards concrete techniques of distinction than towards the abstract interpretation of meaning or legal logic.

The particular influence of the ancient Roman jurists[39] rested on the fact that the Roman system of administration of justice by honora-

tiores, which economized on public officials, accordingly also minimized their instructional role in the concrete conduct of a lawsuit. But this specific fact which distinguished Rome from, for instance, the Hellenic democracy also excluded the "*kadi* justice"[40] as practiced in the Attic people's courts. The official presidency over the course of the lawsuit was preserved together with the separation of power between the magistrate and the judgment finders. The combination of these factors created the specifically Roman practice of trial instruction (*Prozessinstruktion*) through a strictly formal order of the magistrate to the citizen judge (the *iudex*), giving him directions with regard to those issues of law and fact according to which he should grant or deny the plaintiff's claim.[41]

The magistrate, especially the *aedilis* and *praetor*, eventually recorded the schemata of these trial instructions in his "edict"[42] at the beginning of his year of office. It was, however, only relatively late that, in contrast with the Nordic *lag saga* he was regarded as being bound by the content of these "edicts." Naturally, in composing his edict the magistrate was advised by legal practitioners, and the edicts were thus continuously adapted to newly emerging needs. In the main, however, each magistrate simply took over the edict of his predecessor in office. Hence, the great majority of the recognized causes of action had naturally to be defined not in terms of concrete facts, but by the legal concepts of everyday language. The use of a juridically inappropriate formula by the party having to choose the appropriate action thus resulted in the loss of the case. This contrasts with our principle of fact pleading, under which a presentation of facts will support an action if the facts justify the claim from some legal point of view. Obviously under the "principle" of "fact pleading" no such sharp legal definition of concepts is required as was the case under Roman law where the practitioner was forced to define the legal terms of common usage with juristic rigor and to elaborate sharp distinctions between them.[43] Even where the instructing magistrate confined his trial instruction to purely factual matters, as he did in the *actiones in factum conceptae*,[44] the interpretation assumed a strictly formal character, as a result of the then accepted methods of legal thinking. In this state of affairs, the practical development of legal technique was at first largely left to "cautelary jurisprudence," i.e., to the activities of legal counselors who not only drafted the form of contracts for the parties but were also expert advisors to the magistrate in his *consilium*, a consultation that was typical for all Roman officials in the preparation of their edicts and formulae. Finally, they were legal advisers of the citizen judge when he had to decide the questions put to him by the magistrate and to interpret his trial instructions.

According to historical tradition, the consultative activities of the

jurisconsults seem first to have been carried out by the *pontifices*, of whom one was chosen annually for this purpose. Under this priestly influence the administration of justice, in spite of the codification of the Twelve Tables, might easily have assumed a sacrally bound and irrational character, similar to that produced in Mohammedan law by the consultative activity of the mufti. It is true that religious influences seem to have played only a secondary role in the substantive content of early Roman law, but in its purely formal aspects, which are also its most important aspects from a general historical point of view, the influence of sacred law was obviously considerable, as Demelius has made plausible for at least certain important instances.[45] For example, such important legal techniques as procedural fictions seem to have arisen under the influence of the principle of sacred law that *simulata pro veris accipiuntur*.[46] We may recall the role played in the cult of the dead of many peoples by the simulated transaction and also the role which the simulated transaction had to play in situations in which certain ritual obligations were formally fixed in an absolute fashion. It was the repugnance to an essentially bourgeois society of such obligations, which were also economically highly burdensome, which led to their replacement by a mere *pro forma* performance. The substantive secularization of Roman life, combined with the political impotence of the priesthood, turned the latter into an instrument for the purely formalistic and legalistic treatment of religious matters. Furthermore, the early development of the technique of cautelary jurisprudence in temporal matters resulted in an obvious furtherance of the use of this technique in the sphere of the cult. But we may assume with confidence that the earliest techniques of cautelary jurisprudence were at first largely concerned with sacred law.

One of the most important characteristics of early Roman law was its highly analytical nature; this at least is still valid among von Jhering's views, of which so many have become obsolete. A lawsuit would be reduced to the basic issues involved and legal transactions were cut down to the most elementary logical constituents: one lawsuit for just one issue; one legal transaction for just one object; one promise for just one performance.[47] The breaking up of the complex situations of life into specifically determined elements has been the main achievement of the early *ius civile*, the methodological effects of which have also been the most far-reaching. On the other hand, there has resulted from it a certain neglect of the constructive synthetic capacity in the perception of concrete legal institutions, as it arises in the case of a legal imagination unconfined by logical analysis. This analytical tendency, however, corresponds closely to the treatment of ritual obligations in the Roman

national religion. We may recall that the peculiarity of the genuine Roman *religio*, namely, the conceptual, abstract, and thoroughly analytical distinction of the jurisdictions of the sacred *numina* [deities], resulted in a large measure in a rational juridical treatment of religious problems. According to tradition, already the *pontifices* had invented fixed schemata of admissible actions. This pontifical legal technique seems to have remained a professionally monopolized secret knowledge. The emancipation from sacral lawfinding came only in the third century. When the *censor* Appius Claudius was trying to establish himself as a tyrant, one of his freedmen is said to have published the pontifical formulary of actions.[48] The first plebeian *Pontifex maximus*, Tiberius Coruncanius, is reported to have been the first to render *responsa* in public.[49] It was only from that stage that the edicts of the officials could develop to their later significance and that lay honoratiores came to fill the gap as legal consultants and attorneys. The opinion of counsel was communicated orally to private parties and in writing to the official who had requested it. Until the period of the Empire the opinion did not include any statement of reasons, resembling in this respect the oracle of the charismatic *lag saga* or the *fetwa* of the mufti. The expansion of professional juristic activity in step with increasing demand brought about a formal legal education as early as during the Republic, when students (*auditores*) were admitted to the consultations of the legal practitioners.

Another cause of the assumption by early Roman law of a highly formal and rational character, both regarding the substantive rules and their procedural treatment, was the growing involvement of the law in *urban* business activities as carried on through contracts. In this respect, medieval German law presents a rather different picture, for its main concern related to *rural* matters such as social rank, property in land, or family law and inheritance.

But in spite of its formalism, Roman legal life, until well into the time of the Caesars, lacked not only a synthetic-constructive but also a rational-systematic character, and it did so much more than has at times been assumed. It was the Byzantine bureaucracy which finally systematized the existing law; but as far as the formal rigor of juridical thought was concerned, it stood far behind the achievements of the jurisconsults of the Republic and the Principate. It is striking that the systematically most useful among all the literary products of the jurisconsults, namely the Institutes of Gaius, which was an introductory compendium to the study of law, was the work of an unknown person who was certainly not an authority in his own lifetime and who stood outside the circle of the legal honoratiores; one may say that Gaius' relation to them was

analogous to the relation of the modern cram book to the learned treatises of the scholars. But the difference was that the literary products of the practicing Roman jurists of that time, to whose circle Gaius did not belong, did not possess the quality of a rational system, such as university teaching tends to produce; they were mainly moderately rationally organized collections of individual opinions.[50]

The jurisconsults remained a very specific class of honoratiores. To the property-owning strata of Rome they were the universal "fathers confessor"[51] in all economic matters. It is uncertain whether a formal license to render *responsa* was necessary in earlier times, as a passage in Cicero might lead us to suppose.[52] Certainly, it was required at a later date. The *responsa*-rendering jurists emancipated themselves from the methods of the older cautelary jurisprudence, as well as the actual practice of draftsmanship, as their legal refinement increased. By the end of the Republic they formed themselves into schools. It is true that during the Republic, the orators, such as Cicero, showed the tendency, familiar from Athens, to argue emotionally and "ad hominem" rather than rationally, insofar as the specifically political assize courts (*quaestio repetundarum*) came close to assuming the character of popular justice. In this way, the orators contributed to the weakening of precise legal conceptualization; but in Rome this happened almost exclusively in political cases. Under the Empire, the administration of justice became entirely a specialized professional matter. A part of the jurisconsults were placed in an official status vis-à-vis the administration of justice by Augustus' grant of the privilege making their *responsa* binding on the judges.[53] The jurisconsults ceased to be attorneys (*causidici*); even less could they form a lawyers' guild whose interests and intellectual training would have been directed to daily practice and the needs of clients. The jurisconsults had nothing to do with the technical or business aspects of attorneyship but were concerned exclusively with the rendering of legal opinions about statements of fact which had been prepared by an attorney or a judge.[54] They were thus in the best possible position to elaborate a rigorously abstract scheme of juristic concepts. In this way the responding jurisconsults were sufficiently remote from the actual contact of legal business to allow them to reduce individual details to general principles by employing scientific techniques. This remoteness was greater in Rome than it was in England, where the lawyer was always the representative of a client. It was, however, the controversies between the schools which forced these principles into even greater abstraction.[55] Because of the binding character of their opinions, jurisconsults dominated the administration of justice; however, the *responsa* continued, at least for a time, to be rendered without a statement of

reasons, like the sage's oracle or the mufti's *fetwa*. But they began to be collected by the jurists and then to be published with comments indicating the legal reasons.[56] School discussions and disputations about legal cases among and with the *auditores* grew out of the latters' presence in the exercise of the consultative practice, but only by the end of the Republic did there develop a fixed course of training.[57] Just as the steadily increasing formal study of Hellenic philosophy took on a certain significance for juristic thought, so the Hellenic philosophical schools served, in many respects, as models for the external organization of the schools for lawyers. It was from this pedagogical and publishing activity of the law schools that the technique of Roman law developed from a stage when it was strongly empirical, despite the precision of its concepts, to increasing rationality of operation and scientific sublimation. But theoretical legal training remained secondary to legal practice and this fact explains how a slight degree of development of abstract legal concepts could go hand in hand with a high degree of abstraction in legal thinking, wherever the abstract legal concepts would have served essentially theoretical interests rather than practical requirements. The treatment of numerous, and apparently heterogeneous, fact situations under the one category of *locatio*, for instance, had important practical consequences.[58] But no direct practical consequences can arise from the elaboration of the concept of "legal transaction," which is intended to serve a mere desire for intellectual organization. Thus neither this concept nor similar ones, like "claim" or "disposition," existed in Roman law of Antiquity, and even in the time of Justinian its general systematization was not rationalized beyond a relatively modest degree. The sublimation of concepts took place almost exclusively in connection with some concrete type of contract or form of action.[59]

Two reasons are responsible for the fact that this sublimation nevertheless led to those results which we have before us now. Decisive was, first, the complete secularization of the administration of justice, including the office of jurisconsult. The binding *responsum* of the Roman jurist clearly has a parallel in the *fetwa* of the Islamic mufti. He too is an officially licensed legal consultant. But he receives his training in an Islamic school. These schools, to be sure, developed upon the pattern of the officially recognized law schools of the late Roman empire. Under the influence of the formal training through ancient philosophy, they also developed, for certain times at least, methods similar to those of Antiquity. But their instruction remained predominantly theological, and the trends just mentioned were thwarted by religious ties and traditional observance, by the vagueness and precariousness of sacred law, which can neither be eliminated nor be enforced, and by those other features

which are characteristic of all theocratic justice bound to a sacred writ. Legal education thus remained limited there to empirical and mechanical memorization and theoretical casuistry without contact with life.

The second reason for the difference between Roman and Islamic law lies in the kind of judicial organization and in the politically conditioned limits which were set to rationalization in the economic field. The theological element was completely absent from Roman legal development. The purely secular and increasingly bureaucratic late Roman state culled that unique collection of the Pandects from the products of the responding jurisconsults and their disciples, whose legal thinking was of the utmost precision, however imperfect their "system" may have been. Supplemented by autonomous Byzantine ideas, the Roman materials thus collected in the Pandects provided the stuff for the legal thought of the medieval universities for centuries to come. As early as during the imperial period, an increasingly *abstract* character trait had been added as a new element to the age-old indigenous *analytical* quality of the Roman legal concepts. To some extent this abstract character had been anticipated by the nature of the Roman forms of action. In every one of them the state of the operative facts was expressed in the form of a legal concept. Some of these concepts were so formulated, however, that they afforded the practitioners, be they cautelary jurists, attorneys, or jurisconsults, the opportunity to subsume an extraordinarily diverse range of economic situations under one single concept. The adaptation to new economic needs thus took place in large measure through the rational interpretation and extension of old concepts. It was in this way that legal-logical and constructive thinking was raised to the highest level to which it can be raised within the range of the purely analytical method. Goldschmidt[60] has properly pointed out the extraordinary elasticity of such legal concepts as *locatio-conductio, emptio-venditio, mandatum* (and especially *actio quod iussu*), *depositum*, and above all, the unlimited capacity of *stipulatio* as the one *constitutum* for most of those obligations to pay a sum certain for which we have today the bill of exchange and other formal contracts.[61]

The specific character of Roman legal logic, as it developed from the given conditions, becomes especially clear when one compares it with the modes of operation of English cautelary jurisprudence. It, too, utilized and manipulated numerous individual concepts with the greatest boldness in order to achieve actionability in the most diverse situations. But we can easily see the difference between the way in which, on the one hand, the Roman jurists used the concept of *iussum* to achieve both the drawee's authority to pay for the drawer and the latter's warranty[62] and, on the other hand, the ways in which the English lawyers derived

the actionability of numerous heterogeneous contracts from the tort concept of "trespass."[63] In the latter case, *legally* heterogeneous phenomena are thrown together in order to obtain actionability by indirection. In the Roman instance, by contrast, situations which are new and diverse *economically*, i.e., externally, are subsumed under a single and appropriate legal concept.

One must note, however, that the abstract character of many legal concepts which today are regarded as being particularly "Roman" in their origin, is not to be found originally, and in some cases did not even originate, in Antiquity. The much discussed Roman concept of *dominium*, for example, is a product of the denationalization of Roman law and its transformation into world law. Property, in national Roman law, was by no means a particularly abstractly ordered institution, and it was not even a unitary one in general.[64] It was Justinian who first abolished the fundamental differences and reduced them to the few forms which were observable in land law; and it was only after the old procedural and social conditions of the praetorian interdicts had died out that medieval analysis could concern itself with the conceptual content of the two Pandectian institutions of *dominium* and *possessio* as wholly abstract concepts. Nor was the position essentially different with many other institutions. In their earlier form, in particular, most of the genuine Roman legal institutions were not essentially more abstract than those of German law. The peculiar form of the Pandects arose out of the peculiar transformations of the Roman state. The sublimation of juristic thinking was in itself, as far as its direction was concerned, influenced by political conditions which operated in different ways in the Republican and the late Imperial period. The important technical traits of the earlier administration of justice and the jurisconsults were, as we have seen, essentially the products of rule by the Republican honoratiores. But this very rule was not entirely favorable to a professional juristic training of the political upper-class magistrates with their short terms of office. While the Twelve Tables had always been taught in the schools, knowledge of the *leges*, however, was acquired by the Roman republican magistrate mostly by practical experience. His jurisconsults looked after the rest for him. In contrast, the necessity of systematic juristic studies was greatly increased by the imperial system of legal administration through appointed officials and its rationalization and bureaucratization, especially in the provincial service. The general effect of all bureaucratization of authority will be seen later in a wider context. The systematic rationalization of the law in England, for example, was retarded because no bureaucratization occurred there. As long as the jurisconsults dominated the Roman legal administration of justice

as the legal honoratiores, the striving for systematization was feeble, and no codifying and systematizing intervention by the political authority occurred. The downfall of the Roman aristocracy under the Severi was correlated with the decline of the role of the responding jurisconsults and parallels a rapidly increasing significance of the imperial rescripts in the practice of the courts. Legal education, carried on in the later period in state-approved schools, assumed the form of textbook instruction from the works of the jurists. The courts, too, used them as authoritative sources and, in case of dissent among these books, the Emperors, by the so-called "Law of Citations," established both a certain order of priority among them and the principle that the majority of the approved authors should prevail.[85] The collections of *responsa* thus came to occupy the position held in the Common Law by the collection of precedents. This situation conditioned the peculiar form of the Pandects and the conservation of that part of classical juristic literature which had been incorporated in them.

NOTES

1. On "legal *honoratiores*"—see *supra*, sec. *i*, n. 18. In effect the present section is concerned with the legal profession, its various types, and their influence on the formal characteristics of the law.

A concise survey of the history of the legal profession in ancient and modern Western civilization will be found, with bibliography, in the article by Hazeltine, Radin, and Berle in 9 ENCYC. SOC. SCI. 324. To the bibliography should now be added F. SCHULZ, HISTORY, and R. POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES (1953).

2. The most authoritative expositions on the development of the legal profession in the Middle Ages are those by H. Brunner: (1) *Die Zulässigkeit der Anwaltschaft im französischen, normannischen und englischen Rechte des Mittelalters* (1878) 1 Z.F. VGL. R. 321 *et seq.*, and the partial translation of it in 3 ILL. L. REV. 257; (2) *Wort und Form im altfranzösischen Process* in 57 SITZUNGSBERICHTE DER PHILOS.-HIST. CLASSE DER KAISERLICHEN AKADEMIE DER WISSENSCH. ZU WIEN (1868) 655; see also WEBER, GENERAL ECONOMIC HISTORY 340; ENGELMANN AND MILLAR, *op. cit.*

3. On the development of jury trial in general see literature cited *supra* sec. *iii*, nn. 33, 34. For the connection between *attornatio* and the "records" in the royal courts, see Brunner, *Die Zuläss. der Anwlt.*, *loc. cit.* 362: both the *attornatio* and the records were allowed only in the *curia regis*, and their relationship is clearly shown in earlier English sources—*ibid.* 373; GLANVILLE, VIII, 8, § 7; Brunner, *op. cit.* 197.

4. *Fautes volent exploits* means "errors destroy the acts" (one mistake nullifies the whole procedure); concerning this maxim and the old French procedure in general, see Brunner, *Wort und Form im altfranzösischen Process*, *loc. cit.*, esp. at p. 670.

5. Cf. *supra*, sec. *iii*:6:c.

6. See POLLOCK AND MAITLAND I, 212: "A man is allowed to put forward some one else to speak for him, not in order that he may be bound by that other person's words, but in order that he may have a chance of correcting formal blunders and supplying omissions" (Leg. Henr. 46, § 3). This was the so-called "droit d'amendement" explained by Brunner, *loc. cit.* 754–780, and also in his *Zuläss. der Anw.* 322.

7. The appointment of an attorney rested at first upon special privilege, but this was no longer so in the time of Glanville, ZUL. D. ANWL., *loc. cit.* 363; HOLDSWORTH II, 315, 316.

8. By the Lateran Council, 1215, the clergy were, however, prohibited from acting as attorneys in secular courts, except in causes concerning themselves or concerning poor persons.

9. The earliest time for which it is certain that in the royal courts of England litigants could appear by representation, is that of Henry II. Professional legal representation seems to begin with the thirteenth rather than with the twelfth century. For Bracton tells much about the "attorney" who can fully act for and indeed also fully commit his client. The attorney's job was, however, mainly procedural; and as the legal system became more and more complex, litigants required not only to be represented procedurally but also felt the need for lawyers who would *narrate* as well as argue their case in court. The lawyers were the *narrators* (and were later called the *serjeants*) but there is still too little known about their early history. As Plucknett has remarked, "In the present state of our knowledge it therefore seems safe to say that there certainly were professional *narrators* and attorneys during the reign of Edward I, and that possibly these professions already existed under Henry III" (204, 206).

In the following account of the methods of the Common Law as well as in his general ideas about it, Weber relied to an apparently large extent upon the writings of J. Hatschek, especially the third chapter of his ENGLISCHES STAATSRECHT I, 95 *et seq.* Weber's general ideas of legal thought as expressed throughout this work seem to have been influenced strongly by Hatschek, especially his article entitled *Konventionalregeln, oder über die Grenzen der naturwissenschaftlichen Begriffsbildung im öffentlichen Recht* (1909), 3 JAHRBUCH DES ÖFFENTLICHEN RECHTS 1–67.

10. For a short account of the course of this complicated development, covering several centuries, see PLUCKNETT 212–215, and literature there cited. The standard work is HERMAN COHEN, HISTORY OF THE ENGLISH BAR (1929).

11. The two universities, Oxford and Cambridge, taught only civil and canon law whereas the Inns of Court concentrated on "English" law as developed in the royal courts. Cf. PLUCKNETT 208–209.

12. On the fictions which were used by the several courts of the king to extend their jurisdiction, see PLUCKNETT 152–155; HOLDSWORTH I, 235. More generally, see Morris S. Cohen, *Fictions*, 6 ENCYC. SOC. SCI. 225; Fuller, *Legal Fictions* (1930–31), 25 ILL. L. REV. 363, 513, 877; MAINE, c. II.

13. Cf. the recent analysis of the methods of Common Law reasoning by EDWARD H. LEVI, INTRODUCTION TO LEGAL REASONING; see also LLEWELLYN, PRÄJUDIZIENRECHT UND RECHTSPRECHUNG IN AMERIKA (1933).

14. Weber is obviously thinking of the continuance in modern American real property law of such concepts as tenure, estate, and fee, and of such relics as the doctrine of destructibility of contingent remainders, the doctrine of worthier title, or the Rule in Shelley's Case. The concept of tenure has practically disappeared, the meaning and functions of the others have been radically transformed; cf. R. R. POWELL, LAW OF REAL PROPERTY (1950) I, c. iv. On seisin, see Maitland,

The Mystery of Seisin (1886), 2 L.Q. REV. 481; ordwell, *Seisin and Disseisin* (1920/21), 34 HARV. L. REV. 592; Sweet, *Seisin* (1896), 12 L.Q. REV. 239.

An Illinois case on seisin reviving most of the old features of the English law is *Fort Dearborn v. Kline* (1885), 115 Ill. 177, 3 N.E. 272.

R. POWELL, *op. cit.* 236, n. 70, characterizes Illinois decisions as "anachronistic," "re-incarnating" old English law (with the help of A. Kales's great knowledge). Powell continues (p. 237): "In general, it can be said that English law [concerning real property] is a more constantly significant factor in the thinking of the Illinois judiciary than in most of our other states. The ghosts of the past have freer exit from their closets, without much scrutiny to determine their real utility as a part of a modern scheme of life."

15. For evidence of efforts by the English bar to prevent codification and law reform, see, among others, the biography of Lord Birkenhead in DICTIONARY OF NATIONAL BIOGRAPHY (1922–1930) 782. For entham's despair at the hostility shown toward law reform and codification by the English bar, see J. DILLON, LAWS AND JURISPRUDENCE OF ENGLAND AND AMERICA (1894) 271, 316–347, 180 *et seq.* See also Sunderland, *The English Struggle for Procedural Reform* (1926), 39 HARV. L. REV. 725. The American lawyers' aversion against codification and law reform found dramatic expression in the fight of the New York bar led by J. C. Carter, against David Dudley Field's efforts to codify the law. Cf. Dillon, *op. cit.* 225; see also REPORTS OF AMERICAN BAR ASSOCIATION (1890) 217 for Carter, and 1885, 1886 for D. D. Field; on D. D. Field, cf. CENTENARY ESSAYS of the New York University School of Law, ed. by A. Reppy (1949), Llewellyn, 3 ENCYC. SOC. SCI. 243, also CLARK, CODE PLEADING (2nd ed. 1947) 17–21.

16. For illustrations of, and literature on, "the deep rooted common law tradition of judicial hostility to legislation" see J. STONE, 198.

17. The source of this statement could not be located. The English term "joint business" is used in the German text.

18. Cf. Brunner, *Die Zulässigkeit der Anwaltschaft* 324.

19. Concerning Roman-law oriented legal education, see P. KOSCHAKER, EUROPA UND DAS RÖMISCHE RECHT (1947) 45 *et. seq.*, 55–99, and literature there cited.

20. See KOSCHAKER, *loc. cit.* 94 *et seq.* and literature there cited; for the social position of lawyers in Rome, France, England, Germany, and the difference between them, see pp. 164–180, 227–234. There never was a lawyers' guild organization in Germany, *ibid.* pp. 230, 247.

21. Night schools or other law schools outside of universities and of the atmosphere of the *universitas literarum* are unknown in continental Europe and are thus not considered by Weber.

22. Legal education, as it has become established in the nineteenth century in Germany and Austria (-Hungary) and as it still exists there, consists of two parts, viz., theoretical study of three to four years at a university, and a practical in-service training of usually another three years in various courts and administrative agencies, the office of the public prosecutor and an attorney's office. Cf. Rheinstein, *Law Faculties and Law Schools*, [1938] WIS. L. REV. 5; cf. also E. SCHWEINBURG, LAW TRAINING IN CONTINENTAL EUROPE (1945) 32, 80.

23. See now Secs. 571, 581, 2 of the Civil Code; as to the rule of Roman law, under which a lease is a purely personal contract between lessor and lessee and where, consequently, the lessee has no right to remain on the land as against the purchaser from the lessor, see SOHM, INSTITUTIONEN 434; but see also BUCKLAND 499.

24. On Hindu law see S. Vesey Fitzgerald, *Hindu Law*, 9 Encyc. Soc. Sci. 261, and literature stated there; see furthermore *infra*, sec. *v*, n. 19. For an account of early "legal" education in India, see Maine, Early Law 13.

25. In his Essays on Sociology of Religion Weber has not included one on Islam; he has considered it, however, in his chapter on Sociology of Religion. As the principal sources on Islamic law he seems to have used Goldziher's Vorlesungen über den Islam (1910, 2nd ed. 1925), the pertinent chapter in Kohler and Wenger, 82 *et seq.*, and the further literature listed there on p. 152, especially the several articles of Josef Kohler's in his Zeitschrift für Vergleichende Rechtswissenschaft. For additional literature on Islamic law see the following works by J. Schacht: his articles in the Encyclopaedia of Islam (1927); his edition of G. Bergstrasser's Grundzüge des Islamischen Rechts (1935); *Islamic Law*, 8 Encyc. Soc. Sci. 344, with bibliography at p. 349; and Origin of Mohammedan Law (1951). Books and articles on Mohammedan law in the English language are listed in Stern's bibliography (1950) 43 Law Library J. 16; cf. also G. v. Grünebaum, Medieval Islam (1946).

26. *Hadiths*—traditions concerning the exemplary deeds of the Prophet and his companions, and those sayings of the former which have not been incorporated in the Koran. They make up the *sunna*, which is regarded as authoritative by the Sunnite branch of Mohammedanism, but rejected by the Shiites. When the *hadiths* were assembled in collections, only those were accepted as authoritative which could be traced through the "golden chain" of men regarded as completely reliable. On the role played in the formation and development of Islamic law by the "invention" of appropriate "traditions," see J. Schacht, Origins of Mohammedan Law (1951).

27. Georg Freiherr v. Hertling, 1843–1919, Catholic philosopher and German statesman. See his *Recht, Staat und Gesellschaft*, 1907.

28. Dharma-Sutras "are the oldest manifestation of definite schools of law, or rather they embody (in the form of mnemonic aphorisms) the law teaching given in particular Vedic schools. With one exception, which professes to emanate from a god, each of them bears the name of some great sage of the [Vedic] period."—Vesey-Fitzgerald, *op. cit.* n. 24. They probably date from the period between 600 and 300 B.C.

The statement that according to prevailing Hindu theory all law is contained in the Dharma-Sutras is tenable only when the term is used in so broad a sense as to include the *arthasastras* and those law books of the institute-type which are known under the names of *Manu* and *Yajñavalkya*. The latter occupy a prominent position in the works of those later commentators which have become important for the development of modern Hindu law.

29. Didaskalia (Greek: Teaching, Doctrine)—the unfolding of the teaching of Jesus in the pneumatic-charismatic manner of the earliest Christian communities, i.e., before its fixation in authoritative writings, such as the *Didache of the Apostles* and the channelization of Christian life in organized congregations. Cf. Sohm, Kirchenrecht 38, 41.

30. *Fetwa*—opinion of the theologian-legal scholar, the mufti.

31. *Shari'ah*—the totality of Allah's rules for the conduct of man.

32. On the Islamic schools, see *supra*, sec. *ii*:5 and sec. *iii*, n. 12.

33. In contrast to the *notary public* of the American type, whose primary function is that of authenticating signatures and thus creating official evidence of genuineness, the continental notary is also a specialist in legal drafting, especially of real estate conveyances, but also of important commercial documents. He is thus not only a lawyer but a lawyer of special training and competence. See

Deák, *Nota ies Public.* 11 ENCYC. SOC. SCI. 399, and literature cited there; also CALASSO, STORIA E SISTEMA DELLE FONTI DEL DIRITTO COMUNE (1938) I, 212, and (1934) III ARCHIVIO GIURIDICO 64. Savigny has fixed the collegium of the notaries in Bologna o the middle of the thirteenth century; cf. GESCHICHTE DES RÖMISCHEN RECHTS IM MITTELALTER 540; see also GOLDSCHMIDT 151–153.

34. On the *podestà*, Italian city magistrates brought in from other towns to allay intramural strife, see *infra*, ch. XVI:*iii*:3; cf. also ENGELMANN 59; CALISSE, *op. cit.* 143, 169, 180. On the *signoria*, the late medieval Italian city tyranny and monarchy, see *infra*, ch. XVI:*iv*:8–9.

35. Cf. Stouff (1887) 11 NOUVELLE REVUE HISTORIQUE 269; GOLDSCHMIDT, 200 and literature there cited; also p. 230 (n. 159); p. 153 (n. 32). On the notaries in France compare the diss rtation of A. COPPIN, LES ORIGINES DU NOTARIAT FRANÇAIS (1884, Académie de Douai).

36. See: for France, KOSCHAKER, EUROPA U. DAS RÖM. RECHT 221 and literature there cited; for Germany, BRUNNER I. 209, II. 296 *et seq*; see also the recent article of G. Schubart-Kikenischer, *Römisches Recht im Brünner Schöffenbuch* (1947), 65 SAV. Z. GERM. 86; see in general ENGELMANN AND MILLAR 98 *et seq.*, 114 *et seq.*, 114 *et seq.*, 199, 519.

37. EIKE VON REPGOW (c. 1180–c. 1250) is the author of SACHSENSPIEGEL (MIRROR OF SAXON LAW, 1224–1230); cf. v. Künssberg, 13 ENCYC. SOC. SCI. 308; E. WOLF, GROSSE RECHTSDENKER (1939) 1; PHILIPPE DE BEAUMANOIR (c. 1246–1296) is the author of COUTUMES DE BEAUVOISIS (1283), the most influential of the medieval law treatises of France; cf. Meynial, 2 ENCYC. SOC. SCI. 486.

38. See the introduction to the SACHSENSPIEGEL by Homeyer in his 3rd ed. (1861) 20, 305; E. Molitor, *Der Gedankengang des Sachsenspiegels* (1947), 65 SAV. Z. GERM. 15, and the most recent literature there cited.

39. On the Roman jurists see JOLOWICZ, 88, 380; H. J. WOLFF, ROMAN LAW (1951) 91; and particularly, F. SCHULZ, HISTORY, and W. KUNKEL, HERKUNFT UND SOZIALE STELLUNG DER RÖMISCHEN JURISTEN (1952).

40. *Kadi*—judge of the Mohammedan *shari'ah* court (see *supra*, n. 31), *kadi* justice (*Kadijustiz*)—used by Weber as a term of art to describe the administration of justice which is oriented not at fixed rules of a formally rational law but at the ethical, religious, political, or otherwise expediential postulates of a substantively rational law.

41. See Millar, *Procedure, Legal*, 12 ENCYC. SOC. SCI. 439, 440.

42. On the edict, see JOLOWICZ 95, 362; H. J. WOLFF, *op. cit.* 81.

43. The contrast corresponds to that between Common Law pleading and Code pleading, as it is known in American law. Cf. CLARK, *op. cit.* 5; Millar, *Procedure, Legal*, 12 ENCYC. SOC. SCI. 439, 446/447.

44. The *formula* used is one *in factum concepta*, when there is no reference to a civil law concept but the judge is simply told to condemn, if he finds certain *facts* described in the *intentio* to be true or, if not true, to absolve. Cf. JOLOWICZ 212–213; WENGER 162, 164.

45. Gustav Demelius, Professor in Bonn. (SCHIEDSEID UND BEWEISEID IM RÖMISCHEN CIVILPROZESS [1887]); see review in 8 SAV. Z. ROM. 269, by O. Gradenwitz. On the problem of the extent to which sacred law was of influence in the development of (secular) Roman law, see *infra*, sec. *v*:1–2.

46. *Simulata p o veris accipiuntur* ("the simulated transaction is regarded as the real [true] one"; SERVIUS AD AENEAM II, 116). This meant that instead of animals only their forms, modeled in bread or wax, had to be sacrificed. For other examples see JHERING I, 326.

47. Jhering III, 27ff.

48. C. 300 B.C. cf. F. Schulz, History 9.

49. Ti. Coruncanius was consul in 280 B.C. and is reported to have been the first to render *responsa* in public by Pomponius, in D. 1, 2, 2, 35: *Primus publice profiteri coepit;* cf. Schulz 10.

50. See Buckland 22. On Gaius *ibid.* 29 and Schulz, History 159; Jörs and Kunkel 33; De Zulueta, *Reflexions on Gaius* [1947], Tulane L. Rev. 173.

51. Jhering II, 440.

52. Cicero, In Verrem 4.9.20.

53. "No juristic text suggests that Augustus made responsa binding. It is clear that a change in the position of the jurists did occur under Hadrian." Buckland, Textbook 23. For recent literature on this famous controversy concerning the nature and origin of the *ius respondendi* see Koschaker, Europa u. das röm. Recht 962; Siber, *Der Ausgangspunkt des ius respondendi* (1941), 61 Sav. Z. Rom. 397; Kunkel, *Das Wesen des ius respondendi* (1948), 66 Sav. Z. Rom. 423.

54. On the distinction between the jurisconsults and the attorney, see Jhering II, 436; Buckland 22.

55. On the two "schools" of Proculians and Sabinians, their significance, and alleged controversies, see Buckland 27; Schulz, History 119; Jörs and Kunkel 32, 394.

56. On this literature, see now esp. Schulz, History 91, 173, 223.

57. See Kohler and Wenger 172; Jolowicz 469; Schulz, History 119.

58. The one concept of *locatio-conductio* ("lease"), as derived from the *actiones locati* and *conducti*, covered (1) the *locatio-conductio rei*, i.e., the lease of a piece of land or a chattel; (2) the *locatio-conductio operarum*, i.e., the contract for services, in which the worker was said to let his working power; and (3) the *locatio-conductio operis*, in which the opportunity to construct a building or to complete some other work, e.g., to make a suit of cloth, is let to an independent contractor.

59. Weber here follows Jhering II. See also now Schulz, Principles 43; Wieacker, Vom römischen Recht 7; Ehrlich 195, 312.

60. Universalgeschichte 78, 93; in general, 71–89, 331.

61. *Locatio-conductio*—lease; see *supra* n. 58; *em[p]tio-venditio*—sale; *mandatum*—mandate, i.e., contract for unpaid services; if the services are to be paid for, the contract is one of *locatio-conductio operarum.*

Actio quod iussu [*depositum*]—originally, action against one who has given to his son or slave authority to make a contract with another; *stipulatio*—promise asked for and given in certain formalized words.

Constitutum—the term is used here in an untechnical sense apparently meaning the legal basis (*causa*) of an actionable promise; technically *constitutum debiti* means the formless promise to pay an already existing debt of the promisor or a third party; it became actionable in praetorian law by the *actio de pecunia constituta*, an *actio in factum.* See Jörs and Kunkel 189.

62. Cf. Goldschmidt 78, 93. It must be remembered, however, that the *actio quod iussu* was not generally available, but only where the person by whom the contract had been made was a *filius familias*, a slave, or otherwise a dependent of the defendant. Cf. Buckland 531, according to whom the *actio quod iussu* was only of small importance. Weber's statement is based upon Goldschmidt 78, n. 93, who speaks of the "astonishingly broad category of the *mandatum* or *iussus*" (as exemplified by D. 17.1.2), of which he says that it sufficed for those modern transactions of which Weber speaks in the text. For the present state of

learning concerning *mandatum* and *iussus*, see JÖRS AND KUNKEL 213, 267, 411, 415.

63. Cf. PLUCKNETT 601, and the literature there cited.

64. The comprehensive Roman concept of ownership, *dominium*, stands in contrast with the Germanic laws, in which there has been lacking not only a common legal term covering full ownership in both land and chattels, but also a term indicating the fullness of rights to possession, utilization, and disposition of land. The various ways in which a person may derive benefits from land have been traditionally expressed in the complex set of tenures, estates, and future interests which has been characteristic of the Common Law. Only in recent times have the terms "fee" and, more recently, "title" assumed a meaning which comes near to that of the Roman *dominium*, which indicates the sum total of all rights and benefits which may be derived from a piece of land (as well as from a chattel). All rights of an objectively or temporally limited character are either, as the lease, regarded as mere personal claims against the owner or as rights in the thing of another (*iure in re aliena*), i.e., encumbrances, such as an estate for life (*usufructus*), a right of way or other easement (*servitus*), or a mortgage (*hypotheca*). As long as a particular thing is encumbered with such a right of another, the owner's *dominium* is accordingly limited, immediately to expand, however, to its fullness of unlimited freedom of possession, enjoyment, use, and disposal, as soon as the encumbrance is lifted. This concept of *dominium* must not be understood, however, in the sense that a Roman property owner would have been completely unlimited in his freedom to use or abuse his thing. At all times was he limited, especially as landowner, by police power regulations established in the public interest. The concept of *dominium* is only a mental tool to facilitate mental operations concerning property rights. Indirectly, it also tends, of course, to facilitate land transactions and thus to increase the security of land titles.

As Weber observes the highly abstract concept of *dominium* has been the product of a long process of juridical elaboration. Similar to the Germanic and other laws, older Roman law, too, operated with a variety of concepts indicating the various kinds of a person's legally recognized relationship to a thing, especially a piece of land. In the *ius civile*, *res mancipi* (citizen's land in the proper sense, slaves, cattle, and certain agricultural implements) were treated differently from the *res nec mancipi*. Ownership *ex iure Quiritium* was not the same as the *in bonis habere* of the praetorian law or the various tenures in the administratively managed public lands (see sec. *ii*:5). The elaboration of the comprehensive concept of *dominium* was the work of the jurists. According to the presently prevailing opinion, this mental process was essentially completed by the classical jurists. On the development see JÖRS and KUNKEL 120, and the extensive literature stated there and at p. 405; also BUCKLAND 188, and NOYES 131.

65. Law of Citations.—There were several; the earliest was issued by Constantine in A.D. 321; the best known is that of 426, issued by Valentinian III and Theodosius II (CODEX THEODOSIANUS 1.4.3.). The courts were ordered to consider the works of a certain number of jurists; where the jurists differed, the judge was to follow the opinion of the majority or, in the case of a tie, that of Papinian.

V

Formal and Substantive Rationalization —Theocratic and Secular Law

1. *The General Conditions of Legal Formalism*

The considerations of the last section raise the important problem, already touched upon in various places, of the influence of the form of political authority on the formal aspects of the law. A definitive analysis of this problem requires an analysis of the various types of authority which we shall not undertake until later. However, a few general remarks may be made at this point. The older forms of popular justice had originated in conciliatory proceedings between kinship-groups. The primitive formalistic irrationality of these older forms of justice was everywhere cast off under the impact of the authority of princes or magistrates (*imperium*, ban) or, in certain situations, of an organized priesthood. With this impact, the substance of the law, too, was lastingly influenced, although the character of this influence varied with the various types of authority. The more rational the administrative machinery of the princes or hierarchs became, that is, the greater the extent to which administrative "officials" were used in the exercise of the power, the greater was the likelihood that the legal procedure would also become "rational" both in form and substance. To the extent to which the rationality of the organization of authority increased, irrational forms of procedure were eliminated and the substantive law was systematized, i.e., the law as a whole was rationalized. This process occurred, for instance, in Antiquity in the *ius honorarium* and the praetorian remedies,[1] in the capitularies of the Frankish Kings, in the procedural innovations of the English Kings and Lords Chancellc ,[2] or in the inquisitorial procedure of the Catholic Church.[3] However, these rationalizing tendencies were not part of an articulate and unambiguous policy on the part of the wielders of power; they were rather driven in this direction by the needs of their own rational administration, as, for instance, in the case of the administrative machinery of the P .pacy, or by powerful interest-groups with whom they were allied and to whom rationality in substantive law and procedure constituted an advantage, as, for instance, to the bourgeois classes of Rome, of the late Middle Ages, or of modern times. Where these interests were absent the secu-

larization of the law and the growth of a strictly formal mode of juridical thought either remained in an incipient stage or was even positively counteracted. In general terms, this may be attributed to the fact that the rationality of ecclesiastical hierarchies as well as of patrimonial sovereigns is substantive in character, so that their aim is not that of achieving that highest degree of formal juridical precision which would maximize the chances for the correct prediction of legal consequences and for the rational systematization of law and procedure. The aim is rather to find a type of law which is most appropriate to the expediential and ethical goals of the authorities in question. To these carriers of legal development the self-contained and specialized "juridical" treatment of legal questions is an alien idea, and they are not at all interested in any separation of law from ethics. This is particularly true, generally speaking, of theocratically influenced legal systems, which are characterized by a combination of legal rules and ethical demands. Yet in the course of this kind of rationalization of legal thinking on the one hand and of the forms of social relationships on the other, the most diverse consequences could emerge from the nonjuridical components of a legal doctrine of priestly make. One of these possible consequences was the separation of *fas*, the religious command, from *ius*, the established law for the settlement of such human conflicts which had no religious relevance.[4] In this situation, it was possible for *ius* to pass through an independent course of development into a rational and formal legal system, in which emphasis might be either upon logical or upon empirical elements. This actually happened both in Rome and in the Middle Ages. We shall discuss later [v:2, v:8] the ways in which the relationship between the religiously fixed and the freely established components of the law were determined in these cases. As we shall see hereafter, [sec. vii] it was quite possible, as thinking became increasing secular, for the sacred law to encounter as a rival, or to be replaced by, a "natural law" which would operate beside the positive law partly as an ideal postulate and partly as a doctrine with varying actual influence upon legislation or legal practice. It was also possible, however, that the religious prescriptions were never differentiated from secular rules and that the characteristically theocratic combination of religious and ritualistic prescriptions with legal rules remained unchanged. In this case, there arose a featureless conglomeration of ethical and legal duties, moral exhortations and legal commandments without formalized explicitness, and the result was a specifically *non-formal* type of law. Just which of these two possibilities actually occurred depended upon the already mentioned characteristics of the religion in question and the principles that governed its relation to the legal system and the state; in part it de-

pended upon the power position of the priesthood vis-à-vis the state; and finally, upon the structure of the state. It was because of their special structure of authority that in almost all the Asiatic civilizations the last mentioned of these courses of development came to emerge and persist.

But although certain features in the logical structure of different legal systems may be similar, they may nevertheless be the result of diverse types of domination. Authoritarian powers resting on personal loyalty, such as theocracy and patrimonial monarchy, have usually created a nonformal type of law. But a nonformal type of law may also be produced by certain types of democracy. The explanation lies in the fact that not only such power-wielders as hierarchs and despots, and particularly enlightened despots, but also democratic demagogues may refuse to be bound by formal rules, even by those they have made themselves, excepting, however, those norms which they regard as religiously sacred and hence as absolutely binding. They all are confronted by the inevitable conflict between an abstract formalism of legal certainty and their desire to realize substantive goals. Juridical formalism enables the legal system to operate like a technically rational machine. Thus it guarantees to individuals and groups within the system a relative maximum of freedom, and greatly increases for them the possibility of predicting the legal consequences of their actions. Procedure becomes a specific type of pacified contest, bound to fixed and inviolable "rules of the game."

Primitive procedures for adjusting conflicts of interest between kinship groups are characterized by rigorously formalistic rules of evidence. The same is true of judicial procedure in *Dinggenossenschaften.* As we have seen, these rules were at first influenced by magical beliefs which required that the questions of evidence should be asked in the proper way and by the proper party. Even afterwards it took a long time for the law to develop the idea that a fact, as understood today, could be "established" by a rational procedure, particularly by the examination of witnesses, which is the most important method now, not to speak at all of circumstantial evidence. The compurgators of earlier epochs did not swear that a statement of fact was true but confirmed the rightness of their side by exposing themselves to the divine wrath. We may observe that this practice was not much less realistic than that of our days when a great many people, perhaps a majority, believe their party task as witnesses to be simply that of "swearing" as to which party is "in the right." In ancient law, proof was therefore not regarded as a "burden" but at least in large part as a "right" of the party to which it was attributed. The judge, however, was strictly bound by these rules and the traditional methods of proof. The modern theory of as late a period

as that of "common law" procedure[5] is different from ancient procedure only in that it would treat proof as burden. It, too, binds the judge to the motions of, and the evidence offered by, the parties and, indeed, the same principle applies to the entire conduct of the suit: in accordance with the principle of adversary procedure the judge has to wait for the motions of the parties. Whatever is not introduced or put into a motion does not exist as far as the judge is concerned; the same is true of facts which remain undisclosed by the recognized methods of proof, be they rational or irrational. Thus, the judge aims at establishing only that relative truth which is attainable within the limits set by the procedural acts of the parties.

This exactly was the character of adjudication in its oldest known, most clear-cut form: arbitration and composition between contending kinship groups, with oracle or ordeal constituting the trial procedure. This ancient legal procedure was rigorously formal like all activities oriented towards the invocation of magical or divine powers; but, by means of the irrational supernatural character of the decisive acts of procedure, it tried to obtain the substantively "right" decision. When, however, the authority of, and the belief in, these irrational powers came to be lost and when they were replaced by rational proof and the logical derivation of decisions, the formalistic adjudication had to become a mere contest between litigants, regulated so as to aim at the relatively optimal chance of finding the truth. The promotion of the progress of the suit is the concern of the parties rather than that of the state. They are not compelled by the judge to do anything they do not wish to do at their own initiative. It is for this very reason that the judge cannot comply with the quest for the optimal realization of substantive demands of a political, ethical or affective character by means of an adjudication which could give effect to considerations of concrete expediency or equity in individual cases. Formal justice guarantees the maximum freedom for the interested parties to represent their formal legal interests. But because of the unequal distribution of economic power, which the system of formal justice legalizes, this very freedom must time and again produce consequences which are contrary to the substantive postulates of religious ethics or of political expediency. Formal justice is thus repugnant to all authoritarian powers, theocratic as well as patriarchic, because it diminishes the dependency of the individual upon the grace and power of the authorities.[6] To democracy, however, it has been repugnant because it decreases the dependency of the legal practice and therewith of the individuals upon the decisions of their fellow citizens.[7] Furthermore, the development of the trial into a peaceful contest of conflicting interests can contribute to the further concentration of economic and

social power. In all these cases formal justice, due to its necessarily abstract character, infringes upon the ideals of substantive justice. It is precisely this abstract character which constitutes the decisive merit of formal justice to those who wield the economic power at any given time and who are therefore interested in its unhampered operation, but also to those who on ideological grounds attempt to break down authoritarian control or to restrain irrational mass emotions for the purpose of opening up individual opportunities and liberating capacities. To all these groups nonformal justice simply represents the likelihood of absolute arbitrariness and subjectivistic instability. Among those groups who favor formal justice we must include all those political and economic interest groups to whom the stability and predictability of legal procedure are of very great importance, i.e., particularly rational, economic, and political organizations intended to have a permanent character. Above all, those in possession of economic power look upon a formal rational administration of justice as a guarantee of "freedom," a value which is repudiated not only by theocratic or patriarchal-authoritarian groups but, under certain conditions, also by democratic groups. Formal justice and the "freedom" which it guarantees are indeed rejected by all groups ideologically interested in substantive justice. Such groups are better served by khadi-justice than by the formal type. The popular justice of the direct Attic democracy, for example, was decidedly a form of khadi-justice. Modern trial by jury, too, is frequently khadi-justice in actual practice although not according to formal law; even in this highly formalized type of a limited popular adjudication one can observe a tendency to be bound by formal legal rules only to the extent directly required by procedural technique. Quite generally, in all forms of popular justice decisions are reached on the basis of concrete, ethical, or political considerations or of feelings oriented toward social justice. Political justice prevailed particularly in Athens, but it can be found even today. In this respect, there are similar tendencies displayed by popular democracy on the one hand and the authoritarian power of theocracy or of patriarchal monarchs on the other. When, for example, French jurors, contrary to formal law, regularly acquit a husband who has killed his wife's paramour caught in the act, they are doing exactly what Frederick the Great did when he dispensed "royal justice" for the benefit of Arnold, the miller.[8] Even more so does the distinctive characteristic of a theocratic administration of justice consist entirely in the primacy of concrete ethical considerations; its indifference or aversion to formalism is limited only in so far as the rules of the sacred law are explicitly formulated. But in so far as norms of the latter apply, the theocratic type of law results in the exact

opposite, viz., a law which, in order to be adaptable to changing circumstances, develops an extremely formalistic casuistry. Secular, patrimonial-authoritarian administration of justice is much freer than theocratic justice, even where it has to conform with tradition, which usually allows quite a degree of flexibility.

Finally, the administration of justice by honoratiores presents two aspects depending on what legal interests there are involved, those of the honoratiores' own class or those of the class dominated by them. In England, for instance, all cases coming before the central courts were adjudicated in a strictly formalistic way. But the courts of justices of the peace, which dealt with the daily troubles and misdemeanors of the masses, were informal and representative of khadi-justice to an extent completely unknown on the Continent. Furthermore, the high cost of litigation and legal services amounted for those who could not afford to purchase them to a denial of justice, which was rather similar to that which existed, for other reasons, in the judicial system of the Roman republic.[9] This denial of justice was in close conformity with the interests of the propertied, especially the capitalistic, classes. But such a dual judicial policy of formal adjudication of disputes within the upper class, combined with arbitrariness or de facto denegation of justice for the economically weak, is not always possible. If it cannot be had, capitalistic interests will fare best under a rigorously formal system of adjudication, which applies in all cases and operates under the adversary system of procedure. In any case adjudication by honoratiores inclines to be essentially empirical, and its procedure is complicated and expensive. It may thus well stand in the way of the interests of the bourgeois classes and it may indeed be said that England achieved capitalistic supremacy among the nations not because but rather in spite of its judicial system. For these very reasons the bourgeois strata have generally tended to be intensely interested in a rational procedural system and therefore in a systematized, unambiguous, and specialized formal law which eliminates both obsolete traditions and arbitrariness and in which rights can have their source exclusively in general objective norms. Such a systematically codified law was thus demanded by the English Puritans,[10] the Roman Plebeians,[11] and the German bourgeoisie of the nineteenth century. But in all these cases such a system was still a long way off.

In the administration of justice of theocratic type, in adjudication by secular honoratiores (as judges or private or officially patented jurisconsults), as well as in that development of law and procedure which is based upon the *imperium* and the contempt powers of magistrates, princes, or officials holding in their hands the direction of the lawsuit,[12]

the view is at first strictly adhered to that fundamentally the law has always been what it is and that no more is needed than an interpretation of its ambiguities and its application to particular cases. Nonetheless, as we have seen [in sec. *iii*], the emergence of rationally compacted norms is in itself possible even under rather primitive economic conditions, once the hold of magical stereotypization has been broken. The existence of irrational techniques of revelation as the sole means of innovation has often implied a high degree of flexibility in the norms; their absence, on the other hand, has resulted in a higher degree of stereotypization, because in that event the sacred tradition as such remained the sole holy element and would thus be sublimated by the priests into a system of sacred law.

2. *The Substantive Rationalization of Sacred Law*

Sacred law and sacred lawmaking have emerged in rather different ways in different geographical areas and in different branches of the law; their persistence has likewise varied. We shall completely disregard at this point of our analysis the special attention which sacred law pays to all problems of punishment and atonement, a concern originally caused by purely magical norms; nor shall we here consider its interest in political law, or the originally magically conditioned norms which regulated the times and places at which trials were allowed to take place, or the modes of proof. In the main, we shall deal only with "private law" as commonly understood. In this branch of law, the fundamental principles regarding the permissibility and the incidents of marriage, the law of the family, and, closely related to it, that of inheritance, have constituted a major branch of sacred law in China and India as well as in the Roman *fas*, the Islamic *shariah*, and the medieval canon law. The ancient magical prohibitions of incest were early forms of religious regulation of marriage.[13] In addition there was the importance of appropriate sacrifices to the ancestors and other familial *sacra*, which caused the intrusion of sacred law into the law of the family and inheritance. In the areas of Christianity, where the latter interests lost part of their significance, the fiscal interests of the Church in the validity of wills operated to maintain its control in the field of the law of inheritance.[14]

Secular trade law was liable to come into conflict with the religious norms relating to objects and places dedicated to religious purposes or consecrated for other reasons or magically tabooed. In the sphere of contract, sacred law intervened on purely formal grounds

whenever a religious form of promise, especially an oath, had been used, a situation which occurred frequently and in the beginning, we may surmise, regularly.[15] On substantive grounds, sacred law became involved whenever important norms of a religious-ethical character, for instance, the prohibition of usury, entered the picture.

The relations between temporal and sacred law in general can vary considerably, depending upon the particular principles underlying the religious ethics in question. As long as religious ethics remains at the stage of magical or ritualistic formalism, it can, under certain circumstances, become paralyzed and completely ineffective through its own inherent means of refined rationalization of magical casuistry. In the course of the history of the Roman republic the *fas* met with just this fate. There was scarcely a single sacred norm for the circumvention of which one could not have invented some appropriate sacred device or form of evasion.[16] The College of Augurs' power of intervention in cases of defective religious form and evil *omina*, which meant, practically speaking, a power to rescind the resolutions of the popular assemblies, was never formally abolished in Rome as it had been by Pericles and Ephialtes in the case of the equally sacredly conditioned power of the Athenian Areiopagus.[17] But under the absolute domination of the priesthood by the secular magisterial nobility, this power served political purposes exclusively, and its application, like that of the substantive *fas*, was rendered practically innocuous by peculiar sacred techniques. Thus, like the Hellenic law of the late period, the thoroughly secularized *ius* was guaranteed against intrusions from this direction, despite the extraordinarily large role played in Roman life by considerations of ritual obligation. The subordination of the priesthood to the profane power in the ancient polis and certain peculiar characteristics of the Roman Olympus and of its treatment of which we have spoken, were the factors by which this line of development was determined in Rome.[18]

3. *Indian Law*

The situation was the reverse where a dominant priesthood was able to regulate the whole range of life ritualistically and thus to a considerable extent to control the entire legal system, as was the case in India.[19] According to prevailing Hindu theory, all law is contained in the Dharma-Sutras. The purely secular development of law was confined to the establishment of particular systems of law for the various vocational groups of the merchants, artisans, and so forth. No one doubted the right of the vocational groups and castes to establish their

own laws, so that the prevailing state of affairs could be summarized in the maxim: "Special law prevails over general law."[20] Almost all of the actually obtaining secular law came from these sources. This type of law, which covered almost the entire field of matters of daily life, was, however, disregarded in priestly doctrine and in the philosophical schools. Since no one thus specialized in its study and administration, it escaped not only all rationalization, but also lacked a reliable guaranty of validity in cases of divergence from the sacred law, which latter was in theory absolutely binding, even though it was widely disregarded in practice.

Lawfinding in India represented that same characteristic intermixture of magical and rational elements which corresponds to both the peculiar kind of the religion and the theocratic-patriarchal regulation of life. The formalism of procedure was on the whole rather slight. The courts were not of the type of popular justice. The rules that the king is bound by the decision of the chief justice and that lay members (viz., merchants and scribes in the older sources and guild masters and scribes in the later ones) must be among the members of the court are both expressive of rational tendencies. The great significance of private arbitration corresponded to the autonomous law creation by the consociations. However, appeals from the organized tribunals of the consociations to the public courts were permitted as a general rule. The law of evidence is today primarily rational in character; resort is primarily had to instruments in writing and to the testimony of witnesses. Ordeals were reserved for cases in which the results of the rational means of evidence were not sufficiently clear. In those situations, however, they preserved their unbroken magical significance. This was especially true of the oath, which was to be followed by a period of waiting to determine the consequences of the self-curse. Similarly the magical means of execution, especially the creditor's starving himself to death before the door of the debtor,[21] existed along with the official enforcement of judgments and legalized self-help. A practically complete parallelism of sacred and secular law existed in criminal procedure. But there was also a tendency towards the fusion of both these types of law, and on the whole sacred and secular law constituted an undifferentiated body, which obscured the remnants of the ancient Aryan law. This body of law was, in turn, largely superseded by the autonomous administration of justice of the consociations, especially the castes, which possessed the most effective of all means of compulsion, viz., expulsion.

Within the territory where *Buddhism* prevailed as the religion of the state, i.e., in Ceylon, Siam, Malaya, Indo-China, and especially Cambodia and Burma, the legislative influence of the Buddhist ethics was

far from slight.[22] The Buddhist ethics was responsible for the equal status of husband and wife as expressed, for instance, in the rule of cognatic inheritance or the system of community property, or in the duty of filial piety, established in the interest of the parents' fate in the beyond, and requiring, among other things, the heir's liability for the debts of the deceased. The whole law came to be permeated with ethical elements which found expression in the protection of slaves, the leniency of the penal law (except the often extremely cruel punishment for political crimes), and in the admissibility of giving bond for keeping the peace. Yet even the relatively worldly ethics of Buddhism was so preoccupied with conscience on the one hand and ritual formalism on the other that a system of sacred "law" could scarcely develop as the subject matter of a specialized learning. Nonetheless, a legal literature, Hindu in tone, did develop and made possible the proclamation in Burma in 1875 of the "Buddhist law" as the official law, meaning by Buddhist law a law of Hindu origin, modified in the direction of Buddhism.

4. *Chinese Law*

In *China*,[23] on the other hand, the magical and animistic duties were restricted by the power-monopoly of the bureaucracy to the purely ritual sphere. Thus, as we have seen and shall see further, it exercised profound influences on economic activity. The irrationalities of Chinese administration of justice were caused by patrimonial rather than theocratic factors. Legal prophecy, like prophecy in general, has been unknown in China, at least in historical times; there also was no stratum of responding jurisconsults and no specialized legal training. All this corresponded to the patriarchal character of the political association, which was opposed to any development of formal law. The "Wu" and the "Wei" (Taoist magicians) were the counselors in matters of magical ritual. Those of their members who had passed the examinations and had, accordingly, a literary education, were advisors to families, kinship groups, and villages in ceremonial and legal matters.

5. *Islamic Law*

In *Islam* there was, at least in theory, not a single sphere of life in which secular law could have developed independently of the claims of sacred norms. In fact, there occurred a rather far-reaching reception

of Hellenic and Roman law.[24] Officially, however, the entire corpus of private law was claimed to be an interpretation of the Koran, or its elaboration through customary law. This took place when, after the fall of the Omayyad Caliphate and the establishment of rule of the Abbassids, the caesaro-papist principles of the Zoroastrian Sassanids were transplanted into Islam in the name of a return to the sacred tradition.[25] The status of sacred law in Islam is an ideal example of the way in which sacred law operates in a genuinely prophetically created scriptural religion. The Koran itself contains quite a few rules of positive law (such as, for instance, the abolition of the prohibition of marriage between a man and his adoptive daughter-in-law, the very liberty of which Mohammed availed himself). But the bulk of the legal prescriptions are of a different origin. Formally, they usually appear as *hadith*, i.e., exemplary deeds and sayings of the prophet, the authenticity of which was attested to by a successive line of recognized transmitters extending back by oral transmission to the contemporaries of the prophet, which originally meant back to the specially qualified companions of Mohammed. Due to this unbroken chain of personal transmitters the prescriptions are, or are said to be, exclusively orally transmitted, and constitute the *Sunna*, which is not an interpretation of the Koran itself, but a tradition alongside the Koran. Its oldest component parts derive mainly from the pre-Islamic period, particularly from the customary law of Medina, the compilation and editing of which as *Sunna* has been attributed to Malik-ibn-Anas. But neither the Koran nor the *Sunna* were by themselves the sources of the law used by the judges. These sources were rather the *fikh*, i.e., the product of the speculative labors of the law schools, which are collections of *hadiths* arranged either according to authors (*musnad*) or to subject matter (*musannaf*, of which six constitute the traditional canon). The *fikh* comprises ethical as well as legal commands and has contained, ever since the law became crystallized, an increasingly large section of a completely obsolete character. The crystallization was officially achieved through the belief that the charismatic, juridical-prophetic power of legal interpretation (*ijtihad*) had been extinguished since the seventh or eighth century, that is, the thirteenth or fourteenth century of the Christian era, a belief similar to that of the Christian Church and to that of Judaism regarding their assumption that the prophetic age had come to an end. The prophets of the law, the *mujtahidûn* of the charismatic epoch, were still thought of as the agents of juridical revelation, although only the founders of the four law schools (*madhab*), acknowledged as orthodox, were given complete recognition. After the extinction of the *ijtihad* only commentators (*muqallidin*) remained and the law

became absolutely fixed. The struggle among the four orthodox law schools was primarily a conflict about the components of the orthodox *Sunna,* but it was also a conflict over methods of interpretation, and even these differences were increasingly stereotyped once the law was fixed. Only the small Hanbalite School rejects all *bida,* i.e., all new law, all new *hadith,* and all rational schemes of interpretation. Thus, as well as because of its postulate of *coge intrare,*[26] it has cut itself off from the other schools which, in principle, are tolerant of each other. The schools differ by the different roles ascribed to legal science in the creation of new law. The Malekite School was dominant for a long time in Africa and Arabia. Since it originated in the oldest political center of Islam, Medina, it was especially uninhibited, perhaps as might have been expected, in incorporating pre-Islamic law. But it was bound to a greater extent by tradition than the Hanefite School, which emerged from Iraq and was, accordingly, deeply affected by Byzantine influences.[27] Its role was particularly important in the Court of the Caliph, and it is still the official school in Turkey[28] and the dominant one in Egypt. The main contribution of the Hanefite jurisprudence, which was in close contact with the ideas of the palace, seems to have been the development of the empirical techniques of Islamic jurists, i.e., the use of analogy (*qiyâs*). It also proclaimed the *ra'y,* i.e., the idea that learned doctrine was an independent source of law, together with the received interpretation of the Koran. The Shafiite school, which originated in Baghdad and spread into Southern Arabia, Egypt, and Indonesia, is regarded as opposed not only to both these Hanefite characteristics, that is, the role ascribed to learned opinion and borrowings from foreign law, but also to the Malekites' elastic attitude toward tradition. It is thus regarded as more traditionalistic, although it has nevertheless achieved similar results through its large-scale reception of *hadiths* of questionable genuineness. The conflict between the *Ashab-al-hadith* i.e., the conservative traditionalists, and the *Ashab-al-fikh,* i.e., the rationalistic jurists, has persisted through the entire history of Islamic law.

The sacred law of Islam is throughout specifically a "jurists' law." Its validity rests on *idshmâ* (*idshmâ-al-ammah—tacitus consensus omnium*) which is defined in practice as the agreement of the prophets of the law, i.e., the great jurists (*fuqahâ*). Besides the infallible prophet, only the *idshmâ* are officially infallible. Koran and *Sunna* are merely the historical sources of the *idshmâ.* The judges do not consult the Koran or the *Sunna,* but the compilations of the *idshmâ,* and they are not allowed independently to interpret the sacred writings or traditions. The Islamic jurists were in a position similar to that of the Roman jurists, and especially the organization of their schools is reminiscent of that in Rome. The jurist's activities involved both legal consultation

and the teaching of students. He was therefore in contact with the practical requirements of his clients as well as the practical pedagogical demands, which necessitated systematic classification. But the subordination both to the fixed interpretative methods laid down by the heads of the schools and to the authoritative commentaries excluded, ever since the close of the *ijtihad* period, all freedom of interpretation. In the official universities, like *Al-Azhar* of Cairo, which includes among its faculty representatives of all four orthodox schools, teaching became the routinized recitation of fixed sentiments.[29] Certain essential characteristics of Islamic organization, viz., the absence of [Church] Councils as well as of doctrinal infallibility [like that ascribed to the papal office], influenced the development of the sacred law in the direction of a stereotyped "jurists' law." Actually, however, the direct applicability of sacred law was limited to certain fundamental institutions within a range of substantive legal domain only slightly more inclusive than that of medieval canon law. However, the universalism which was claimed by the sacred tradition resulted in the fact that inevitable innovations had to be supported either by a *fetwa*,[30] which could almost always be obtained in a particular case, sometimes in good faith and sometimes through trickery, or by the disputatious casuistry of the several competing orthodox schools. As a consequence of these factors, together with the already mentioned inadequacy of the formal rationality of juridical thought, systematic lawmaking, aiming at legal uniformity or consistency, was impossible. The sacred law could not be disregarded; nor could it, despite many adaptations, be really carried out in practice. As in the Roman system, officially licensed jurists (*muftis*, with the *Sheikh-ül-Islam* at their head) can be called on for opinions by the khadis or the parties as the occasion arises. Their opinions are authoritative, but they also vary from person to person; like the opinions of oracles, they are given without any statement of rational reasons. Thus they actually increase the irrationality of the sacred law rather than contribute, however slightly, to its rationalization.

As a status group law, the sacred law applies only to the Muslim but not to the subject population of unbelievers. As a consequence, legal particularism continued to exist not only for the several tolerated denominations, which were privileged partly positively and partly negatively, but also as local or vocational custom. The scope of the maxim that "special law prevails over the general law of the land," although it claimed an absolute validity, was of doubtful application whenever particular laws happened to conflict with sacred norms, which, themselves, were subject to thoroughly unstable interpretations. The commercial law of Islam developed from the legal techniques of late Antiquity a variety of norms, quite a few of which were directly taken over

by the West.[31] In Islam itself, however, the validity of these commercial norms did not derive from enactment or from stable principles of a rational legal system. Their guaranty consisted in nothing but the merchants' sense of honesty and economic influence. The sacred traditions rather threatened than promoted most of these particularistic institutions. They existed *praeter legem*.

This impediment to legal unification and consistency always existed as a natural consequence wherever the validity of sacred law or immutable tradition has been taken seriously, in China and India just as in the territories of Islam. Even in Islam the system of personal laws applied to the purely orthodox schools, in the same way in which it once applied as part of the folk laws in the empire of the Carlovingians.[32] It would have been quite impossible to create a *lex terrae* such as the Common Law had become since the Norman Conquest and, officially, since Henry II. We actually find in all the great Islamic empires of the present time a dualism of religious and secular administration of justice: the temporal official stands beside the khadi, and the secular law beside the *shari'ah*. Similarly to the capitularies of the Carlovingians, this secular law (*qânûn*) began to expand from the very beginning, i.e, since the times of the Omayyad Khalifs, and to assume increasing importance in relation to the sacred law, the more the latter became stereotyped. It became binding for the secular courts whose jurisdiction came to prevail in all matters except those concerning tutelage, marriage, inheritance, divorce, and, to some extent, settled lands and certain other aspects of land law. These courts are not concerned at all with the prohibitions of the sacred law but decide according to local custom, since every systematization of even the secular law was prevented by the continuous intervention of spiritual norms. Thus the Turkish Codex, which began to be promulgated in 1869, is not a Code in the true sense, but simply a compilation of Hanefite norms.[33] We shall see that this state of affairs has had important consequences as regards economic organization.

6. *Persian Law*

In *Persia*, where the Shiite form of Islam is the established religion, the irrationality of the sacred law is even greater, since there it does not even possess the relatively firm bases given by the *Sunna*. The belief in the invisible teacher (*Imâm*) who, at any rate in official theory, is regarded as infallible, is only a poor substitute.[34] The members of the judiciary are "admitted" by the Shah, who, as a religiously illegitimate

ruler, is compelled to pay the greatest regard to the wishes of the local *honoratiores*. This "admission" is no "appointment," but rather the *agrégation* of candidates graduated from the theological schools. There are judicial districts, but the jurisdictions of the individual judges do not seem to be clearly fixed, as the parties may choose from among a number of competing judges. The charismatic character of these juridical prophets is thus clearly indicated. The rigorous sectarianism of the *Shi'ah*, which is accentuated by Zoroastrian influences, would have prevented as unclean all economic intercourse with unbelievers if not through many "fictions" this seclusionism demanded by sacred law had ultimately been almost completely renunciated. There was thus brought about an extensive withdrawal of sacred legal influences from almost all spheres of activity that are of any economic and political consequence. The same retreat of sacred law took place in the political sphere when constitutionalism was justified, through *fetwas*, by quotations from the Koran. Nevertheless, the theocracy is even today far from being a negligible factor in economic life. Despite the increasing shrinkage of its range of influence, the theocratic element in adjudication was and still is—together with the peculiar features of Oriental patrimonialism which will be treated later—of great significance for economic activity. Here, as elsewhere, this fact is due less to the positive content of the norms of the sacred law than to the attitudes prevailing in judicial administration, which is aiming at "material" justice rather than at a formal regulation of conflicting interests. It arrives at decisions in accord with considerations of equity even in those cases concerning real property which belong to its jurisdiction. Such considerations are all the more likely where the law is uncodified. Predictability of decisions of kadi justice is thus at a minimum. As long as religious courts had jurisdiction over land cases, capitalistic exploitation of the land was thus impossible, as, for instance, in Tunisia.[35] However, capitalist interests succeeded in eliminating this jurisdiction. The whole situation is typical of the way in which theocratic judicial administration has interfered and must necessarily interfere with the operation of a rational economic system. It is only the precise extent of this interference which varies from place to place.

7. *Jewish Law*

Jewish sacred law has certain formal similarities with Islamic sacred law, although its context was quite the reverse of that in which Islamic sacred law existed.[36] Among the Jews, too, the Torah and the interpre-

tative and supplementary sacred tradition purported to obtain as a norm of universal validity in all areas of life; similarly, the sacred law obtained only for the coreligionists. But unlike Islam, the bearers of this legal system were not a ruling stratum but rather a pariah people. Hence commerce with outsiders was juridically foreign commerce, and it was to be governed in part by different ethical norms. To the legal norms obtaining in their environment the Jews tried to adapt themselves to the extent permitted by that environment and to the extent that it did not run counter to their own ritualistic scruples. As early as in the period of the kings, the old local oracle, the *Urim* and *Thummim*,[37] had already been supplanted by juridical prophets, who contested the king's competence to issue legal orders with much greater effectiveness than their counterparts in Germanic law.

In the post-Exilic age the Nebiim, i.e., the soothsayers and quite probably law prophets of the period of the kings,[38] were replaced, as we have seen, by the Pharisees who were originally a stratum of intellectuals of upper-class origin with marked Hellenistic traits; later they also included small middle-class people who engaged in scriptural interpretation as a pastime.[39] Thus there developed, at the latest in the last pre-Christian century, the scholastic treatment of ritual and legal questions and thereby the legal technique of the expositors of the Torah and the consulting jurists of the two Eastern centers of Judaism: Jerusalem and Babylon.[40] Like the Islamic and Hindu lawyers, they were the bearers of a tradition which in part rested on the interpretation of the Torah but was also in part independent of it. God had given that tradition to Moses during their forty-day encounter on Sinai. By means of this tradition the official institutions, for instance, levirate marriage,[41] were as markedly transformed as was the case in Islam or in India. Furthermore, like that of Islam and India, it was at first a strictly oral tradition. Its written fixation by the Tannaim[42] began with the increasing fragmentation of the diaspora and the development of a scholastic treatment in the schools of Hillel [ca. 30 B.C.—A.D. 10] and Shammai after the beginning of the Christian era. This was undoubtedly done to guarantee unity and consistency once the judge had become bound to the responses of the consulting legal scholars and therefore to precedents. As in Rome and England, the authorities for the particular legal sayings were cited, and vocational training, examinations, and licensing finally replaced the formerly free legal prophecy. The Mishnah[43] is still the product of the activities of the respondents themselves, collected by Rabbi Judah the Patriarch [ca. 135–220]. The Gemara, its official commentary, is, on the other hand, the product of the activities of the teaching lawyers, the Amoraim, who had succeeded the first interpreters and

who translated into Aramaic and interpreted for the audience the Hebraic passages recited by the reader. In Palestine they bore the title *rabbî* and a corresponding one in Babylon (*mar*). A "dialectical" treatment along the lines of occidental theology could be found in the Pumbeditha "academy" of Babylon. But this method became fundamentally suspect during the later period of orthodoxy and it is condemned today. Since then a speculative theological treatment of the Torah has been impossible. More explicitly than in India and in Islam the dogmatic-edifying and the legal elements in the tradition, the *haggadah* and the *halakhah*, were separated from one another both in literature and in division of labor. In its external aspects the center of learned activity and organization shifted increasingly toward Babylon. The Exilarch (*Resh galutha*) lived in Babylon from the time of Hadrian on and into the eleventh century. His office, which was hereditarily transmitted in the Davidic family, was officially recognized by the Parthian and Persian, and later by the Islamic, rulers; he was provided with a pontifical retinue, his jurisdiction was acknowledged for a long time, even in criminal matters, and under the Arabs he had the power of excommunication. The bearers of the legal development were the two competing academies at Sura and Pumbeditha, of which the former was the more distinguished. Their presidents, the Geonim, combined judicial activity as members of the Sanhedrin with consultative practice for the entire Diaspora and with academic teaching of law. The Geonim were partly elected by the recognized teachers and partly designated by the Exilarch. The external academic organization resembled that of the medieval and oriental schools. The regular students resided at the school; in the month of the Kalla[44] they were joined from abroad by large numbers of more mature candidates for rabbinical office, who came to participate in the academic discussions of the Talmud. The Gaon issued his responses either spontaneously or after discussion during Kalla or with the students.

The literary works of the Geonim, which began roughly with the sixth century, were, in form, no more than commentaries. Theirs was thus a more modest task than that of their predecessors, the Amoraim, who creatively expounded the Mishnah, or that of the successors of the latter, the Saboraim, who commented on it in a relatively free manner, not to speak at all of the Tannaim. But, in practice, and as a result of their elaborate and strong organization, they succeeded in having the authority of the Babylonian Talmud triumph over that of the Palestinian. It is true that this supremacy applied mainly to the Islamic countries, but up until the tenth century it was accepted also by the Jews of the Occident. It was only after that and following

the extinction of the office of the Exilarch[45] that the West freed itself from the Eastern influence. The Frankish rabbis of the Carlovingian epoch, for instance, brought about the transition to monogamy. After the learned treatises of Maimonides[46] and Asher,[47] although they were rejected by the Orthodox as rationalistic, it was ultimately possible for the Spanish Jew Joseph Karo, in his Shulchan Aruch,[48] to create a compendium which, as compared with the Islamic canonic treatises, was very manageable and brief. In practice this work then replaced the authority of the Talmudic responses, and in Algiers, for example, as well as in Continental Europe, it came in many instances to guide practice like a veritable code.

Talmudic jurisprudence originated in a highly scholastic atmosphere and, during the very period of the emergence of the commentary on the Mishnah, it had much looser relations with legal practice than in both earlier and later periods. In consequence of these two factors, its formal appearance demonstrated with great clarity the typical characteristics of sacred law, i.e., its marked predominance of purely theoretically constructed, but lifeless, casuistry, which within the narrow limits of a purely rationalistic interpretation could not be elaborated into a genuine system. The casuistic sublimation of law was by no means slight. However, living and dead law were thoroughly intermixed, and no distinction was made between legal and ethical norms.

In matters of substance innumerable receptions had occurred already in Talmudic times, from Near Eastern, especially the Babylonian, and later from the Hellenistic and Byzantine, environments. But not everything in Jewish law which corresponds to the common Near Eastern law is borrowed. On the other hand, it is intrinsically improbable that, as a modern theory holds, some of the most important legal institutions of capitalistic commerce, for instance, the instrument payable to bearer, were invented by the Jews in their own law and then imported by them into the Occident.[49] Instruments containing a bearer clause had been known already in Babylonian law of the age of Hammurabi, and the only question is whether they were instruments simply allowing the debtor to discharge his debt by making payment to the holder or whether they were genuine negotiable instruments payable to bearer.[50] The former type of instrument can also be found in Hellenistic law.[51] But the legal construction is different from what it is in the occidental negotiable instrument payable to bearer (*Inhaberurkunden*), which was influenced by the Germanic conception of the paper as the "embodiment" of rights and was therefore much more effective for purposes of commercialization.[52] The Jewish origin of the modern types of securities is rendered improbable by an additional fact, viz., the fact that the

Occidental precursors of these securities originated in the peculiar needs of the various forms of early medieval *procedure* which were clearly rational. Indeed the clauses which prepared the way for negotiability originally did not serve commercial ends at all but rather those of procedure, above all that of providing a means for substituting a representative for the true party in interest.[53] So far not a single importation of a legal institution has been clearly demonstrated as attributable to the Jews.[54]

It was not in the Occident but rather in the Orient that Jewish law played a real role as an influence in the legal systems of other peoples. Important elements of the Mosaic law were incorporated with Christianization into Armenian law as one of the components of its further development.[55] In the kingdom of the Khazars, Judaism was the official religion and thus Jewish law applied there even formally.[56] Finally, the legal history of the Russians makes it seem probable that through the Khazars certain elements of the most ancient Russian law developed under the influence of Jewish-Talmudic law.[57] There was nothing similar in the Occident. Although it is not impossible that through the mediation of the Jews certain forms of business enterprise may have been imported into the Occident, it is improbable that these forms would have been of national Jewish origin. They are much more likely to have been Syrian-Byzantine institutions or, through these, Hellenistic, or ultimately perhaps, institutions of common Oriental law deriving from Babylon. We must remember that in the importation of Eastern commercial techniques into the West the Jews were in competition with the Syrians, at least in late Antiquity.[58] As far as its formal character is concerned, genuine Jewish law as such and, particularly, the Jewish law of obligations, were no appropriate context at all for the development of such institutions as are required by modern capitalism. Its relatively unhampered development of the contractual type of transaction in no way changes this situation.

Naturally the influence of Jewish sacred law was all the more powerful in the internal life of the family and the synagogue. It was especially significant there in so far as it was ritual. The strictly economic norms were either, like the sabbatical year,[59] confined to the Holy Land—even there it has, through rabbinical dispensation, now been abolished—or rendered obsolete by changes in the economic system, or, like everywhere else, were made innocuous by formalistic practices of circumvention. Even before the emancipation of the Jews the extent to, and sense in, which the sacred law was still valid varied greatly from place to place. Formally, Jewish sacred law manifested no peculiar characteristics. As a special body of law and as one which was

only imperfectly systematized and rationalized and which, while elaborated casuistically, was still not logically consistent, Jewish sacred law possessed the general features of a product which had developed under the control of sacred norms and their elaboration by priests and theological lawyers. However interesting the theme may be in itself, we have in this place no reason to give it special attention.

8. *Canon Law*

The Canon Law of *Christendom* occupies a relatively special position with reference to all other systems of sacred law.[60] In many of its parts it was much more rational and more highly developed on the formal side than the other cases of sacred law. Furthermore, from the very beginning its relation to the secular law was one of a relatively clear dualism, with the respective jurisdictions fairly definitely marked in a manner not to be found elsewhere. This situation was, first of all, due to the fact that the early church had refused for centuries to have anything whatsoever to do with state and law. Its relatively rational character, however, was the product of several causes. When the Church saw itself compelled to seek relations with the secular authorities, it arranged them, as we saw (ch. VI:*xv*), with the aid of the Stoic conception of "natural law," that is, a rational body of ideas. Moreover, the rational traditions of the Roman law lived on in its own administration. At the beginning of the Middle Ages the Western church took for its model the most formal components of Germanic law in its attempt to create its first systematic body of law, the *penitentials*.[61] Furthermore, the structure of the occidental medieval university separated the teaching of both theology and secular law from that of canon law and thus prevented the growth of such theocratic hybrid structures as develo d elsewhere. The rigorously logical and professional legal technique which was developed through both ancient philosophy and jurisprudence was also bound to influence the treatment of Canon law. The collecting activity of the jurists of the church had to concern itself not, as almost everywhere else, with *responsa* and precedents but with conciliar resolutions, official rescripts and decretals, and ultimately it even began to "create" such sources by deliberate forgery—a phenomenon that did not occur in any other church.[62] Finally, and above all, after the end of the charismatic epoch of the early church, the character of ecclesiastical lawmaking was influenced by the fact that the church's functionaries were holders of rationally defined bureaucratic offices. This conception, which was peculiarly characteristic of the church's organization and which, too, was a conse-

quence of the connection with classical Antiquity, was temporarily interrupted by the feudal interlude of the early Middle Ages but revived and became all-powerful with the Gregorian period [i.e., the late 11th cent.]. Thus the occidental church traveled the path of legislation by rational enactment much more pronouncedly than any other religious community. The rigorously rational hierarchical organization of the church also made it possible that it could issue general decrees by which economically burdensome and hence impractical prescriptions, for instance, the prohibition of usury, could be treated as permanently or temporarily obsolete (as we saw in ch. VI:*xii*). In numerous respects, it is true, Canon law can hardly conceal the general pattern so characteristic of all theocratic law, viz., the mixture of substantive legislative and moral ends with the formally relevant elements of normation and the consequent loss of precision. But it has nonetheless been more strongly oriented towards a strictly formal legal technique than any other body of sacred law. Unlike the Islamic and Jewish legal systems, it did not grow through the activities of responding jurists. Furthermore, in consequence of the New Testament's eschatological withdrawal from the world, the basic writ of Christianity contains only such a minimum of formally binding norms of a ritual or legal character that the way was left entirely free for purely rational enactment. The *muftis, rabbis* and *geonim* found parallels only in the fathers-confessor and *directeurs de l'âme*[63] of the Counter-Reformation, and in certain divines of the old Protestant churches. Such casuistic ministry was then promptly productive of certain remote similarities to the Talmudic products, especially within the Catholic realm.[64] But everything was under the supervision of the central offices of the Holy See, and binding norms of social ethics were currently elaborated exclusively through their highly elastic decrees. In this way, there arose that unique relationship between sacred and secular law in which Canon law became indeed one of the guides for secular law on the road to rationality. The relatively decisive factor was the unique organization of the Catholic Church as a rational institution (*Anstalt*). As to the content of the law, apart from such details as the *actio spolii*[65] and the *possessorium summariissimum*,[66] the most significant contributions of Canon law were the recognition of informal contracts,[67] the promotion in the interest of pious endowments of freedom of testation,[68] and the canonist conception of the corporation. The churches were, indeed, the first "institutions" in the legal sense, and it was here that the legal construction of public organizations as corporations had its point of departure, as we have seen [sec. *ii*:6]. The direct practical significance of Canon law for secular law, as far as substantive private, and especially commercial, law was concerned, varied a great deal in the course of time;

in the main, however, it was relatively slight even in the Middle Ages. In Antiquity Canon law had not been able to bring about the legal abolition of free divorce even as late as Justinian,[69] and the submission of any cases to the spiritual courts had remained entirely a matter of discretion. The theoretical claim to an all-embracing substantive regulation of the entire conduct of life, which Canon law shared with all other systems of theocratic law, had in the Occident relatively harmless effects upon legal technique. The reason was that Canon law had found in the Roman law a secular competitor which had achieved an extraordinary formal perfection and which, in the course of history, had become the universal law of the world. The early Church had regarded the Roman Empire and its laws as definitive and eternal. And where the Canon law tried to extend its dominion it met with the vigorous and successful opposition of the economic interests of the bourgeoisie, including that of the Italian cities, with which the Papacy had to ally itself. In the municipal statutes of both Germany and Italy, and in Italian guild statutes, we find severe penalties for citizens bringing suit in an ecclesiastical court, and we can also find regulations that allow with an almost astonishing cynicism the discharge of spiritual penalties that might be incurred for "usury" by lump sum payments by the guilds.[70] Furthermore, in the rationally organized guilds of the lawyers as well as in the assemblies of the Estates the same material and ideal class interests, especially of the lawyers, turned against ecclesiastical law just as they did (in part) against Roman law. Apart from a few institutions, the main influence of the Canon law lay in the field of procedure. In contrast with the formalistic proof of a secular procedure based upon the adversary principle, the striving of all theocratic justice for substantive rather than merely formal truth produced quite early a rational but specifically substantive technique of inquisitorial procedure.[71] A theocratic administration of justice can no more leave the discovery of the truth to the arbitrary discretion of the litigants than the expiation of a wrong. It has to operate *ex officio* and to create a system of evidence which appears to offer the optimal possibilities of establishing the true facts. Canon law thus developed in the Western world the procedure by inquisition, which was subsequently taken over by secular criminal justice.[72] The conflicts about substantive Canon law became later an essentially political matter. Its still existing claims no longer lie in fields which are of practical economic relevance.

After the end of the early Byzantine period, the situation of the *Eastern* churches began to resemble that of Islam as a result of the absence of both an infallible agency for the exposition of doctrine and of conciliar legislation. The difference lay only in essentially stronger

caesaro-papistic claims of the Byzantine monarchs, as compared with those which could be voiced by the Sultans of the East after the separation of the Sultanate from the Abbassid Caliphate,[73] or even as compared with those which the Turkish Sultans could make effective after the transfer of the Caliphate from Mutawakkil to Sultan Selim,[74] to say nothing of the precarious legitimacy of the Persian Shahs *vis-à-vis* their Shiitic subjects.[75] Still, neither the late Byzantine nor the Russian and other caesaro-papistic rulers have ever claimed to be able to create new sacred law. There were, therefore, no organs at all for this purpose, not even law schools of the Islamic sort. As a result, therefore, Eastern Canon law, thus confined to its original sphere, remained entirely stable but also without any influence on economic life.

NOTES

1. *Ius honorarium*—The law created by the praetor in addition to, or in modification of, the *ius civile* as contained in the formal *leges* or in ancient tradition.

2. Cf. PLUCKNETT, 82 *et seq.*; 2 ASSOCIATION OF AMERICAN LAW SCHOOLS, SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY (1908) 367.

3. Legal procedure, civil or criminal, is said to be inquisitorial when the ascertainment of the facts is regarded primarily as the task of the judge, while in the so-called adversary procedure the true facts are expected to emerge from the allegations and proof of the parties without the active coöperation of the judge. A shift from the predominantly adversary procedure of the Germanic laws was initiated in the later Middle Ages by the Church, whose model became influential for procedural development throughout Western Europe.

4. On the Roman distinction between *ius* and *fas* see JOLOWICZ, *op. cit.* 86 *et seq.*; MITTEIS 22–30 and literature there listed. For a baroque use of the terms, see BLACKSTONE III, 2.

5. Namely, of continental Europe, i.e., the procedure which was common on the Continent before the reforms introduced by the codification of the nineteenth and twentieth centuries. In this and the following senten es Weber speaks also, however, of the continental procedure of the present day, which, as will appear, is not basically different from Anglo-American procedure.

6. Weber has anticipated the procedural reforms of the modern totalitarian states whi h have shown marked tendencies to strengthen the inquisitorial at the expense of the adversary principle. Cf. Ploscowe, *Purging Italian Criminal Justice of Fascism* (1945), 45 COL. L. REV. 240; BERMAN, JUSTICE IN RUSSIA 207, EBERHARD SCHMIDT, EINFÜHRUNG IN DIE GESCHICHTE DER DEUTSCHEN STRAFRECHTSPFLEGE (1947) 406; also SCHOENKE, ZIVILPROZESSRECHT (6th ed. 1949) 25; H. Schroeder, *Die Herrschaft der Parteien im Zivilprozess* (1943), 16 ANNUARIO DI DIRITTO COMPARATO 168.

7. Apparently, Weber is thinking here of the democracy of the Athenian rather than of the modern Western type.

8. Famous case in which Frederick tried to intervene in a private lawsuit. In 1779, upon suit by his landlord, a baron, Arnold, a humble miller, was ejected because of nonpayment of rent. Arnold turned to the king who ordered

the court to vacate its judgment and restore Arnold to the possession of the mill. The judges refused to render a decision "which would be against the law." When they continued in their "obstinate" refusal to obey the king's angrily repeated command, he ordered the supreme court to sentence them to jail. When the supreme court judges declared that the law would not permit such a step, they, together with the judges of the lower court, were ordered to be arrested by the king and were sentenced by him to one year's imprisonment, loss of office, and payment of damages to Arnold. It was one of the first acts of government of Frederick's successor, Frederick William II, to comply with the demand of the public to rehabilitate the judges and to indemnify them out of the public treasury. See W. JELLINEK, VERWALTUNGSRECHT 85 and literature cited there; for an account in English, see the translation by I. Husik of R. STAMMLER, THE THEORY OF JUSTICE (1925) 243 *et seq.*

9. Cf. A. MENDELSSOHN-BARTHOLDY, IMPERIUM DES RICHTERS (1908). The allusion points to the early period when Rome was dominated by the patricians, who entirely dominated the administration of justice, until their power was broken in the long struggle of the plebeians. Cf. MOMMSEN, HISTORY OF ROME (Dickson's tr. 1900) 341–369; JOLOWICZ 7–12.

10. Cf. I. SANFORD, STUDIES AND ILLUSTRATIONS OF THE GREAT REBELLION (1858); P. A. GOOCH, ENGLISH DEMOCRATIC IDEAS IN THE SEVENTEENTH CENTURY (2nd ed. 1927) 308; HOLDSWORTH 412.

11. In their struggle against patrician domination the plebeians achieved one of their most important successes when they compelled the patricians to consent to the appointment of a commission to write down the laws and thus to make their knowledge generally accessible. The product of the commission's work was the law of the Twelve Tables, which is reported by Livy (III, 9 *et seq.*) to have been promulgated in 450/449 B.C. and which for centuries was taken as the basis of the Roman *ius civile*.

12. *Prozessinstruktion* is a term of art of German theory of procedure. It means the role and activity of those persons who keep a lawsuit, civil or criminal, going and direct the course which it has to follow. In the type of procedure mentioned in the text, the *Prozessinstruktion* is vested in a public officer or potentate who presides over the trial or at least that part of it in which the issues are formulated, but does not himself render the final judgment. The principal illustration is constituted by the role of the Roman *praetor* who presided over the proceedings *in iure*, in which there were formulated, with his active participation, those issues of law or fact or both which had to be decided, *in iudicio*, by the *iudex*, whom the *praetor* would appoint.

Another variety is represented by popular assemblies, especially of the Germanic type, which would be presided over by a prince or his representative or by some other person of authority, while the decision would be made by all, or some, of the members of the assembly (see sec. *iii*:6). Both the Roman *praetor* and the Germanic prince, etc., had the *Banngewalt*, i.e., the power to subpoena attendance upon penalty of outlawry or forfeiture of property.

13. See WESTERMARCK, HISTORY OF HUMAN MARRIAGE c. XIX; FREUD, TOTEM AND TABOO (Brill transl. 1927) c. I; Fortune, R., *Incest*, 7 ENCYC. SOC. SCI. 620 and further literature cited there.

14. On the role of the Church in maintaining or reëstablishing the principle of freedom of testation, see POLLOCK AND MAITLAND II, 349; HOLDSWORTH III, 536, 541 *et seq.*

15. Here Weber apparently follows JHERING 263. In contrast MITTEIS 23, n. 2, points to the "well-known" fact "that in Roman private life the promissory oath

was hardly used in any situations other than those in which legal coercion was lacking." Explicitly referring to Jhering, Mitteis states that "the idea of a religious component in the secular law of Rome has at one time been badly abused" (*op. cit.* 24, n. 4). More recently such ideas have been resuscitated, however, even more radically by HÄGERSTRÖM, DER RÖMISCHE OBLIGATIONSBEGRIFF (1927), and DAS MAGISTRATISCHE IUS IM ZUSAMMENHANG MIT DEM RÖM. SAKRALRECHT (1929).

16. See JHERING I, *et seq.* Recent research has thrown doubt on the correctness of applying the word *fas* to the sacred law of Rome. Cf. the following statement in JÖRS AND KUNKEL 19, n. 2: "In modern literature the distinction between *ius* and *fas* is commonly regarded as equivalent to that between temporal and sacred law. Such use of the terms does not, however, correspond to Roman usage. At first, *fas* meant that sphere which was left free by the Gods. It included quite particularly those aspects of life for which the temporal law could be effective. In an ethically deepened usage, which came to be frequent with the Ciceronian period, *fas* means that which is religiously *permitted* in contrast to *ius*, which means that which is *commanded*. Even in this sense, *fas* does not mean, however, a religiously moral order in contrast to *ius* as a man-made order. Such an idea did not arise before Christianity. Even less does *fas* mean the complex of rules concerning religious rites and similar problems. These rules belong to the *ius*, as *ius sacrum* or *ius pontificium*. The development of the meaning of *fas* is largely paralleled by that of the Greek word ὅσιον; cf. WILAMOWITZ, PLATON I. 61; LATTE, HEILIGES RECHT 55 n. 16." Cf. also *supra* n. 4.

17. On the College of Augurs and its *interventio*, see JHERING I, 329 *et seq.* On the abolition of the Areiopagos, "by a decree which was carried, about B.C. 458 and by which, as Aristotle says, the Areiopagos was 'mutilated' and many of its hereditary rights abolished" (ARIST., POL. ii 9; CIC., DE NAT. DEOR. ii 29; DE REP. i 27), see the article in W. SMITH, DICTIONARY OF GREEK AND ROMAN ANTIQUITIES (1848) 128.

18. Weber's treatment of the relations between religion and law corresponds to the prevailing opinion, as expressed especially by Mitteis. A much closer relationship and a more far-reaching influence of magico-religious ideas upon the development of Roman law has more recently been maintained by HÄGERSTRÖM, *op. cit. supra* n. 15; as to further literature on the problem see JÖRS AND KUNKEL 4, n. 3, 393.

19. On Hindu law see the article by Vesey-Fitzgerald in 9 ENCYC. SOC. SCI. 257, and literature cited there; Weber seems to have used primarily Jolly's article in BÜHLER'S GRUNDRISS DER INDOARISCHEN PHILOLOGIE (1886; Engl. transl. by Ghosh. Calcutta, 1928) and the DIGEST OF HINDU LAW by West and Bühler (Bombay, 1867/69). Cf. the footnote in WEBER'S GESAMMELTE AUFSÄTZE ZUR RELIGIONSSOZIOLOGIE (2nd ed. 1923), HINDUISMUS UND BUDDHISMUS II, 2. He also seems to have been acquainted with the pertinent passages in KOHLER AND WENGER 102–130, and with the works of SIR HENRY MAINE: ANCIENT LAW; VILLAGE COMMUNITIES; EARLY HISTORY OF INSTITUTIONS; EARLY LAW AND CUSTOM.

20. Weber uses here the old German maxim, "Willkür bricht Landrecht," which, as shown above, sec. ii: 5, meant that in the later Middle Ages and the early centuries of the modern age the customary or specially created law of some group prevailed over the general law of the land. The parallel with this German state of affairs is admissible only when one considers that Hindu law could not strictly be called the law of any particular territory in the sense of the German *Landrecht* but rather the law of the believers, which was simply regarded as *the*

law as long as it did not have to compete with any other legal system, i.e., in the period before the Mohammedan invasion.

21. See *supra*, sec. ii:2:(4b).

22. As to the law in the countries of Buddhist influence, see VESEY-FITZGERALD, *loc. cit.* in sec. iv, n. 24; also BURGE'S COMMENTARIES ON COLONIAL AND FOREIGN LAW (ed. 1908–1914), 6 vols. The following articles in 1 SCHLEGELBERGER, RECHTSVERGL. HANDWÖRTERBUCH (1929) deal with these countries' modern legal systems, in which the Buddhist traditions are still influential, although in various degrees: W. Trit I, *Siam* 470; H. Mundell, *Malaiische Staaten* 417. H. Solus, *Die französischen Besitzungen und Kolonien* 535, 553 (Cambodia); F. Grobbs, *Britisch Indien* 319–328; 324–325 (Burma). In Ceylon, Buddhist law was largely superseded in the eighteenth century by Roman-Dutch law. See LEE, INTRODUCTION TO ROMAN-DUTCH LAW (1925); PEREIRA, LAWS OF CEYLON (1913); J. KOHLER, RECHTSVERGLEICHENDE STUDIEN (1889) 211 *et seq.*, 251.

23. The principal literature on China which was used by Weber is listed in the introductory note to his essay on the ethics of Confucianism and Taoism (1 GESAMMELTE AUFSÄTZE ZUR RELIGIONSSOZIOLOGIE (3rd ed. 1934) 276; tr. by H. Gerth, s.t. THE RELIGION OF CHINA [1951]). Chinese law is discussed by him especially on pp. 391 *et seq.* and 436 *et seq.* of the work just mentioned. Weber apparently used the chapter on Chinese Law (pp. 138 *et seq.*) in KOHLER AND WENGER and the literature listed there at p. 153. For further orientation on Chinese law see Escarra, *Chinese Law*, 9 ENCYC. SOC. SCI. 249 and literature listed there at p. 266; Betz and Lautenschlager, *China*, in 1 SCHLEGELBERGER'S RECHTSVERGL. HANDWÖRTERBUCH 328, and literature listed at pp. 389–391; see also BUENGER, QUELLEN ZUR RECHTSGESCHICHTE DER T'ANG ZEIT (1949); C. H. PEAKE, RECENT STUDIES ON CHINESE LAW (1937). Weber's observations are limited, of course, to the law of the pre-revolutionary China.

24. The theory of a major reception of Roman or Hellenistic ideas or institutions in Islamic law has recently encountered well-stated opposition. See R. Vesey-Fitzgerald, *Alleged Debt of Islamic to Roman Law* (1951) in 67 L.Q. REV. 81; cf. Schacht, *Origins of Islamic Jurisprudence* (1951) and *Foreign Elements in Ancient Islamic Law* (1950), 32 COMP. LEG. 9.

25. Omayyads (661–750)—Arab dynasty following in the caliphate the immediate associates of Mohammed (abu-Bekr, Omar, Osman, and Ali), leading in the Arab-Islamic expansion into Armenia, Iran, Afghanistan, the Indus area, North Africa, and Spain; the revolutionary succession of the Abbassids (750–1258) residing in Baghdad marks the rise of the Persian element and the amalgamation of the Arab conquerors with their Oriental subjects. Cf. H. C. BECKER, in 2 CAMBRIDGE MEDIEVAL HISTORY (1913) 355–364. Sassanids (226–641)—last Persian dynasty before the Arab conquest.

26. Post. ate of *coge intrare*—claim of rightful compulsion against heretics, especially as made against the Donatists by Augustine (Epist. 185, ad Bonifacium, A.D. 417), who ascribes to the Church the right and duty to compel membership and obedience even on the part of the unwilling. As authority he refers to the parable of the great supper (Luke 14:23), in which the host bids the servant that he "compel to enter" (*coge intrare*) all those whom he will encoun r.—SCHAFF, HISTORY OF THE CHRISTIAN CHURCH (1886) 144. The argument was also used, first it seems, in 1009 by Bruno von Querfurt, in the agitation for the Crusades and the compulsory conversion to Christianity of Moslems and other infidels; cf. ERDMANN, DIE ENTSTEHUNG DES KREUZZUGSGEDANKENS (1935) 97.

27. Doubtful; see *supra*, n. 24.

28. Written before the separation of church and state by Kemal Atatürk; see now the Constitution of April 20, 1924, and the Civil Code of October 4, 1926, which is in the main a translation of the Swiss Civil Code of 1907.

29. This statement of Weber's is no longer correct. On recent reforms of Islamic legal education see A. Sékaly, *La réorganisation de l'Université d'El-Azhar* (1936), 10 Révue des Études Islamiques 1.

30. *Fetwa*—a jurist's opinion on a concrete case, similar to the *responsa* of the Roman jurists; cf. *supra*, sec. iv:3.

31. This statement of Weber's, as also that in his History 258, seems to be based upon the works of Josef Kohler, especially Kohler and Wenger 97; *Die Islamlehre vom Rechtsmissbrauch* 29 Z.f.v.R. 432–444, and Moderne Rechtsfragen bei islamitischen Juristen. Ein Beitrag zu ihrer Lösung (1885). But compare the cautious statements by Goldschmidt 98, 99, 246, 250; and *Ursprünge des Mäklerrechts, insbesondere sensal* (1882), 28 Z.f. ges. Handelsrecht 315.

Strictly denying any influence is P. Rehme, *Geschichte des Handelsrechts* in 1 Ehrenberg Handbuch des gesamten Handelsrechts (1913) 95. ("Was das Verhältnis des islamitischen Rechtes zu den romanischen anlangt, so ist festzustellen: bisher ist noch für keinen Punkt der Nachweis einer Einwirkung jenes auf dieses erbracht worden.") See also, pp. 98, 99, 102, 108. In addition to the authorities above mentioned, compare also about the *contractus mohatra* (Arabic khatar), Cohn, *Die Kreditgeschäfte* in 3 Endemann, Handbuch des deutschen Handels-, See- und Wechselrechts (1885) 846; 2 Windscheid, Lehrbuch des Pandektenrechts (1900) 73; about negotiable instruments, cf. Grasshoff, Das Wechselrecht der Araber (1899); Rehme, *loc. cit.* 95; Kohler, *Islamrecht* in 17 Z.f.v.R. 207.

32. See *supra*, sec. ii:5 and iii:2.

33. Weber's main sources seem to have been Kohler in Kohler and Wenger 130, and literature cited there at p. 153. On modern Persian law see the article by Greenfield in 1 Schlegelberger, *op. cit.*, 427.

34. The word *imâm*, which in general simply means teacher, has in the Shiite tradition assumed the special meaning of spiritual and temporal head of all Islam. The first Imâm is Ali, Mohammed's son-in-law. None but Ali's descendants can be his successors. The Omayads, who after Ali's assassination assumed the khalifate, are regarded as usurpers by the Shiites, among whom dissension also broke out, however, as to which of the several lines of Ali's descendants were to be regarded as the charismatically true. All agree that that imâm, whom they respectively regard as the last legitimate one, transcended from earth, has since been living concealed from man as the "invisible imâm," and will at the end of time reappear as *mahdi* to save the world from all evil and to establish his kingdom of peace and justice. Certain eminent sages are believed to have had personal contacts with the invisible imâm and to have received revelations from him. Cf. Goldziher, *op. cit.* 213 *et seq.*

35. Cf. Solus in 1 Schlegelberger, *op. cit.* 545.

36. In his own book on Judaism Weber does not deal with rabbinical law. The literature on Jewish law which Weber is likely to have known is listed in Kohler and Wenger 151/152; for further information see Gulak, *Jewish Law*, 9 Encyc. Soc. Sci. 219, and literature there at p. 264; also D. Daube, *The Civil Law of the Mischnah* (1944), 18 Tulane L. Rev. 351.

37. The Urim and Thummim seem to have been objects attached to the breastplates of the High Priest (Exod. 28:30) and used by him to ascertain the

will of God on questions of national importance (Num. 27:21). They disappeared in the period of the later kings (Ezra 2:63).

38. On divination and prophecy in Israel, see AJ 112 *et seq.*, 179 *et seq.*, 281 *et seq.*

39. On the sociological place and role of the Pharisees, Weber has expressed himself at AJ 401 *et seq.*

40. Both the Palestinian and the Babylonian Talmud were concluded in the later part of the fifth century B.C.

41. Deut. 25:5–10: Where a man dies without a male descendant, the widow must not marry a stranger, but the surviving brother of the deceased must take her to wife, and the first son born of them succeeds to the name and property of the deceased, cf. Cohon, *Levirate Marriage* in FERM'S ENCYC. OF RELIGION (1945) 441, and literature stated there.

42. *Tannaim* (Aramaic)-Jewish scholars of the first two centuries A.D.

43. Older layer of talmudic canon.

44. Convention of scholars, held twice annually at the Babylonian academies; see 2 LEVY, TALMUD WÖRTERBUCH 331.

45. A.D. 942, after an internal quarrel between the Exilarch David ben Zakkai and the philosopher Saadia ben Joseph al-Fayyumi, David's two successors were assassinated by Moslems. 3 GRAETZ, HISTORY OF THE JEWS (3rd ed.) 201.

46. 1135(1139?)–1204, foremost Jewish Philosopher of the Middle Ages, lived in Spain and North Africa; see Guttmann in 10 ENCYC. SOC. SCI. 48. Maimonides' treatise on the law, *Mischnah torah* or *Yad-hachazakah*, was completed in 1180; for an English transl., see RABINOWITZ, THE CODE OF MAIMONIDES, Book 13, THE BOOK OF CIVIL LAWS (1949).

47. Jacob ben Asher, born in Germany, died in Toledo, Spain; his legal treatise, *Turim*, was written between 1327 and 1340. Cf. 7 GRAETZ, *loc. cit.* (3rd ed.) 298.

48. 1488–1575; see Ginzberg in 3 JEW. ENCYC. 583; also B. COHEN, THE SHULHAN ARUK AS GUIDE FOR RELIGIOUS PRACTICE TO-DAY (1941).

49. The author referred to in the text seems to be Werner Sombart, who, in his THE JEWS AND MODERN CAPITALISM ascribes to the Jews a decisive role in giving the capitalistic organization its peculiar features, by inventing a good many details of the commercial machinery which moves the business life of today, and by coöperating in the perfecting of others (p. 11). However, in his detailed discussion of this alleged Jewish achievement, Sombart states expressly that "it would be difficult, perhaps impossible, to show what that share was by reference to documentary evidence" (p. 63). Sombart's extensive hypotheses were readily accepted in National-Socialist literature. On the problem of the influence of Jewish law, see also Kuntze, DIE LEHRE VON DEN INHABERPAPIEREN (1857) 48, who discusses some institutions of ancient and later Jewish law but leaves it expressly open whether or not they had any influence on Western developments.

50. Cf. KOHLER, PREISER, AND UNGNAD, HAMMURABI'S GESETZ I, 117, III, 237; SCHORR, ALTBABYLONISCHE RECHTSURKUNDEN (1913) 88.

51. Cf. FREUNDT, WERTPAPIERE IM ANTIKEN UND MITTELALTERLICHEN RECHT (1910) and extensive critical discussion of this book by Joseph Partsch (1911) 70 Z.F. HANDELSR. 437.

52. Cf. Brunner, *Carta and Notitia, Ein Beitrag zur Geschichte der germanischen Urkunde*, in COMMENTATIONES PHILOLOGAE IN HONOREM THEODORI MOMMSENI (1877) 570, repr. 1 ABH. 458.

53. Weber here follows Brunner, BEITRÄGE ZUR GESCHICHTE UND DOGMATIK DER WERTPAPIERE (1877/78), Z.F. HANDELSR. XXII, 87, 518; XXIII,

225; repr. FORSCHUNGEN ZUR GESCHICHTE DES DEUTSCHEN U. FRANZÖSISCHEN RECHTS (1894); and *Das französische Inhaberpapier des Mittelalters, in* FESTSCHRIFT FÜR THÖL (1879) 7; repr. 1 ABH. 487.

54. Cf. GOLDSCHMIDT III.

55. Cf. Kohler, *Das Recht der Armenier* (1887), 7 Z.F. VGL. RECHTSW. 385, 396; but without any evidence.

56. The Khazars, one of the peoples of the North-Caucasian steppes, established an empire between the Black Sea and the Caspian. They reached the zenith of their power in the eighth and ninth centuries. Refusing to yield to pressure from Christian Byzantium and the Mohammedan khalifs, the dynasty, about A.D. 740, adopted the religion of the Jews, who had been expelled from Byzantium and found refuge with the Khazars. Jewish law did not become, however, the general law of the Khazar empire but only of those who professed the Jewish faith. With the arrival of the Viking rulers (Varangians) in Kiev in the late ninth century, the Khazar empire was steadily reduced in size and finally destroyed by Svjatoslav of Kiev (964–972). KADLEC in 4 CAMBRIDGE MEDIEVAL HISTORY 187.

57. Weber's source seems to be S. Eisenstadt, *Über altrussische Rechtsdenkmäler* (1911), 26 Z.F. VGL. R. 157, who does not state more, however, than a brief conjecture.

58. On the role of the Syrians in late Antiquity, see Scheffer-Boychorst, *Zur Geschichte der Syrer im Abendlande*, 6 MITTEILUNGEN FÜR ÖSTERREICHISCHE GESCHICHTSFORSCHUNG 521; MOMMSEN, RÖMISCHE GESCHICHTE 467.

59. Sabbatical year: Every seventh year the Bible (Lev. 25:1–25; Deut. 15:2) ordained that loans be canceled, serfs be freed, pledged property restored, and land left fallow, with all uncultivated growth left to the poor and the stranger. To what extent these rules were ever practiced is uncertain. They became definitely meaningless with the invention of the Prosbol, which tradition has ascribed to Hillel (30 B.C.–A.D. 10). The debtor pretended to enter upon his obligation toward the court rather than the creditor himself. Upon the basis of spurious biblical authority a debt thus created was held not to be affected by the biblical command. Cf. GREENSTONE, 10 JEWISH ENCYCL. 219.

60. There is no comprehensive history of the Canon Law; for a concise survey, see Hazeltine, 3 ENCYC. SOC. SCI. 179, with bibliography at 185.

61. Cf. J. T. MCNEILL AND H. M. GAMER, MEDIEVAL HANDBOOKS OF PENANCE (1938).

62. The most famous cases were those of the Donation of Constantine and the False (or Pseudo-Isidorean) Decretals. The first-named instrument, which was fabricated, probably, in Rome between the middle and the end of the eighth century, purported to be a grant by the Emperor Constantine, in gratitude for his conversion by Pope Silvester, to that pope and his successors forever, of spiritual supremacy over all other patriarchs as well as of temporal dominion over Rome, Italy, and the entire Western region. This *Constitutum Constantini*, which was used by the medieval papacy as one of the bases for its claims of general spiritual supremacy and of temporal power of the city of Rome, was included in the ninth century in the extensive collection of spurious decretals, which purported to be the work of Isidor of Seville, the legendary author of a seventh-century Spanish collection of decretals. The principal aim of the forger was the strengthening of the power of the bishops within the church and as against the state. Both the Donation of Constantine and the False Decretals were recognized as forgeries by the humanist scholars of the sixteenth century. Cf. 7 ENCYC. BRIT. 127, 524, with extensive bibliographies.

63. Spiritual advisers, especially of French royalty and nobility of the seventeenth and eighteenth centuries.

64. The allusion is to the casuistic handbooks of confessional practice and moral theology of the seventeenth and eighteenth centuries, mostly of Jesuit or Redemptorist provenience. The most celebrated is the Homo Apostolicus of St. Alfonso dei Liguori, published 1753/5.

65. *Actio spolii*—originally, as stated in the False Decretals (see *supra* n. 62), the action by which a bishop ousted from his see can claim restoration without having to prove his right; later, on the basis of a canon of Innocent III, of 1215, action aiming at the speedy restoration to possession pertaining to the possessor who has been forcibly ejected as well as to any other person whose interest has been affected by the ejection. Cf. ENGELMANN AND MILLAR 581.

66. *Summariissimum*: summary proceeding of utmost speed and excluding defenses not susceptible of immediate proof. The judgment to be rendered in the *summariissimum* is provisional and subject to review in the *summarium* or the *ordinarium*; cf. ENGELMANN AND MILLAR. The *summariissimum* of canon law procedure influenced the development of summary procedures in the temporal courts.

67. Ames, *History of Parol Contracts Prior to Assumpsit* (1895) 8 HARV. L. REV. 252; repr. Ass. of Amer. Law Schools, SELECTED ESSAYS ON ANGLO-AMERICAN LEGAL HIST. (1909) III, 304; POLLOCK AND MAITLAND II, 184.

68. POLLOCK AND MAITLAND II, 331; HOLDSWORTH III, 534; R. Caillemer, *The Executor in England and on the Continent*, Ass. of Amer. Law Schools, SELECTED ESSAYS ON ANGLO-AMERICAN LEGAL HISTORY III, 746.

69. A.D. 527–565. In Justinian's Corpus Iuris divorce is treated primarily in DIGEST 24.2.

70. The source of this statement of Weber's could not be located. The only references that could be found are to a statute of Brescia of 1252, mentioned in KOHLER, DAS STRAFRECHT DER ITALIENISCHEN STATUTEN (1897) I, 592 and a statute of Trieste, of 1420, mentioned by Del Giudice in 6 PERTILE, STORIA DEL DIRITTO ITALIANO (1900) Part I, p. 82, n. 35. The former threatens with punishment anyone who invokes the ecclesiastical court against the taking of interest as declared permissible by the city. The second prohibits a debtor to invoke the ecclesiastical court before he has paid the full debt as agreed and, apparently, including interest. Cf. LASTIG, ENTWICKLUNGSWEGE UND QUELLEN DES HANDELSRECHTS (1877) §§ 14–17; 34–37; same, *Beiträge zur Geschichte des Handelsrechts* (1848) 23 Z.F. HANDELSR. 138, 142.

71. See *supra*, sec. VII 1.

72. See A. ESMEIN, HISTORY OF CONTINENTAL CRIMINAL PROCEDURE (transl. by Simpson, 1913) 78.

73. In 1258 Musta'sim, the last kaliph of Baghdad, was defeated and deposed by Hulagu, the grandson of Jenghiz Khan.

74. After their defeat by the Mongols, the Abbassids continued a shadow sovereignty in Egypt until that country was conquered by the Turkish Sultan Selim I in 1517.

75. Following the fall of the Sassanian dynasty and the Arab conquest in 637, Persia was under alien rulers until its reconstitution as a national state under the Shiite dynasty of the Safavi in 1405. According to the official doctrine established at that time, the Shah is the representative of the "invisible *Imâm*."

VI

Imperium and Patrimonial Enactment: The Codifications

1. *Imperium*

The second authoritarian power which has intervened in the formalism and irrationalism of the old folk administration of justice is the *imperium* of the princes, magistrates, and officials. We shall not consider here that special law which a prince may create for his personal retinue, his own subordinate officials—especially his army—and of which highly significant remnants still persist today.[1] These legal creations have led in the past to very important structures of special law, e.g., the law of patron and client, master and servant, and of lord and vassal, which in Antiquity as well as in the Middle Ages escaped the control of the general or common law and the jurisdiction of the regular courts, and differed from the general law in various complicated ways. Although these phenomena are of political importance, they have in themselves no formal structure of their own. In accordance with the general character of the legal system, these structures of special law were governed, as for instance in Antiquity the law of patron and client, by a mixture of sacred norms on the one hand and conventional rules on the other; or they had, like the medieval laws of master and serf, or lord and vassal, a status group character; or they are regulated, like the present-day law of public and military service, by certain special norms of administrative and other public law, or are simply subjected to special substantive rules and procedural authorities.

What we are concerned with are rather the effects of the *imperium* on the general (common) law, its modification, and the emergence of a new law of general validity alongside, in place of, or in contrast to, the common law. Quite particularly shall we be concerned with the effects of this situation upon the formal structure of the law in general. Only one general point should be made here: the degree of development of structures of special laws of this kind is a measure of the mutual power relationship of the *imperium* to the strata with which it must reckon as supports of its power. The English kings were successful in preventing a special feudal law from emerging as a particu-

laristic system, as it did in Germany, so that it was rather absorbed into the unified *lex terrae*, the Common Law.[2] However, the entire land law, family law and inheritance law acquired a strong feudal flavor.[3] The Roman state's law took note of the *clientela* in certain isolated norms, mostly in curse formulae, but in the main it intentionally refrained from drawing this institution, important though it was for the social status of the Roman nobility, into the regulatory sphere of private law.[4] Like the English law, the Italian *statuta* of the Middle Ages created a uniform *lex terrae*.[5] In Central Europe no such achievement occurred until the advent of the absolutist princely state, which, however, was careful to preserve the substantive remnants of the various special laws until they were fully absorbed by the modern institutional state.[6]

The conditions under which the prince, magistrate, or official appeared legitimated to create or influence the common law and under which he had the actual power to do so, the scope to which this power extended in different geographic areas or legal spheres, as well as the motives which underlay this intervention, will be discussed later in our treatment of the forms of domination. In reality, that power assumed many forms and correspondingly produced many different results. Generally, one of the earliest creations of the princely power to protect the peace (*Banngewalt*) was a rational penal law.[7] Military considerations as well as general interest in "law and order" demanded regulation in this particular sphere. Next to religious lynch-law, the power of the princely office has indeed been the second main source of a separate "criminal procedure." Often priestly influences, too, were directly operative in this development, as, in Christendom, because of its interest in the extirpation of blood-vengeance and the duel. In Russia, the *knyaz* (prince), who in earlier times had presumed only to a mere arbitrator's function, was immediately after Christianization induced by the bishops to create a casuistic penal law; the very concept of "penalty" (*prodazha*) makes its appearance only at that time.[8] Similarly in the Occident, in Islam, and certainly in India, the rational tendencies of the priesthood have played a part.

It appears plausible that the establishment of those detailed tariffs of *wergilt* and fines which appear in all the old legal enactments was decisively due to the influence of the princes. Once typical conditions of composition had been developed, it seems that that system which Binding has shown to have existed in German law,[9] was a universal phenomenon: in it we find two sets of *wergilt*, viz., one of considerable magnitude for acts of manslaughter and other vengeance-requiring injuries, and a much smaller one indiscriminately applicable to all other

kinds of injury. It was probably under princely influence that there developed those almost grotesque tariffs covering every conceivable type of misdeed, which enabled everyone to reflect in advance whether the commission of a certain crime or the institution of a lawsuit would "pay."[10] The marked preponderance of a purely economic attitude toward crime and punishment has, as a matter of fact, been common to peasant strata in all ages. However, the formalism expressed in the fixed measurement of all amends is a result of the refusal to submit to the lord's arbitrariness. Not until the administration of justice had become thoroughly patriarchal did this rigorous formalism yield to a more elastic and sometimes completely arbitrary determination of punishment.

In the sphere of private law, which could never be as accessible to the peace power (*Banngewalt*) of the prince in the same way as criminal justice—regarded as a means of guaranteeing a formal order and security—the intervention of the *imperium* occurred everywhere much later and with varying results and in varying forms. In some places a princely or magisterial law arose, which, in distinction to the common law, made explicit reference to its particular source of origin, as, for instance, the Roman *ius honorarium* of the praetorian edict, the "writ" law of the English kings, or the "equity" of the English chancellors. This law was created by the special "magisterial power" (*Gerichtsbann*) of the official charged with the administration of justice; he found complacent cooperation on the part of the legal honoratiores, who, as lawyers, such as the Roman jurisconsults or the English barristers, were eager to comply with the requests of their clients. By virtue of this power the official might be entitled, as the praetor was, to issue binding instructions to the judges or, as it was finally decided in England by James I himself in the conflict between the Lord Chancellor, Francis Bacon, and the common law courts, to issue injunctions to the parties;[11] or to see to it that, by voluntary submission or through compulsion, a case be brought into the magistrate's own court, as, for instance, in England into the Royal Courts or later into the Chancery.[12]

In this way the officials created new remedies, which in the long run came to a large extent to supersede the general law (*ius civile*, common law.) The common element in these bureaucratic innovations in substantive law is that they all had their start in the desire for a more rational procedure, which emanated from groups engaging in rational economic activity, i.e., bourgeois strata. The very ancient *interdicta* trial (*Interdiktionsprozess*)[13] and the *actiones in factum* would seem to prove that the Roman praetor had acquired his predominant position in procedure, i.e., his power of instructing the jurors, quite some time before the *lex Aebutia*.[14] But as a glance at the substantive

content of the Edict shows, the formulary procedure was created by the commercial needs of the bourgeoisie as the intensity of commerce increased. The same needs resulted in the elimination of certain originally magically conditioned formalities. In England and France, the greatest attraction of the royal courts was, as it had been in Rome, the emancipation from verbal formalism. In many parts of the West, the adverse party could be compelled to testify under oath. In England, the cumbersome formalities of the summons were also dispensed with; the king would issue his summons "sub poena"; also the king's court used the jury rather than judicial combat and other irrational methods of proof which were intolerable to the bourgeoisie.

In English "Equity," innovations of substantive law did not, to any considerable extent, occur before the seventeenth century.[15] Louis IX,[16] like Henry II and his successors, especially Edward III, created above everything else a relatively rational system of evidence and eliminated the remnants of the formalism of magical or folk justice origin.[17] The "Equity" of the English Chancellor in turn eliminated from its sphere what had been the great achievement of the Royal Courts—the jury. In the dualism of "Law" and "Equity" which still obtains today in England and in the United States and frequently allows the plaintiff to choose between competing remedies, the formal distinction still consists in the fact that at Law cases are tried with, and in Equity without, a jury.

The technical instruments of magisterial law are on the whole purely empirical and formalistic in character; particularly frequent, for instance, is the use of fictions, which can be found already in the Frankish capitularies.[18] This feature is, of course, to be expected in the case of a legal system which grows directly out of legal practice. In consequence, the technical character of the law remains unchanged. Indeed, its formalism has often been intensified, although, as the term "Equity" indicates, ideological postulates could also provide the stimulus to intervention. Indeed, the case is one in which the *imperium* had to compete with a system of law the legitimacy of which it had to accept as inviolable and the general basis of which it could not eliminate. To greater lengths it could go only where, as in the case of verbal formalism and irrationality of proof, the *imperium* was accommodating urgent demands of strong pressure groups.

The power of the *imperium* is heightened where the existing law can be changed directly by means of princely decrees of equal validity with that of the common law, as we find it, for instance, in the case of the Frankish *capitula legibus addenda*, the ordinances and decrees of the signories of the Italian cities, or the decrees of the late Roman princi-

pate, which had the same validity as *leges*. In the early Empire, it will be remembered, imperial decrees were binding only upon the emperor's officials.[19] On the whole, orders of this kind were, of course, not issued without the assent of the honoratiores (Senate, assembly of imperial officials) or even of the representatives of the moot community. The attitude also persisted for a long time, at least among the Franks, that such decrees could not create real "law," and it constituted a considerable obstacle to princely legislation.[20] Between this case and the factually omnipotent manipulation of the law by Western military dictators or the manipulation of the law by Oriental patrimonial princes we can find numerous intermediate situations. Legislation by patrimonial monarchs, too, would normally respect tradition to a considerable extent. But the more it succeeded in eliminating the administration of justice by the moot community, as it generally tended to do, the more frequently it developed its own specifically formal qualities and the better it was able to impress them upon the legal system. These qualities could be of one or the other of two quite different types, corresponding to the different political conditions of existence of the power of the patrimonial monarch.

One of the forms in which princely lawmaking took place was for the prince, whose own political power was regarded as a legitimately acquired right just as any other property right, to give up some parcel of this fullness of power by granting to some one or more of his officials or subjects, or to foreign merchants, or any other person or persons some special rights (privileges), which were then to be respected by the princely administration of justice. To the extent that this was the case, law and right, "norms" and "claims," coincided in such a way that, if thought out consistently, the entire legal order would appear as a mere bundle of assorted privileges. The other form of princely lawmaking occurred in just the opposite form: the prince would not grant to anyone any claims which would be binding upon him or his judiciary. In that case, there are again two possibilities. The prince gives commands from case to case according to his entirely free discretion; to that extent there is no place for the concepts of either "law" or "right." Or the prince would issue "regulations" containing general directives for his officials. Such regulations mean that the officials are directed, until the receipt of further directives, to order the concerns of the subjects and to settle their conflicts in the manner indicated. In that situation the prospect of an individual to obtain a certain decision in his favor is not a "right" of his but rather a factual "reflex," a by-product of the regulation, which is not legally guaranteed to him. It is the same as in the case where a father complies with some wishes of his child

without thinking, however, that he thus binds himself to any formal juristic principles or fixed procedural forms. As a matter of fact, the extreme consequence of a "patriarchal" administration of justice by the *parens patriae* is but a transposition of the intrafamilial mode of settling conflicts into the political body. The whole legal system would be dissolved into "administration" if this system were ever carried to its logical consequences.[21]

We shall designate the first of these two forms as the "estate" (*ständische*) type of patrimonial princely justice and the second as the "patriarchal." In the estate type of judicial administration and lawmaking, the legal order is rigorously formal but thoroughly concrete and in this sense irrational. Only an "empirical" type of legal interpretation can develop. All "administration" is negotiation, bargaining, and contracting about "privileges," the content of which must then be fixed. It thus operates like judicial procedure and is not formally distinct from the administration of justice. This was the way of the administrative proceedings of the English Parliament and of the great old Royal Councils, which were all originally administrative and judicial bodies at the same time. The most important and the only fully developed instance of "estate" patrimonialism is the political body of the medieval Occident.

In the purely "patriarchal" administration of the law, the law is, on the contrary, thoroughly informal, as far as one may speak of "law" at all under such a system of pure "regulations." Judicial administration aims at the substantive truth and thus sweeps away formal rules of evidence. Hence it would come into conflict quite frequently with the old magical procedures, but the relation between the secular and sacred procedures could assume various forms. In Africa the plaintiff might have a chance to appeal from the prince's judgment to the ordeal or to the ecstatic judgment vision of the fetish-priests (*oghanghas*), the agents of the old sacral trial. On the other hand, the rigorously patriarchal princely justice negates the formal guaranty of rights and the principle of strict adversary procedure in favor of the attempt to settle an interest conflict objectively "right" and equitably.

Although the patriarchal system of justice can well be rational in the sense of adherence to fixed principles, it is not so in the sense of a logical rationality of its modes of thought but rather in the sense of the pursuit of substantive principles of social justice of political, welfare-utilitarian, or ethical content. Again law and administration are identical, but not in the sense that all administration would assume the form of adjudication but rather in the reverse sense that all adjudication takes the character of administration. The prince's administrative officials are at the same time judges, and the prince himself, intervening at will into

the administration of justice in the form of "cabinet justice," decides according to his free discretion in the light of considerations of equity, expediency, or politics. He treats the grant of legal remedies to a large extent as a free gift of grace or a privilege to be accorded from case to case, determines its conditions and forms, and eliminates the irrational forms and means of proof in favor of a free official search for the truth. The ideal example of this type of rational administration of justice is the "kadi-justice" of the "Solomonian" judgment as it was practiced by the hero of that legend—and by Sancho Panza when he happened to be governor.[22] All patrimonial princely justice has an inherent tendency to move in this direction. The "writs" of the English kings were obtained by applying to the king's boundless grace. The *actiones in factum* allow us to guess how far even the Roman magistrates originally were allowed to go in the free grant or denial of actions (*denegatio actionis*). English magisterial justice of the post-medieval type, too, makes its appearance as "equity." The reforms of Louis IX in France were of a thoroughly patriarchal character. Oriental, like Indian, justice, in so far as it is not theocratic, is essential patriarchal. Chinese administration of justice constitutes a type of patriarchal obliteration of the line between justice and administration. Decrees of the emperor, both educative and commanding in content, intervene generally or in concrete cases. The finding of the judgment, to the extent that it is not magically conditioned, is oriented towards substantive rather than formal standards. When measured by formal or economic "expectations," it is thus a strongly irrational and concrete type of fireside equity. This type of intervention of the *imperium* into the formation of law and the administration of justice occurs on quite different "cultural levels"; it is the result not of economic but, primarily, political conditions. Thus in Africa, wherever the power of the chief has grown strong because of either its combination with the magical priesthood or the significance of war or through a trade monopoly, the old formalistic and magical procedures and the exclusive rule of tradition have often completely disappeared. In their place has arisen a procedure with public summons in the name of the prince (often through *Anschwörung*[23] of the defendant), public enforcement of the judgment and rational proof by witnesses in place of the ordeal; there have also developed practices of law enactment either exclusively by the prince alone, as among the Ashantis or, as in South Guinea, by him with the acclamation of the community.[24] But often the prince or chief or his judge decide entirely according to their own discretion and sense of equity, without any formally binding rules whatsoever. This situation can be found in culture areas so different from each other as those

of the Basuto, the Baralong, of Dahomey, the realm of Muata Cazembe, or Morocco.[25] The only restraint consists in the apprehension of losing the throne because of an excessively flagrant breach of the law, and especially a breach of those traditional norms which are regarded as sacred and on which the rulers' own legitimacy rests. This antiformal substantive character of patriarchal administration reaches its high point when the (secular or priestly) prince places himself at the service of positive religious interests and, more particularly, when he propagates a religiosity which postulates certain ethical attitudes rather than the mere performance of rituals. All the antiformal tendencies of theocracy, which in this case are freed even from the otherwise effective restraints of ritualistic and, on that account, formal sacred norms, combine with formlessness of a patriarchal welfare policy, which aims at the nurturing of right attitudes, and the administration of which approximates the character of pastoral care of souls. The boundaries between law and ethics are then torn down just as those between legal coercion and paternal monition, and between legislative motives and legal techniques. The closest approach to this "patriarchal" type is presented by the edicts of the Buddhist King Asoka.[26] As a rule, however, a combination of estate and patriarchal elements, together with the formal procedures of folk justice, prevails in the patrimonial princely system of justice. The extent to which one or the other of these factors preponderates depends—as we shall see in our discussion of "domination"—essentially on political conditions and power relations. In the West, in addition to these, the (originally politically conditioned) tradition of moot justice, which, as a matter of principle, denied the king the position of judgment finder, was of significance for the preponderance of "estate" forms in the administration of justice.

The growth to preëminence of rational-formalistic elements at the expense of the typical features of patrimonial law, as it occurred in the modern Western world, arose from the immanent needs of patrimonial monarchical administration, especially with respect to the elimination of the supremacy of estate privileges and the "estate" character of the legal and administrative system in general. In this respect the needs of those interested in increased rationality, which means in this case, in growing predominance of formal legal equality and objective formal norms, coincide with the power interests of the prince as against the holders of privilege. Both interests are served simultaneously by the substitution of "reglementation" for "privilege."

No such coincidence existed, however, where the demand was, first, for limitations of the arbitrary patriarchal discretion by fixed rules and, second, for the recognition of definite claims of the subjects against

the administration of justice or, in other words, for guaranteed "rights." As we know, these two elements are not identical. A method of settling disputes which proceeds by means of fixed administrative regulations by no means signifies the existence of guaranteed "rights"; but the latter, i.e., the existence not only of objective and fixed norms but of "law" in the strict sense is, at least in the sphere of private law, the one sure guaranty of adherence to objective norms. This guaranty was sought after by economic interest groups which the princes wished to favor and tie to themselves because they served their fiscal and political power interests. Most prominent among these were the bourgeois interests, which had to demand an unambiguous and clear legal system, that would be free of irrational administrative arbitrariness as well as of irrational disturbance by concrete privileges, that would also offer firm guaranties of the legally binding character of contracts, and that, in consequence of all these features, would function in a calculable way. The alliance of monarchical and bourgeois interests was, therefore, one of the major factors which led towards formal legal rationalization. Alliance must not be understood, however, in the sense that a direct "cooperation" of these two powers would always have been necessary. The utilitarian rationalism characteristic of every sort of bureaucratic administration tended already by itself in the direction of the private economic rationalism of the bourgeois strata. The fiscal interests of the prince also drove him to prepare the way for capitalistic interests to a far greater extent than was actually demanded at the time by those interests themselves. On the other hand, the guaranty of rights which would be independent of the discretion of the prince and his officials was by no means a product of the tendencies genuinely immanent in bureaucracy. Moreover, it was not within the unqualified interest of the capitalist groups either. The very contrary was the case with respect to those essentially politically oriented forms of capitalism which we shall have occasion to contrast, as a special type of capitalism, with its specifically modern "bourgeois" type. Even early bourgeois capitalism itself showed this interest in guaranteed rights either not at all or to a slight extent only, and sometimes it pursued even the very opposite end. The position not only of the great colonial and commercial monopolists but also of the monopolistic large-scale entrepreneurs of the mercantilist manufacturing period regularly rested upon princely privileges which often enough infringed upon the prevailing common law, i.e., in this instance, the guild law. This latter fact called forth the violent opposition of the bourgeois middle class and thus induced the capitalists to pay for their privileged business opportunities by the precariousness of their legal position vis-à-vis the prince. The politically and monopo-

listically oriented capitalism, and even the early mercantilistic capitalism, thus came to have an interest in the creation and maintenance of the patriarchal princely power as against the estates and against the bourgeois craftsmen, as happened in the time of the Stuarts, as has been happening today, and as is likely to happen even more often in broad areas of economic life.[27] In spite of all this, the intrusion of *imperium*, especially of the monarch, into the legal system, has contributed to the unification and systematization of the law and thus to "codification." The stronger and more stable the monarch's power was, the more it tended in that direction. The prince desired "order" as well as "unity" and cohesion of his realm. These aims emerged not only from technical requirements of administration but also from the personal interests of his officials: legal uniformity renders possible employment of every official throughout the entire area of the realm, in which case career chances are, of course, better than where every official is bound to the area of his origin by his ignorance of the laws of any other part of the realm. While thus the bourgeois classes seek after "certainty" in the administration of justice, officialdom is generally interested in "clarity" and "orderliness" of the law.

2. *The Driving Forces Behind Codification*

Although the interests of officials, bourgeois business interests, and monarchical interests in fiscal and administrative ends have been the usual factors promoting codification, they have not been the only ones. Politically dominated strata other than the bourgeoisie can be interested in the unambiguous fixation of the law, and those ruling powers to whom their demands are directed and which yield to them, voluntarily or under pressure, have not always been monarchs.

Systematic codification of the law can be the product of a conscious and universal reorientation of legal life, such as becomes necessary as a result of external political innovations, or of a compromise between status groups or classes aiming at the internal social unification of the political body, or it may result from a combination of both these circumstances. The codification may thus be occasioned by the planful establishment of a community (*Verband*) in a new area, as, for instance, in the case of the *leges datae* of the colonies of Antiquity;[28] or by the formation of a new political community which in certain respects wishes to subject itself to a unified legal system, as, for instance, the Israelite confederation;[29] or by the conclusion of revolution through the compromise of status groups or classes, as the Twelve Tables are said to have

been.[80] The systematic recording of the law may also occur in the interest of legal security following a social conflict. In such situations the parties interested in the recording of the law are naturally those which had hitherto suffered most from the lack of an unambiguously fixed and generally accessible set of norms, i.e., of norms which would allow checking up on the administration of justice. In Antiquity these groups were typically the peasantry and the bourgeoisie as against a system of administration of justice carried on, or dominated by, aristocratic notables or priests. In such cases, the systematic "recording" of the law was apt to contain a large dose of new law and it was thus quite regularly imposed as *lex data* through prophets or prophet-like fiduciaries (*Aisymnetai*) on the basis of revelation or oracle.[81] The interests to be secured were likely to be understood quite clearly by the participants. The possible modes of settlement, too, were likely so to have been clarified by previous discussion and agitation that they were ripe for the prophet's or the aisymnete's fiat. For the rest, the interested parties were more concerned with a formal and clear settlement of the points actually in issue than with a systematic law. The legal normation thus used to be expressed in the epigrammatic and proverb-like brevity which is characteristic of oracles, customals, or *responsa* of jurisconsults. The very fact that we find this style in the Twelve Tables should suffice to dispel the doubts as to their origin in one single act of legislation. Of the same kind is the style of the Decalogue and the Book of the Covenant. In both complexes of commands and prohibitions, the Roman and the Jewish, this style is indicative of their truly law-prophetic and aisymnetic origin. Both also equally present the characteristic feature of combining civil and religious commandments. The Twelve Tables anathematize (*sacer esto*) the son who strikes his father and the patron who does not keep faith with his client. No legal consequences were provided in either case. Obviously the commandments had become necessary because domestic discipline and piety had fallen into decay. The Jewish and Roman codifications differ, however, in so far as in the Decalogue and the Book of the Covenant the religious content is systematized while the Roman *lex* contained but single prescriptions; the bases of religious law were fixed and there was no new religious revelation. It is a quite different and a secondary question whether the twelve "tables," on which the law of the city of Rome, as given by the legal prophets, was said to have been recorded and which are reported to have been destroyed in the conflagration of the Gallic conquest, were any more "historical" than the two tables of the Mosaic law. But the rejection of the tradition as to the age and unity of the Roman legislation is required neither by substantive nor linguistic considerations;

indeed, the latter are particularly irrelevant in view of the purely oral nature of the transmission of the tradition. The opinion that the Twelve Tables were but a collection of legal proverbs or of *responsa* of jurisconsults is contradicted by internal evidence. The norms are general ones and of a fairly abstract character; a good many of them are clearly and consciously aiming in a definite direction and a good many others clearly appear as compromises between different status groups. It is quite improbable that a mere record of the practice of jurisconsults or the literary product of a Sextus Aelius Paetus Catus[32] or some other collector of cases could have attained such an authority in a city and in an age permeated with conflicts between rationally conceived interests. Also the analogy with other aisymnetic laws is too obvious. A "systematic" codification, to be true, is produced by that situation which is typical for aisymnetic legislation and the needs to be satisfied by it only in a purely formal sense. A "systematic" codification was constituted neither for ethics by the Decalogue nor for the regulation of business activities by the Twelve Tables or the Book of the Covenant. It was only through the work of the practicing lawyers that system and legal "*ratio*" were introduced, and even then but to a limited extent. Greater in this respect were the effects of the needs of legal education, but the full extent of systematization and rationalization resulted from the work of monarchical officials. They are the true systematic codifiers, since they have a special interest in a "comprehensive" system as such. For this reason monarchical codifications commonly are so much more rational with respect to systematics than even the most comprehensive aisymnetic or prophetic promulgations.

Monarchical codification has thus been one way to systematize a law. The only other one has been didactic literary activity, especially the creation of so-called "books of law," which every now and then have acquired canonical prestige and have thus come to dominate legal practice almost with statutory force.[33] In both cases, however, the systematic recordation of the law is hardly ever more than a compilation of the existing law meant to eliminate doubts and controversies. A good many collections of laws and regulations created at the behest of patrimonial monarchs and appearing externally as codes, as, for instance, the official Chinese compilation,[34] have, in spite of a certain element of "systematic" classification, little to do with real codification; they are nothing but mechanical arrangements. Other "codifications" have sought no more than to arrange the prevailing law in an orderly and systematic fashion. The *Lex Salica* and most of the other *leges barbarorum* were such compilations for the practice of the moot communities.[35] The highly influential *Assize of Jerusalem*[36] embodied the

precedents on commercial usages: the *Siete Partidas* and similar "codifications" as far back as the *leges Romanae* collected those parts of the Roman law which had remained alive.[37] But even this kind of compilation necessarily implied a certain measure of systematization and, in this sense, rationalization of the legal data, and the groups that are interested in bringing about such a compilation are the same as those interested in a genuine codification, i.e., in a systematic revision of the substantive content of the existing law. The two cannot be sharply distinguished from one another. In that "legal security" which results from codification a strong political interest commonly exists even apart from all other considerations. Codification has thus always been near at hand in cases of creation of a new political entity. We thus find it at the establishment of the Mongolian Empire by Genghis Khan[38] where the collection of the *Yasa* constituted an incipient codification, as well as in many similar cases down to the foundation of the Napoleonic Empire. Apparently against all historical order, an epoch of codification thus occurred in the West at the very beginning of its history in the *leges* of the Germanic kingdoms newly created on Roman soil. The need to pacify these ethnically heterogeneous political structures necessarily required the determination of the law actually existing and the upheaval of the military conquest facilitated the formal radicalism with which the task was carried out.

The interest in the precise functioning of the administrative machine through the establishment of legal security, alongside the prestige-needs of the monarch, especially in the case of Justinian, were the motives for the compilations of the late Roman empire down to the Code of Justianian, as well as of the monarchical Roman-law codifications of the Middle Ages of the kind of the Spanish *Siete Partidas*. In all these cases it is unlikely that private economic interests played any direct role. On the other hand, the oldest and relatively completely known code, which is in this respect the most unique of all those which have come down to us, i.e., the Code of Hammurabi,[39] allows us to infer with some reasonable degree of certainty that there existed relatively strong commerical interests and that the king wished to strengthen the legal security of commerce for his own political and fiscal purposes. The situation is typically that of a city kingdom. The surviving remnants of earlier enactments allow us to infer that the status and class conflicts which were typical of the ancient city were at work then too, exept that, due to the difference in political structure, they led to a different result. It may be said of Hammurabi's Code that, insofar as the evidence of older records is available, it did not establish any really new law but rather codified the existing law and that it was not the first

of its kind.[40] As in most other monarchical codifications, the political interest in the unification of the legal system as such within the entire realm played a dominant role, in addition to the economic and religious interests which are so clearly apparent in the intensive regulation of familial obligations, especially, the obligation of filial piety, which there as everywhere else were lying close to the heart of the patriarchal monarch. For the same reasons which we have already come to know, most of the other monarchical codifications, too, were aimed at overcoming the old principle under which special laws were to prevail over the general law of the land. These same motives were even more influential in bringing about the increasing frequency of monarchical codifications in the era of the rise of the bureaucratic state.[41] They, too, brought innovations only to a limited extent. At least in Central and Western Europe, they presupposed the validity of the Roman and Canon law as a universal law. Roman law, as subsidiary law, recognized the prior claims of the local and special laws, and for Canon law the actual situation was not much different although it claimed for itself absolute and universal effect.

None of the monarchical codifications can match the significance of the revolution in legal thought and in the actual substantive law which was brought about by the reception of Roman law.[42] This is not the place to trace the history; all we can do is to present a few observations.

3. *The Reception of Roman Law and the Development of Modern Legal Logic*

In so far as the emperors, especially Frederick I [1152–1190], and later the territorial princes participated in it, the reception was stimulated essentially by the sovereign position of the monarch as it appears in Justinian's codification. For the rest, the question is still unresolved and perhaps not fully resolvable whether and how far economic interests were behind the reception and to what extent they were promoted by it; it is an equally open question as to what was the cause of the preeminence of the learned, i.e., university-trained, judges who were the bearers of Romanism as well as of the patrimonial-princely procedures. It is above all unsettled whether it was essentially the interested parties (*Rechtsinteressenten*) who, through arbitration agreements, resorted to the legally trained administrative officials of the princes instead of the courts, thus establishing decision "ex officio" instead of decision "ex

lege," and starving out the ancient courts (cf. Stölzel), or whether, as Rosenthal has attempted to show in detail,[48] the courts themselves were, as a result of the initiative of the princes, increasingly staffed with legally trained "assessors" rather than with lay *honoratiores*.

Whatever the answers may be to these questions, this much seems to be clear: since, as the sources indicate, even those status groups which viewed Roman law with distrust, in general did not object to the presence on the bench of some "doctors," but only opposed their preponderance and especially the appointment of foreigners, it is obvious that the advance of the trained jurists was caused by intrinsic needs of the administration of justice, especially by the need to rationalize legal procedure, and by the fact that the jurists possessed that special capacity which results from specialized professional training, viz., the capacity to state clearly and unambiguously the legal issue involved in a complicated situation. To this extent the professional interests of the legal practitioners coincided with those of the private groups interested in the law, both bourgeois and noble. Yet, in the reception of substantive Roman law the "most modern," i.e., the bourgeois groups, were not interested at all; their needs were served much better by the institutions of the medieval *law merchant* and the urban real estate law. It was only the general formal qualities of Roman law which, with the inevitable growth of the character of the practice of law as a profession, brought it to supremacy, except where there existed already, as in England, a national system of legal training protected by powerful interests. These formal qualities account also for the fact that the patrimonial monarchical justice of the West did not take the path, as it did elsewhere, of turning into a patriarchal administration of justice in accordance with standards of substantive welfare and equity. A very important factor in this respect was the formalistic training of the lawyers, on whom the princes were dependent as their officials, and which was largely responsible for the fact that in the West the administration of justice acquired that juristically formal character which is peculiar to it in contrast to most other systems of patrimonial administration of justice. The respect for Roman law and Romanist law training also dominated all the monarchical codifications of the early modern age, which were all the products of the rationalism of university-trained lawyers.

The reception of the Roman law created a new stratum of legal honoratiores, the legal scholars who, on the basis of an education in legal *literature*, had graduated from a university with a doctor's diploma. Indeed, this new stratum was the very basis of the strength of the Roman law. Its significance for the formal qualities of the law was far-reaching.

Already during the Roman Empire, Roman law had begun to be the object of a purely literary activity, which represented something quite different from the production of "law books" by the medieval legal honoratiores of Germany or France or of elementary treatises by English lawyers, however important those books may have been in their own ways. Under the influence of the philosophical training, superficial though it may have been, of the ancient lawyers, the significance of the purely logical elements in legal thinking began to increase. Indeed, it came to be especially important for the actual legal practice as there was no sacred law with any binding force and as the mind was unencumbered by any theological or substantive ethical concerns which might have pushed it in the direction of a purely speculative casuistry. As a matter of fact, incipient tendencies toward the view that what the lawyer cannot "think" or "construe" cannot be admitted as having legal reality could be already found among the Roman jurists. In this context also belong those numerous purely logical propositions as: *quod universitati debetur singulis non debetur*[44] or *quod ab initio vitiosum est, non potest tractu temporis convalescere.*[45] Only, these maxims were but unsystematic occasional productions of abstract legal logic, added to support some concretely motivated individual decisions and totally disregarded in others, even by the same jurist. The essentially inductive, empirical character of legal thought was barely affected, or not at all. The situation was quite different in the [medieval] *reception* of Roman law. First of all, it strengthened that tendency of the legal institutions themselves to become more and more abstract, which had begun already with the transformation of the Roman *ius civile* into the law of the Empire. As Ehrlich has properly emphasized,[46] in order for them to be received at all, the Roman legal institutions had to be cleansed of all remnants of national contextual association and to be elevated into the sphere of the logically abstract; and Roman law itself had to be absolutized as the very embodiment of right reason. The six centuries of Civil Law jurisprudence have produced exactly this result. At the same time, the modes of legal thought were turned more and more in the direction of formal logic. The occasional brilliant aperçus of the Roman jurists of the kind just noted were torn out of the context of the concrete cases of the Pandects and were raised to the level of ultimate legal principles from which deductive arguments were to be derived. Now there was created what the Roman jurists had so obviously lacked, viz., the purely systematic categories, such as "legal transaction" or "declaration of intention,"[47] for which ancient jurisprudence did not even have uniform names. Above all, the proposition that what the jurist cannot con-

ceive has no legal existence now acquired practical significance. Among the ancient jurists, as a result of the historically conditioned analytical nature of Roman legal thought, properly "constructive" ability, even though it was not entirely absent, was only of small significance. Now when this law was transposed into entirely strange fact situations, unknown in Antiquity, the task of "construing" the situation in a logically impeccable way became almost the exclusive task. In this way that conception of law which still prevails today and which sees in law a logically consistent and gapless complex of "norms" waiting to be "applied" became the decisive conception for legal thought.[48] Practical needs, like those of the bourgeoisie, for a "calculable" law, which were decisive in the tendency towards a formal law as such, did not play any considerable role in this particular process. As experience shows, this need may be gratified quite as well, and often better, by a formal, empirical case law. The consequences of the purely logical construction often bear very irrational or even unforeseen relations to the expectations of the commercial interests. It is this very fact which has given rise to the frequently made charge that the purely logical law is "remote from life" (*lebensfremd*). This logical systematization of the law has been the consequence of the intrinsic intellectual needs of the legal theorists and their disciples, the doctors, i.e., of a typical aristocracy of legal literati. In troublesome cases, opinions rendered by law school faculties were the ultimate authority on the Continent.[49] The university-trained judge and notary, together with the university-trained advocate, were the typical legal honoratiores.

Roman law triumphed wherever there did not exist a legal profession with a nation-wide organization. With the exception of England, northern France, and Scandinavia, it conquered all of Europe from Spain to Scotland and Russia. In Italy, at least at the beginning, the notaries were the chief agents of the movement, while in the North its main agents were the learned judges, with the monarchs standing behind them almost everywhere. No Western legal system, not even that of England, has kept itself entirely free of these influences. Their traces show up in the systematic structure of English law, in many of its institutions, and in the very definitions of the sources of the Common Law: judicial precedent and "legal principle," no matter what the difference of inner structure.[50] The true home of the Roman law remained, of course, in Italy, especially under the influence of the Genoese and other learned courts (*rotae*), whose elegant and constructive decisions were collected and printed in Germany in the sixteenth century and thus helped to bring Germany under the influence of the *Reichskammergericht*[51] and the learned courts of the territories.

4. *Types of Patrimonial Codification*

It was not until the era of fully developed "enlightened despotism" that, beginning with the eighteenth century, conscious efforts were made to transcend the specifically formal legal logic of the Civil Law and its academic legal honoratiores, which indeed constituted a unique phenomenon in the world. The decisive role was played, first of all, by the general rationalism developed by bureaucracy in line with its growing self-confidence and its naive belief of "knowing better." Political authority with its patriarchal core assumed the form of the welfare state and proceeded without regard for the concrete desires of the groups interested in the law and the formalism of the trained legal mind. It would indeed have liked nothing better than to suppress completely this kind of thought. The ideal was to deprive the law of its specialist character and to formulate it in a way that would not only instruct the officials but, above all, would enlighten the subjects about their rights and duties exhaustively and without outside aid. This desire for an administration of justice which would strive for substantive justice unaffected by juristic hairsplitting and formalism is, as we have seen, characteristic of every monarchical patriarchalism. But it has not always been able to proceed in this direction without encountering obstacles. The Justinian codifiers could not consider "laymen" as the students and interpreters of their work when they systematized the sublimated law of the jurists. They simply could not eliminate the need for specialized legal training in the face of the achievements of the classical jurists and their authority as it was officially acknowledged by the Citation Law.[53] They could do no more than put forward their work as the sole authoritative collection of citations to serve the educational needs of the students and they had thus to provide for such instruction a textbook presented in the form of a law, i.e., the *Institutes*.[53]

Patriarchalism could act more freely in that classical monument of the modern "welfare state," the Prussian *Allgemeine Landrecht*.[54] In marked contrast to the universe of "rights" of the "Estate" polity, in this Code the "law" is primarily a universe of duties. The universality of one's "darndest debt and duty" (*verdammte Pflicht und Schuldigkeit*) is the main characteristic of the legal order, and its most notable feature is a systematic rationalism, not of a formal but of that substantive kind which always is typical of such cases. Where "reason wants to reign" all law which has for its existence no reason other than the fact that it exists, such as, especially, customary law, must disappear. All modern codifications, down to the first draft of the German Civil Code,[55] have thus been at war with it. Those legal practices which do

not rest upon the explicit provisions of the legislator, just as every traditional mode of legal interpretation, are regarded by the rationalistic legislator as inferior sources of law to be tolerated only so long as the statute has not yet spoken. Codification was thus intended to be "exhaustive" and was believed able to be so. Hence, in order to prevent all creation of new law by the hated jurists, the Prussian judge was directed, in cases of doubt, to turn to a commission specially created for the purpose. The effects of these general tendencies were apparent in the formal qualities of the law so created. In view of the fixed habits of the practitioners, who had to be reckoned with even in the Prussian *Landrecht* and who were oriented towards the concepts of the Roman law, the attempt to emancipate the law from the professional lawyers by the direct enlightenment of the public through the legislator himself of necessity resulted in a highly detailed casuistry, which, due to the striving for material justice, tended to be unprecise rather than formally clear. Yet, dependency on the categories and methodology of Roman law remained inescapable, despite numerous individual divergences and the vigorous attempt, for the first time undertaken in a German legal enactment, to use a German terminology. The occurrence of numerous provisions of a merely didactic or ethically admonitory character gave rise to many doubts as to whether or not a particular provision was really meant to constitute a legally binding norm. Despite the striving for explicitness, clarity was, furthermore, obscured by the fact that the Code's system took as its point of departure not formal legal concepts but the practical relations of life and thus frequently had to take up one and the same legal institution piecemeal in different places.

The aim of eliminating the elaboration of his law by professional jurists was, indeed, achieved by the legislator to a considerable extent, although in not exactly the way intended. A real knowledge of the law by the public could scarcely be achieved by a many-volumed work with tens of thousands of sections, and if the aim was that of bringing about an emancipation from the influence of attorneys and other legal practitioners, the very nature of things prevented its realization under modern conditions. As soon as the Supreme Court (*Obertribunal*) began to publish a series of semi-official reports of its decisions, the cult of *stare decisis* developed as strongly in Prussia as anywhere outside England. On the other hand, nobody could feel stimulated to undertake a scholarly treatment of a law which created neither formally precise norms nor clearly intelligible institutions, as neither of these was intended by this utilitarian legislation.[56] As a matter of fact, patrimonial substantive rationalism has nowhere been able to provide much stimulation for formal legal thought.

The codification thus contributed to a situation in which the scholarly juristic activity was directed either even more to Roman law or, under the influence of nationalism, to the legal institutions of older German law, with the aim of present both of them, by means of the historical method, in their original "pure" form. For Roman law the result was that, under the hands of jurists trained as professional historians, it had to shed those transformations which it had undergone, since the reception, to become adapted to the needs of the times. The *Usus Modernus Pandectarum*,[57] the product of the reworking of the Justinian law through the Civil Law jurists, fell into oblivion and was condemned by scientific historical purists just as much as medieval Latin had been by the humanistic philologists. And just as the latter had resulted in the elimination of Latin as the universal language of the learned, so Roman law lost its suitability to the needs of modern life. Not until then was the way completely open for abstract legal logic. Learned rationalism was thus merely shifted from one domain to another rather than overcome, as so many of the historians seem to believe.

A purely logical re-systematization of the old law was, of course, not achieved by the historical jurists in any convincing way.[58] It is well known, and it is indeed no accident, that down to Windscheid's compendium,[59] almost all the pandectist treatises remained unfinished. The Germanist wing of the historical school of law was no more successful in producing a rigorously formal sublimation of those institutions which were not derived from Roman law. What attracted the historians in that field were indeed those irrational and antiformalistic elements which derived from the legal order of the old polity of Estates.

Systematization and codification without loss of practical adaptability could thus be achieved only for those special fields which bourgeois interests had autonomously adapted to their needs and which had been empirically rationalized in the practice of special courts, i.e., commercial law and the law of negotiable instruments.[60] This achievement was possible because compelling and clearly defined economic needs were operative. But when, after seven decades of supremacy of historians, and at the high point of a development of legal historiography never achieved in any other country, the creation of the German *Reich* dramatically demanded the unification of the private law as a national task, the German jurists were split in the two camps of Romanists and Germanists and approached the undertaking reluctantly and not fully prepared.[61]

The type of patrimonial monarchical codification is represented by other codes, too, especially the Austrian[62] and the Russian.[63] The latter, it is true, essentially constituted merely the status law of the small privileged strata and left untouched the special institutions of the other

estates, especially the peasantry, i.e., the great majority of the subjects. It even left them their own special administration of justice to a practically very far-reaching extent. The greater comprehensiveness of the Russian and Austrian codes, as contrasted with the Prussian, was purchased at the expense of precision and, in the Austrian code, by a greater dependency upon Roman law. It, too, did not attract scholarly thought for all the decades preceding Unger's work,[84] and even then its treatment was carried on almost entirely within the framework of the Romanistic categories.[85]

NOTES

1. Writing before the First World War, Weber is here alluding to certain institutions of monarchical Germany and Austria-Hungary, especially the regulations for the princely courts and the officers' corps of the army. Where, as in the United Kingdom, monarchy still exists, similar phenomena still obtain, although only in the same formal sense in which a man-of-war is referred to as "His (or Her) Majesty's" ship or an army regiment as the "Royal" Dragoons.

2. On this achievement of the English kings, see MAITLAND, CONSTITUTIONAL HISTORY OF ENGLAND (1931) 23, 151; PLUCKNETT 10. On the relation between feudal law and common law in Germany and in Medieval Europe in general, see MITTEIS, DER STAAT DES HOHEN MITTELALTERS (1944); further literature is stated by PLANITZ 101.

3. Cf. PLUCKNETT 487.

4. Cf. sec. *ii*:5. For a full discussion of the status of the *clientela* and their origin, see MITTEIS 42; MOMMSEN, RÖMISCHE FORSCHUNGEN I, 355 *et seq.*, and his STAATSRECHT III, 1, 57, 64, 76.

5. ENGELMANN AND MILLAR 452, 492.

6. Cf. *supra*, sec. *ii*:6. For a recent concise account of the history of these special laws in France and Germany, see KOSCHAKER, EUROPA UND DAS RÖMISCHE RECHT 234–245, where also the full literature on the subject is referred to.

7. Cf. VON BAR, HISTORY OF CONTINENTAL CRIMINAL LAW (1927) 73. For a similar development of the "King's Peace" in England, see POLLOCK AND MAITLAND II, 462–464; also Pollock, *The King's Peace in the Middle Ages* (1900), 13 HARV. L. REV. 177, repr. 2 SELECTED ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 403; GOEBEL, FELONY AND MISDEMEANOR (1937). For France, see ENGELMANN AND MILLAR 661. For Germany, see BRUNNER, RECHTSGESCHICHTE II, 47.

8. *Prodazha* in modern Russian means "sale," the "giving for" money, but the original meaning was "penalty" or "fine"; cf. A. G. PREOBRAZHENSKII, ETIMOLOGICHESKII SLOVAR' RUSSKOGO IAZYKA (1910–1914; reissued 1959) II, 129. (Wi)

Opinions differ as to whether the *knyaz* ("prince," from German *kuning* ["king"] through Lithuanian *kuningas*) was merely functioning as an arbitrator, so that his award could be rejected by the parties and they would be free to proceed with duel or feud, or whether he exercised more effective judicial power. Cf. L. K. Goetz, *Das russische Recht* (1910), 24 Z.F. VOL. RW. 241, 417 *et seq.*; G. VERNADSKY, MEDIEVAL RUSSIAN LAW 10. The feud, with the possibility of its composition by the payment of *wergild* (Russian: *vira*, *vyéra*, deriving from the

same Germanic root; cf. PREOBRAZHENSKII, *op. cit.*, I, 85), was still common when Christianity was imposed upon the Kiev realm by Vladimir I (972 [980]–1015).

The opinion that a casuistic criminal law was introduced by the prince immediately after Christianization and upon the behest of the bishops finds some support in the Russian Chronicles, which are too indefinite, however, to allow a final judgment.

Public punishment by death or corporeal castigation is still exceptional in the so-called "oldest version" of the Russkaya Pravda, which was formerly ascribed to the age of Yaroslav I (1019–1054), but upon which doubt has been thrown by recent research. See sec. *iii*:6. One who has killed, injured, or otherwise offended another is ordered not only to pay *wergilt* to the person injured or his kin, but also a money fine to the prince. This combination corresponds to that of the Germanic laws where, in the period of growing royal power, an offender had to pay "peace money" (*fredus*) to the king in addition to the *Busse* (*wergilt*) payable to the injured. In Russia this fine is called *prodazha*. The word *nakazanie* as a general term for punishment seems not to occur before the time of firmly established government.

9. KARL BINDING, DIE NORMEN UNDIHRE UEBERTRETUNG (1890) 415.

10. All the *Volksrechte* (*leges barbarorum*, cf. sec. ii:2) contain extensive catalogues of misdeeds and the corresponding amounts of payment. The basis of computation is the *wergilt* payable for the killing of a freeman. The amends (*bot, Busse*) for other acts are computed as fractions of the *wergilt*. For specimens of typical catalogues of this kind, see SIMPSON AND STONE, LAW AND SOCIETY (1949) I, 97. See also POLLOCK AND MAITLAND II, 451.

11. Cf. PLUCKNETT 183; MAITLAND, EQUITY 9.

12. On the successful extension of the jurisdiction of the royal as against the ancient popular and feudal courts, see RADIN, ANGLO-AMERICAN LEGAL HISTORY (1936) 141; PLUCKNETT 337, and literature stated there.

13. *Special proceedings to protect possession.*

14. Second half of second century B.C.

15. Cf. HOLDSWORTH VI, 640.

16. Under Louis IX (the Saint, 1226–1270), trial by ordeal was abolished and the jurisdiction of the feudal lords was subjected to the supervision of the courts of the king, the *Parlements*, whose procedure dispensed with many of the formalities of the older courts. Cf. Brunner, *Wort und Form im altfranzösischen Prozes*< 57 SITZUNGSBERICHTE DER PHIL. HIST. CLASSE DER KAISERL. AKADEMIE D. WISSENSCH. IN WIEN (1868).

17. Of the measures taken by Henry II (1154–1189), the most important is the substitution of inquisition by jury for trial by battle in the assize of novel disseisin.

Under Edward III (1327–1377) the possibility of challenging a court record by battle was abolished (EDW. 3, STAT. 1, c. 4) as well as that of bringing in the ecclesiastical court a prosecution for defamation against members of a grand jury who had indicted a person who was subsequently acquitted (1 EDW. 3, STAT. 2, c. 11). Judicial independence as against the Crown was strengthened by the Statute of Northampton (2 EDW. 3, c. 8); the police and judicial functions of the "keepers," "commissioners," or "justices of the peace" were enlarged and consolidated by a number of statutes (see PLUCKNETT 159); the scope of compelling a defendant to submit to trial by means of outlawry was extended (25 EDW. 3, STAT. 5, c. 17); and use of the English language was allowed in pleadings (36 EDW. 3, c. 15).

18. *Capitularia*—legislative acts of the Frankish kings; see *supra*, sec. *v*:1. On the use of fictions in them, see BRUNNER, RECHTSGESCHICHTE I, 377, 379.

who, among others, reports the following illustration from a *capitulare* of Charles the Bald, of 864: Under the *Lex Salica*, service of summons had to be performed *ad domum*, i.e., in the house of the defendant. At that time many houses had been destroyed, however, by the Norman invaders. The king thus ordained that in such a case the process servers might undertake a sham-service on the spot where the house formerly had stood.

19. Cf. Jolowicz 372–374.

20. The legislative power of the Frankish kings was strictly limited. Laws, for example, which purported to alter the custom of the people could not be enacted without their consent. The principle was, *lex fit consensu populi ac constitutione regis* (Edict of Pistoia, 864, c. 6). Cf. Brissaud, History of French Public Law 81.

21. Compare this with Weber's discussion of "public" and "private" law *supra*, sec. *i*:1.

22. Cervantes, Don Quijote, c. 45; cf. also the story of the Ameer of Afghanistan in Max Radin's Law as Logic and as Experience (1940) 65.

23. *Anschwörung* is invocation for harm, curse, execrate, to swear at; see, e.g., the article by J. Kohler and M. Schmidt, *Zur Rechtsgeschichte Afrikas* (1913), 30 Z.f. vgl. Rw. 33. On the monopoly of trade in Africa by the chieftains see Weber, History 197.

24. For Africa see the recent literature referred to in sec. *iii*, n. 45. In general compare (1913) 30 Z.f. vgl. Rw. 12 *et seq.*, 25 *et seq.*, 32, 66–68, 75, etc.

25. *Basuto*—Bantu native of Basuto Land Protectorate; *Baralong*—Bantu group in Central Bechuanaland; *Muata Cazembe*—hereditary chief whose territory stretched from the south of Lake Mweru to north of Bangweulu, between 9° and 11° S. In the late eighteenth century the authority of the Cazembe was widely recognized; it diminished in power until, toward the end of the nineteenth century, the Cazembe sank to the rank of a petty chief. Lately the territory was divided between Northern Rhodesia and Belgian Congo. Cf. Royal Geographical Soc., The Lands of the Cazembe (1873); M. Schmidt, *Zur Rechtsgeschichte Afrikas*, 31 Z.f. vgl. Rw. (1914) 350, and 34 Z.f. vgl. Rw. 441. As to Morocco, see *Quellen zur ethnologischen Rechtsforschung* (1923) 40 Z.f. vgl. Rw. (Ergänzungsband) 125.

26. 264–c. 227 B.C.; see Vincent Smith, Asoka (rev. ed. 1920); V. A. Smith, Edicts of Asoka (1909) and especially Weber's discussion in GAzRS (2nd ed. 1923) II, 253 [*Religion of India*, 235f.].

27. Weber seems to think of the support of the Conservative party by certain groups of heavy industry and high finance, which often found itself in contrast to the demands of the Center party and other groups representing the political interests of the craftsmen and other middle-class strata in Germany.

28. Jolowicz 69.

29. The codes referred to are the Book of the Covenant (Exod. 21–23) and the Decalogues in Exod. 20:1-17 and 34:10–27; Deut. 27:15–26. See Weber's GAzRS III, 251 [*Ancient Judaism*, 235f.]. There should be added the more recent Deuteronomic Code in Deut. 4:44–26:19. On the Hebrew "codification" cf. J. M. Powis Smith, The Origin and History of Hebrew Law (1931).

30. According to tradition the Law of the Twelve Tables is the work of a Commission of Ten (*Decemviri Legibus Scribundis*) who were appointed in 451 B.C. to satisfy the Plebeian demand for a fixation of the laws. The historicity of the tradition has been doubted. Recent researchers are inclined, however, to accept it as substantially correct. Cf. Jolowicz 11, and Jörs and Kunkel 3, 392, both with literature; cf. also *supra* sec. *v*, n. 11. For a discussion of both the Hebrew and Roman Codification, see Diamond 102, 134.

31. *Aisymnetes* (Gr. "adjuster")—temporary ruler, endowed with full governmental powers, elected to adjust the relationship between contesting classes within a city state, as, for instance, Solon in Athens or Charondas in Catania.

32. Sex. Aelius Paetus Catus, who held the censorate and other magistracies at the beginning of the second century B.C., was frequently quoted b later writers (Cicero) as one of the early authorities on the civil law. He is said to have published a *Tripertita*, a three-part collation containing the XII Tables, interpretations current in his day, and a formulary of writs (*legis actiones*), which was known as the *ius Aelianum* (Pompon. Digest I, 2, 2, 38). Cf. the art. by Klebs in PAULY-WISSOWA, REALENZYKLOPÄDIE DER KLASS. ALTERTUMSWISS., I (1894), 527. (Wi)

33. The most famous examples are the SACHSENSPIEGEL and BEAUMANOIR; see *supra*, sec. *ii*:5, n. 99 and sec. *iv*:2, n. 37.

34. The Chinese compilation, which was in force in the Empire until its end, was the TA CH'ING LÜ LI of 1646, promulgated by the Manchu dynasty a few years after its seizure of power. On this and the other Chinese compilations, see WEBER, *Religion of China*, 101. Cf. also Escarra, *Law, Chinese*, 9 ENCYC. SOC. SCI. 249, 266 (bibliography).

35. For the *Lex Salica* and *Leges Barbarorum*, see sec. *ii*, n. 11; also SEAGLE 166. The most recent reliable edition of the texts is that of the series entitled *Germanenrechte*, published by the Akademie für Deutsches Recht (1935 *et seq.*).

36. The Assizes of Jerusalem were the code of laws for the kingdom of Jerusalem as established by the Crusaders in 1099; see K. RÖHRICHT, GESCHICHTE DES KÖNIGREICHS JERUSALEM (1898).

37. *Siete Partidas* (Span. Law of the Seven Parts). It was compiled between 1256 and 1265 by Alfonso X, king of León and Castile. Among its sources were both the *Fuero Juzgo*, i.e., the Spanish translation of the Germanic *Lex Visigothorum* (cf. sec. *ii*, n. 11), made in 1244, and the Roman tradition, especially as rudely compiled in the Visigothic "Code" for the Roman population, the *Lex Romana Visigothorum* or *Breviarium Alarici* of 506. Similar rudimentary compilations of the Roman law as applicable to the Roman population were made in the Ostrogothic kingdom of Theodoric, the *Edictum Theodorici* (about 500), and in the Burgundian kingdom, the *Lex Romana Burgundionum* (also known as *Papian*).

38. Cf. H. LAMB, GENGHIZ KHAN (1927) c. VII; Krause, *Cingis Han*, HEIDELBERGER AKTEN DER VON-PORTHEIM STIFTUNG (1922); G. Vernadsky, *The Scope and Content of Chingis Khan's Yasa* (1938), 3 HARV. J. OF ASIATIC STUDIES 53.

39. See THE CODE OF HAMMURABI, ed. and tr. by R. E. Harper (1904); KOHLER ET AL., HAMMURABIS GESETZ; G. R. DRIVER AND JOHN C. MILES, THE BABYLONIAN LAWS (1952), 6 vols. (1904–23); for concise discussions and literature see DIAMOND 22, and W. SEAGLE, MEN OF THE LAW (1947) 13.

40. As to codes earlier than that of Hammurabi and related legal monuments, see Koschaker, *Forschungen und Ergebnisse in den keilschriftlichen Rechtsquellen* (1929), 49 SAV. Z. ROM. 188; P. Landsberger, *Die babylonischen Termini für Gesetz und Recht* (1935) SYMBOLA KOSCHAKER. On the Sumerian Code, which has been dated 400 years earlier than the Code of Hammurabi, see the Note. Ur-Nannu, [1954] Orientalia, fasc. 1. On a Sumerian code dated 200 years earlier than the Code of Hammurabi, see F. R. Steele, *The Code of Lipit-Ishtar*, [1948] AMERICAN JOURNAL OF ARCHAEOLOGY, No. 52; on the Accadian Code, dated 80 years before the Code of Hammurabi, see Note. Sumer [1948] 4 AMERICAN JOURNAL OF ARCHAEOLOGY IN IRAQ, No. 2.

41. Codifications of this kind were those of Denmark (King Christian V's

Danish Law, of 1683), Sweden (The Law of The Realm of Sweden, of 1736), and Bavaria (1751, 1753, 1756), the Prussian Code of 1794 (see *infra*, nn. 54–56), the preparation of which was begun in 1738, the Austrian Code of 1811 with its precursors of 1766, 1786, and 1797; also the various Ordinances successively enacted in France since 1539 and dealing with certain special topics. Cf. Continental Legal History Series I (*General Survey*), 263.

42. Among the vast literature on the resuscitation and reception of the Roman law in medieval and Renaissance law, the sources most suitable for a general orientation are: Vinogradoff, Roman Law in Medieval Europe (2nd ed. 1929); Smith; E. Jenks, Law and Politics in the Middle Ages (1905); Wieacker, Vom römischen Recht (1944) 195; and, above all, Koschaker, Europa und das römische Recht (1947); G. v. Below, Die Ursachen der Rezeption des römisch n Rechts (1905). Cf. also Maitland, English Law and the Renaissance (1901) and the articles in Continental Legal History Series, vol. I (General Survey, 1912). For an instructive case study of the reception of Roman law in a particular city, see Coing, Die Rezeption des römischen Rechtes in Frankfurt a. M. (1939).

43. The views stated are expressed in A. Stölzel, *Die Entwicklung der gelehrten R chtsprechung* (1910), in E. Rosenthal's extensive review of this book in 31 Sav. Z. Ge m. 522, esp. 538; and in Rosenthal's own Geschich e des Gerichtswesens und der Verwaltungsorganisation in Bayern (1889/1906).

44. "That which is owed to the collective is not owed to its members." Ulpian, Dig. 3.4.7.1.

45. "What is void from the beginning, cannot be cured by the passage of time." Dig. 50.17.29.

46. Ehrlich 253, 297, 348, 479.

47. These concepts are of fundamental importance in the present law of Germany and those related to it, especially Switzerland and Austria. A "legal transaction" (*R chtsgeschäft*) is every transaction of a person which is intended to produce legal consequences, such as an offer, or its acceptance, the contract itself, a will, or the abandonment of the title to a chattel; it is to be distinguished from natural events creating legal consequences, such as, for instance, the avulsion of a piece of land by a torrent, and also from *Rechtshandlungen*, i.e., human activities which create legal consequences without, or even against, the will of the actors, as, for instance, the negligent causation by one person of bodily injury to another. It is one of the peculiar features of the German Civil Code that it treats in one place those legal problems which are common to all legal transactions of any kind, be it a contract, a conveyance, a marriage, a will, or the issuance of a negotiable instrument. There are thus treated in the Third Part of the First Book of the Code (Secs. 104–185): capacity, declaration of intention, contract, condition and time term, authority, and ratification.

"Declaration of intention" (*Willenserklärung*) is that particular kind of legal transaction which requires that a person make manifest his intention. An offer or an acceptance are declarations of intention; a contract, however, is a "legal transaction" consisting of the declarations of intention of offeror and offeree. The rules applicable to declarations of intention of any kind are all treated together in Secs. 116–144, which thus deal with such problems as fraud, mistake, coercion, formalities, interpretation, or invalidity. For further explanation see Schuster, Principles of German Civil Law (1907) 78; (Brit.) Foreign Office, Manual of German Law (1950) 42.

48. In the terminology of its critics, both American and German, the method here sketched is that of "conceptual jurisprudence." As to Germany, it is described in detail, analyzed, and criticized by the various authors of the essays collected in

20th Century Legal Philosophy Series: Vol. II, THE JURISPRUDENCE OF INTERESTS (1948).

49. On this function of law school faculties as appe late courts, see ENGELMANN; STINTZING, GESCHICHTE DER DEUTSCHEN RECHTSWISSENSCHAFT (1880) I, 65; STÖLZEL, *op. cit.* I, 187; Rheinstein, *Law Faculties and Law Schools* [1938] WIS. L. REV. 5, 7.

50. For a discussion of the Roman aw influences on the Common Law, see MAITLAND, ENGLISH LAW AND THE RENAISSANCE (1901); SCRUTTON, THE INFLUENCE OF ROMAN LAW ON THE LAW OF ENGLAND (1885).

51. The *Reichskammergericht* (Imperial Chamber Court) was established in 1495, as a common supreme court for all parts of the Holy Empire, in the course of the—in the long run—futile attempts to rejuvenate its moribund central government. It was to render its decisions according to "The Em ire's Common Law," which meant, the Roman law. Cf. ENGELMANN AND MILLAR 520; R. SMEND, DAS REICHSKAMMERGERICHT (1911).

52. See *supra*, sec. iv:3, atn. 65.

53. Upon the promulgation of the completed work, the use of any juristic writings outside of the Code and especially of those which had been collected in the DIGEST, was forbidden. Prohibited also, under penalty of deportation and confiscation of roperty, was the writing of new commentaries. The Cor us Iuris was to be the exc usive source of the law. Whatever doubts would arise in its a plication were to be submitted to the Emperor for his own authoritative interpretation. The *Institutes* were to be the only treatise to be used in legal education.

54. Prussian General Code, of June 1794. Cf. *supra* n. 41.

55. The Draft provided in Sec. 2 that "rules of customary law are valid only in so far as they are referred to by the [statutory] law." This provision was not taken over into the Code.

56. A scholarly, systematic ex osition of the Code was successfully undertaken, nevertheless, by Dernburg in his PREUSSISCHES PRIVATRECHT, 3 vols. (1894). Significantly, the author was a Romanist and the treatise did not appear until short y before the Prussian Code was replaced by the new German Civil Code of 1896.

57. See EHRLICH 319–340.

58. On the historical school, see STONE 421.

59. WINDSCHEID, LEHRBUCH DES PANDEKTENRECHTS, 3 vols. 1862–1870. Cf. ed. by Kipp, 1906; on Windscheid see the article by Jolowicz, 15 ENCYC. SOC. SCI. 429.

60. The aw of bills of exchange and promissory notes was codified as early as 1848 in a law which was adopted by all member states of the German Confederation, including Austria. The codification of the general commercial aw followed in 1861.

61. *Supra*, sec. ii:6, atn. 177.

62. General Civil Code (*Allgemeines bürgerliches Gesetzbuch*), of 1811.

63. SVOD ZAKONOV, begun in 1809; revised ed. 1857; cov ring, in 40,000 articles, the entire field of law, including publit law.

64. *System des österreichischen allgemeinen Privatrechts*, 2 vols., 1856.

65. On codification in general and in the United States in p rticular, see now H. E. Ynterma, *The Jurisprudence of Codification* (1949), DAVID DUDLEY FIELD CENTENARY ESSAYS 251.

vii

The Formal Qualities of Revolutionary Law —Natural Law

1. *The French Civil Code*

If we compare the products of the pre-revolutionary period with that child of the Revolution, the Civil Code,[1] and its imitations all over Western and Southern Europe,[2] we can see how considerable the formal differences between them are. The Code is completely free from the intrusion of, and intermixture with, nonjuristic elements and all didactic, as well as all merely ethical admonitions; casuistry, too, is completely absent. Numerous sentences of the Code sound as epigrammatic and as monumental as the sentences of the Twelve Tables, and many of them have become parts of common parlance in the manner of ancient legal proverbs.[3] Certainly none of the precepts of the *Allgemeine Landrecht*[4] or any other German code has achieved such fame. As a product of rational legislation, the Code Civil has become the third of the world's great systems of law, alongside Anglo-Saxon law, a product of juristic practice, and the Roman common-law, a product of theoretical-literary juristic doctrine. It has also become the foundation of the vast majority of eastern and central European codifications. The attainment of this position can be explained by its formal qualities; for the code possesses, or at least gives the impression of possessing, an extraordinary measure of lucidity as well as a precise intelligibility in its provisions. This tangible clarity of many of its precepts the Code owes to the orientation of a large number of its legal institutions to the law of the *coutumes*.[5] To this clarity and simplicity much has been sacrificed in formal juristic qualities and in the depth and thoroughness of substantive consideration.[6] However, both as a result of the abstract total structure of the legal system and the axiomatic nature of many provisions, legal thinking has not been stimulated to a truly constructive elaboration of legal institutions in their pragmatic interrelations. It has rather found itself impelled to accept as mere rules those frequent formulations of the Code which are just rules rather than articulations of broader principles, and to adapt them to the needs of practice from case to case. Quite probably, peculiar formal qualities of modern French jurisprudence are perhaps to

some extent to be ascribed to these somewhat contradictory characteristics of the Code. But these characteristics are expressions of a particular kind of rationalism, namely the sovereign conviction that here for the first time was being created a purely rational law, in accordance with Bentham's ideals, free from all historical "prejudices" and deriving its substantive content exclusively from sublimated common sense in association with the particular raison d'état of the great nation that owes its power to genius rather than to legitimacy. In certain cases the Code sacrifices juristic sublimation to vivid form. This attitude towards legal logic stems directly from the personal intervention of Napoleon, while the epigrammatically dramatized character of some of its provisions corresponds to the type of formulation of the "rights of man and citizen" in the American and French constitutions. Certain axioms concerning the substantive content of legal norms are not presented in the form of matter-of-fact rules, but as postulate-like maxims, with the claim that a legal system is legitimate only when it does not contradict those postulates. With this particular method of forming abstract legal propositions we shall now deal briefly.

2. *Natural Law as the Normative Standard of Positive Law*

Conceptions of the "rightness of the law" are sociologically relevant within a rational, positive legal order only in so far as they give rise to practical consequences for the behavior of law makers, legal practitioners, and social groups interested in the law. In other words, they become sociologically relevant only when practical legal life is materially affected by the conviction of the particular "legitimacy" of certain legal maxims, and of the directly binding force of certain principles which are not to be disrupted by any concessions to positive law imposed by mere power. Such a situation has repeatedly existed in the course of history, but quite particularly at the beginning of modern times and during the Revolutionary period, and in America it still exists. The substantive content of such maxims is usually designated as "Natural Law."[7]

We encountered the *lex naturae* earlier[8] as an essentially Stoic creation which was taken over by *Christianity* for the purpose of constructing a bridge between its own ethics and the norms of the world.[9] It was the law legitimated by God's will for all men of this world of sin and violence, and thus stood in contrast to those of God's commands which

were revealed directly to the faithful and are evident only to the elect. But here we must look at the *lex naturae* from another angle. Natural law is the sum total of all those norms which are valid independently of, and superior to, any positive law and which owe their dignity not to arbitrary enactment but, on the contrary, provide the very legitimation for the binding force of positive law. Natural law has thus been the collective term for those norms which owe their legitimacy not to their origin from a legitimate lawgiver, but to their immanent and teleological qualities. It is the specific and only consistent type of legitimacy of a legal order which can remain once religious revelation and the authoritarian sacredness of a tradition and its bearers have lost their force. Natural law has thus been the specific form of legitimacy of a revolutionarily created order. The invocation of natural law has repeatedly been the method by which classes in revolt against the existing order have legitimated their aspirations, in so far as they did not, or could not, base their claims upon positive religious norms or revelation. Not every natural law, however, has been "revolutionary" in its intentions in the sense that it would provide the justification for the realization of certain norms by violence or by passive disobedience against an existing order. Indeed, natural law has also served to legitimate authoritarian powers of the most diverse types. A "natural law of the historically real" has been quite influential in opposition to the type of natural law which is based upon or produces abstract norms. A natural law axiom of this provenience can be found, for instance, as the basis of the theory of the historical school concerning the preëminence of "customary law," a concept clearly formulated by this school for the first time.[10] It became quite explicit in the assertion that a legislator could not in any legally effective way restrict the sphere of validity of customary law by any enactment or exclude the derogation of the enacted law by custom. It was said to be impossible to forbid historical development to take its course. The same assumption by which enacted law is reduced to the rank of "mere" positive law is contained also in all those half historical and half naturalistic theories of Romanticism which regard the *Volksgeist* as the only natural, and thus the only legitimate, source from which law and culture can emanate, and according to which all "genuine" law must have grown up "organically" and must be based directly upon the sense of justice, in contrast to "artificial," i.e., purposefully enacted, law.[11] The irrationalism of such axioms stands in sharp contrast to the natural law axioms of legal rationalism which alone were able to create norms of a formal type and to which the term "natural law" has *a potiori* been reserved for that reason.

3. *The Origins of Modern Natural Law*

The elaboration of natural law in modern times was in part based on the religious motivation provided by the rationalistic sects; it was also partly derived from the concept of nature of the Renaissance, which everywhere strove to grasp the canon of the ends of "Nature's" will. To some extent, it is derived, too, from the idea, particularly indigenous to England, that every member of the community has certain inherent natural rights. This specifically English concept of "birthright" arose essentially under the influence of the popular conception that certain rights, which had been confirmed in Magna Charta as the special status rights of the barons, were national liberties of all Englishmen as such and that they were thus immune against any interference by the King or any other political authority.[12] But the transition to the conception that every human being as such has certain rights was mainly completed through the rationalistic Enlightenment of the seventeenth and eighteenth centuries with the aid, at certain periods, of powerful religious, particularly Anabaptist, influences.

4. *Transformation of Formal into Substantive Natural Law*

The axioms of natural law fall into very different groups, of which we shall consider only those which bear some especially close relation to the economic order. The natural-law legitimacy of positive law can be connected either with formal or with substantive conditions. The distinction is not a clear-cut one, because there simply cannot exist a completely formal natural law; the reason is that such a natural law would consist entirely of general legal concepts devoid of any content. Nonetheless, the distinction has great significance. The purest type of the first category is that "natural law" concept which arose in the seventeenth and eighteenth centuries as a result of the already mentioned influences, especially in the form of the "contract theory," and more particularly the individualistic aspects of that theory. All legitimate law rests upon enactment, and all enactment, in turn, rests upon rational agreement. This agreement is either, first, real, i.e., derived from an actual original contract of free individuals, which also regulates the form in which new law is to be enacted in the future; or, second, ideal, in the sense that only that law is legitimate whose content does not contradict the conception of a reasonable order enacted by free agreement.

The essential elements in such a natural law are the "freedoms," and above all, "freedom of contract." The voluntary rational contract became one of the universal formal principles of natural law construction, either as the assumed real historical basis of all rational consociations including the state, or, at least, as the regulative standard of evaluation. Like every formal natural law, this type is conceived as a system of rights legitimately acquired by purposive contract, and, as far as economic goods are concerned, it rests upon the basis of a community of economic agreement (*Einverständnisgemeinschaft*) created by the full development of property. Its essential components are property and the freedom to dispose of property, i.e., property legitimately acquired by free contractual transaction made either as "primeval contract" with the whole world, or with certain other persons. Freedom of competition is implied as a constituent element. Freedom of contract has formal limits only to the extent that contracts, and social conduct in general, must neither infringe upon the natural law by which they are legitimated nor impair inalienable freedoms. This basic principle applies to both private arrangements of individuals and the official actions of the organs of society meant to be obeyed by its members. Nobody may validly surrender himself into political or private slavery. For the rest, no enactment *can* validly limit the free disposition of the individual over his property and his working power. Thus, for example, every act of social welfare legislation prohibiting certain contents of the free labor contract, is on that account an infringement of freedom of contract. Until quite recently the Supreme Court of the United States has held that any such legislation is invalid on the purely formal ground that it is incompatible with the natural-law preambles to the constitutions.[13]

"Nature" and "Reason" are the substantive criteria of what is legitimate from the standpoint of natural law. Both are regarded as the same, and so are the rules that are derived from them, so that general propositions about regularities of factual occurrences and general norms of conduct are held to coincide. The knowledge gained by human "reason" is regarded as identical with the "nature of things" or, as one would say nowadays, the "logic of things." The "ought" is identical with the "is," i.e., that which exists in the universal average. Those norms, which are arrived at by the logical analysis of the concepts of the law and ethics, belong, just as the "laws of nature," to those generally binding rules which "not even God Himself could change," and with which a legal order must not come into conflict. Thus, for instance, the only kind of money which meets the requirements of the "nature of things" and the principle of the legitimacy of vested rights is that which has achieved the position of money through the free exchange of goods, in other

words, metallic money.[14] Some nineteenth-century fanatics therefore argued that, according to natural law, the state should rather go to pieces than that the legitimate stability of the law be sullied by the illegitimacy of "artificially" created paper money. For an infringement of the *legitimate* law, it was claimed, would in itself be a negation of the very "idea" of the State.

This formalism of natural law, however, was softened in several ways. First of all, in order to establish relations with the existing order, natural law had to accept legitimate grounds for the acquisition of rights which could not be derived from freedom of contract, especially acquisition through inheritance. There were numerous attempts to base the law of inheritance on natural law.[15] They were mainly of philosophical rather than positively juristic origin, and so we shall disregard them here. In the last analysis, of course, substantive motives almost always enter the picture, and highly artificial constructions are thus frequent. Many other institutions of the prevailing system, too, could not be legitimated except on practical utilitarian grounds. By "justifying" them, natural law "reason" easily slipped into utilitarian thinking, and this shift expresses itself in the change of meaning of the concept of "reasonableness." In purely formal natural law, the reasonable is that which is derivable from the eternal order of nature and logic, both being readily blended with one another. But from the very beginning, the English concept of "reasonable" contained by implication the meaning of "rational" in the sense of "practically appropriate." From this it could be concluded that what would lead in practice to absurd consequences cannot constitute the law desired by nature and reason. This signified the express introduction of substantive presuppositions into the concept of reason which had in fact always been implicit in it.[16] As a matter of fact, it was with the aid of this shift in the meaning of the term that the Supreme Court of the United States was able to free itself from formal natural law so as to be able to recognize the validity of certain acts of social legislation.[17]

In principle, however, the formal natural law was transformed into a substantive natural law as soon as the legitimacy of an acquired right came to be tied up with the substantive economic rather than with the formal modes of its acquisition. Lasalle, in his *System of Vested Rights* [1861], still sought to solve a particular problem in natural law fashion by formal means, in his case by those derived from Hegel's theory of evolution. The inviolability of a right formally and legitimately acquired on the basis of a positive enactment is presupposed, but the natural law limitation of this type of legal positivism becomes evident in connection with the problem of the so-called retroactivity of laws and the related

question of the state's duty to pay compensation where a privilege is abolished. The attempted solution, which is of no interest to us here, is of a thoroughly formal and natural law character.

The decisive turn towards substantive natural law is connected primarily with socialist theories of the exclusive legitimacy of the acquisition of wealth by one's own labor. For this view rejects not only all unearned income acquired through the channels of inheritance or by means of a guaranteed monopoly, but also the formal principle of freedom of contract and general recognition of the legitimacy of all rights acquired through the instrumentality of contracting. According to these theories, all appropriations of goods must be tested substantively by the extent to which they rest on labor as their ground of acquisition.

5. *Class Relations in Natural Law Ideology*

Naturally both the formal rationalistic natural law of freedom of contract and the substantive natural law of the exclusive legitimacy of the product of labor have definite class implications. Freedom of contract and all the propositions regarding as legitimate the property derived therefrom obviously belong to the natural law of the groups interested in market transactions, i.e., those interested in the ultimate appropriation of the means of production. Conversely, the doctrine that land is not produced by anybody's labor and that it is thus incapable of being appropriated at all, constitutes a protest against the closedness of the circle of landowners, and thus corresponds with the class situation of a proletarianized peasantry whose restricted opportunities for self-maintenance force them under the yoke of the land monopolists.[18] It is equally clear that such slogans must acquire a particularly dramatic power where the product of agricultural exploitation still depends primarily upon the natural condition of the soil and where the appropriation of the land is not, at least internally, completed; where, furthermore, agriculture is not carried on in rationally organized large-scale enterprises, and where the income of the landlord is either derived entirely from the tenants' rent or is produced through the use of peasant equipment and peasant labor. All these conditions exist in large measure in the area of the "Black Earth" [Ukraine and Southern Russia]. As regards its positive meaning, this natural law of the small peasantry is ambiguous. It can mean in the *first* place the right to a share in the land to the extent of one's own labor power (*trudovaya norma*); or, *secondly*, a right to the ownership of land to the extent of the traditional standard of living (*potrebityelnaya norma*). In conventional

terminology the postulate thus means either the "right to work" or the "right to a minimum standard of living"; *thirdly*, however, the two may be combined with the demand for the "right to the full product of one's labor."

The Russian revolution of the last decade [i.e., of 1905–06], in all probability the last of the world's natural-law oriented agrarian revolutions,[19] has been bled to death also by the irresolvable contradictions between its various ideologies. Those first two natural-law positions were incompatible not only with one another, but also with the various peasant programs, whether they were motivated by historical, realistically political, practically economical, or finally—and in hopeless confusion because of internal contradictions between the inherent basic dogmas—by Marxist-evolutionist considerations.

Those three "socialist" rights of the individual have also played a role in the ideologies of the industrial proletariat. The first and the second are theoretically possible under handicraft as well as under capitalistic conditions of the working class; the third, however, is possible only under handicraft conditions. Under capitalism the third right of natural law is possible either not at all or only where cost prices are strictly and universally maintained in all exchange transactions. In agriculture, it can be applied only where production is not capitalistic, since capitalism shifts the imputation of the yield of agricultural land from the place of direct agricultural production to the workshops where the agricultural implements, artificial fertilizers, etc., are produced; and the same holds true for industry. Quite generally, where the return is determined by the sale of the product in a freely competitive market, the content of the right of the individual to the full value of his product inevitably loses its meaning. There simply is no longer an individual "labor yield," and if the claim is to make any sense it can be only as the collective claim of all those who find themselves in a common class situation. In practice, this comes down to the demand for a "living wage," i.e., to a special variant of the "right to the standard of living as determined by traditional need." It thus resembles the medieval "just price" as demanded by ecclesiastical ethics which, in case of doubt, was determined by the test (and occasionally experimentally) of whether or not at the given price the craftsmen in question could maintain the standard of living appropriate to their social status.

The "just price" itself, which was the most important natural law element in canonist economic doctrine, fell prey to the same fate. In the canonistic discussions of the determinants of the "just price" one can observe how this labor value price corresponding to the "subsistence principle" is gradually replaced by the competitive price which becomes

the new "natural" price in the same measure as the market community progresses. In the writings of Antonin of Florence [1389–1459] the latter had already come to prevail. In the outlook of the Puritans it was, of course, completely dominant. The price which was to be rejected as "unnatural" was now one which did not rest on the competition of the free market, i.e., the price which was influenced by monopolies or other arbitrary human intervention. Throughout the whole puritanically influenced Anglo-Saxon world this principle has had a great influence up to the very present. Because of the fact that the principle derived its dignity from natural law, it remained a far stronger support for the ideal of "free competition" than those purely utilitarian economic theories which were produced on the Continent in the manner of Bastiat [1801–50].

6. *Practical Significance and Disintegration of Natural Law*

All natural law dogmas have influenced more or less considerably both lawmaking and lawfinding. Some of them survived the economic conditions of the time of their origin and have come to constitute an independent factor in legal development. Formally, they have strengthened the tendency towards logically abstract law, especially the power of logic in legal thinking. Substantively, their influence has varied, but it has been significant everywhere. This is not the place to trace in detail these influences and the changes and compromises of the various natural law axioms. The codifications of the pre-revolutionary rationalistic modern state, as well as the revolutionary codifications, were influenced by the dogmas of natural law, and they ultimately derived the legitimacy of the law which they created from its "reasonableness."[20] We have already seen how easily on the basis of such a concept the shift from the ethical and juristically formal to the utilitarian and technically substantive could, and did, take place. This transformation, for reasons which we have already discussed, was very favorable to the pre-revolutionary patriarchal powers, while the codifications of the Revolution, which took place under the influence of the bourgeoisie, stressed and strengthened the formal natural law, which guaranteed to the individual his rights vis-à-vis the political authorities.

The rise of Socialism at first meant the growing dominance of substantive natural law doctrines in the minds of the masses and even more in the minds of their theorists from among the intelligentsia. These sub-

stantive natural law doctrines could not, however, achieve practical influence over the administration of justice, simply because, before they had achieved a position to do so, they were already being disintegrated by the rapidly growing positivistic and relativistic-evolutionistic skepticism of the very same intellectual strata. Under the influence of this anti-metaphysical radicalism, the eschatological expectations of the masses sought support in prophecies rather than in postulates. Hence in the domain of the revolutionary theories of law, natural law doctrine was destroyed by the evolutionary dogmatism of Marxism, while from the side of "official" learning it was annihilated partly by the Comtean evolutionary scheme and partly by the historicist theories of organic growth. A final contribution in the same direction was made by *Realpolitik* which, under the impact of modern power politics, had come to affect the treatment of public law.[21]

The method of the public law theorists has been, and still is to a great extent, to point to certain apparent practical-political absurdities as the consequence of the juristic theory which they happen to oppose, and then to treat the theory as effectively disposed of forever after. This method is not only directly opposed to that of formal law, but it also contains nothing of substantive natural law. In the main, Continental jurisprudence, even up to the most recent times, proceeds on the basis of the largely unchallenged axiom of the logical "closedness" of the positive law.[22] It seems for the first time to have been expressly stated by Bentham as a protest against the case law rut and the irrationality of the common law.[23] It is indirectly supported by all those tendencies which reject all transcendental law, especially natural law, including, to this extent, the historical school. While it would hardly seem possible to eradicate completely from legal practice all the latent influence of unacknowledged axioms of natural law, for a variety of reasons the axioms of natural law have been deeply discredited. The conflict between the axioms of substantive and formal natural law is insoluble. Evolutionist theories have been at work in various forms. All metajuristic axioms in general have been subject to ever continuing disintegration and relativization. In consequence of both juridical rationalism and modern intellectual skepticism in general, the axioms of natural law have lost all capacity to provide the fundamental basis of a legal system. Compared with firm beliefs in the positive religiously revealed character of a legal norm or in the inviolable sacredness of an age-old tradition, even the most convincing norms arrived at by abstraction seem to be too subtle to serve as the bases of a legal system. Consequently, legal positivism has, at least for the time being, advanced irresistibly. The disappearance of the old natural law conceptions has destroyed all possi-

bility of providing the law with a metaphysical dignity by virtue of its immanent qualities. In the great majority of its most important provisions, it has been unmasked all too visibly, indeed, as the product or the technical means of a compromise between conflicting interests.

But this extinction of the metajuristic implications of the law is one of those ideological developments which, while they have increased skepticism towards the dignity of the particular rules of a concrete legal order, have also effectively promoted the actual obedience to the power, now viewed solely from an instrumentalist standpoint, of the authorities who claim legitimacy at the moment. Among the practitioners of the law this attitude has been particularly pronounced.[24]

7. *Legal Positivism and the Legal Profession*

The vocational responsibility of maintaining the existing legal system seems to place the practitioners of the law in general among the "conservative" forces. This is true in the twofold sense that legal practitioners are inclined to remain cool not only toward the pressure of substantive postulates put forward from "below" in the name of "social" ideals but also towards those from "above" which are put forward in the name of patriarchal power or welfare policies. Of course, this statement should not be taken as representing the whole truth without qualifications. The role of the representative of the underprivileged, and of the advocate of formal equality before the law is particularly suited to the attorney by reason of his direct relationship with his clients, as well as by reason of his character as a private person working for a living and his fluctuating social status. This is why attorneys, and lawyers in general, have played such a leading role in the movements of the *popolani* of the Italian communes and, later, in all the bourgeois revolutions of modern times as well as in the socialist parties. It also explains why in purely democratic countries, such as in France, Italy, or the United States, the lawyers, as the professionally expert technicians of the legal crafts, as honoratiores, and as the fiduciaries of their clients, are the natural aspirants to political careers.

Under certain circumstances, judges, too, have maintained strong opposition to patriarchal powers, either for ideological reasons or out of considerations of status group solidarity or, occasionally, because of economic reasons. To them, the fixed and regular determinateness of all external rights and duties is apt to appear as a worth-while value to be pursued for its own sake; this specifically "bourgeois" element in their

thought has determined their attitudes in the political conflicts which were fought for the purpose of limiting authoritarian patrimonial arbitrariness and favoritism.

Whether the legal profession would take the side either of the authoritarian or the anti-authoritarian powers, once the "rule-boundedness" of the social order had been achieved, depended upon whether the emphasis was more upon mere "order," or upon "liberty," in the sense of guaranty and security of the individual. The choice depended, in the terminology of Radbruch, on whether law was viewed more as "regulation" or as the source of "rights."[25] But quite apart from this antinomy, it was also the previously mentioned alternative between the formal and substantive legal ideals and the vigorous, economically conditioned revival of the latter, both in the upper and lower strata of the social hierarchy, that weakened the oppositionist tendencies of the lawyers as such. We shall discuss later just what technical devices authoritative powers have used to overcome resistance from within the judiciary.[26] Among the general ideological factors which account for the change in the lawyers' attitude, the disappearance of the belief in natural law has played a major role. If the legal profession of the present day manifests at all typical ideological affinities to various power groups, its members are inclined to stand on the side of "order," which in practice means that they will take the side of the "legitimate" authoritarian political power that happens to predominate at the given moment. In this respect, they differ from the lawyers of the English and French revolutionary periods and of the period of enlightenment in general. They differ also from those who had to act within the framework of patrimonial despotism or had been sitting in [German nineteenth-century] parliamentary bodies and municipal councils down to Prussia's "circuit judges' parliament" of the 1860's.[27]

NOTES

1. The French Civil Code was proclaimed on 21 March 1804, under the title of CODE CIVIL DES FRANÇAIS. In 1807 this title was changed to CODE NAPOLÉON, and in 1816 the original title was restored with the fall of the Napoleonic régime. During the reign of Napoleon III the reference to Napoleon was reinstated in the title (1852–1870). While Napoleon was the main driving force and an active participant in the making of the Code, the demand for, and the beginning of, codification in France preceded the Napoleonic era. Even before the Revolution of 1789 the diversity of local laws had come to be regarded as cumbersome and their incompleteness as a source of legal uncertainty, and the Estates General had thus petitioned for a uniform national law. Also the judges of the French *parlements* had become unpopular. The Constituent Assembly of 1790 noted that a code should be proposed, but it was left to the Convention of 1793

to create a special drafting commission, headed by Cambacérès, which was to start the actual work and indeed was charged with its completion within a month. This commission actually succeeded in completing a draft of seven hundred articles within six weeks, which, however, was rejected on the ground that it was too elaborate and detailed and might restrict the freedom of the individual! Another, much shorter, draft was presented one year later (in September 1794), but was only little debated. Of the two further drafts—one in 1796 consisting of five hundred articles and another in 1799—equally little resulted, as the Convention was engaged in waging a war with virtually the whole of Europe; yet, as Vollet has remarked (*Cambridge Modern History* VIII, 710 at 741–742), "The Convention amidst disorders at home and war abroad peacefully deliberated on questions of inheritance, alluvial lands, illegitimate children, and the whole body of civil law. . ." The Consulate, with Napoleon as First Consul, resumed the work, and much of Cambacérès' labor was embodied in the final Code.

In the Code much of the customary law of Northern France was preserved, combined with the conceptual technique of the eighteenth-century Roman law. Extensive use was made of the work of Domat (1625–1696) and, especially, Pothier (1699–1772), who had laid, in their extensive writings, the bases of a common law of France. The whole work was permeated, however, with a strong spirit of liberalism and individualism.

The Code was [in 1954] still in effect in France, although modified by a large number of amendments. A Commission had been charged with the preparation of a total revision of the Code in 1946.

On the Code, see Viollet, *loc. cit.*; Lobingier, *Code civile* and *Codification* in 3 ENCYC. SOC. SCI. 604, 606, with further literature; on the current work of revision, see J. de la Morandière, *Reform of the French Civil Code* (1948), 97 U. OF PA. L. REV. 1.

2. Through the Napoleonic conquests the CODE CIVIL was spread outside France; but permanently it was retained only in Belgium, Luxembourg, and that part of (Russian) Poland which had been constituted by Napoleon as the Grand-Duchy of Warsaw. Until the German Civil Code of 1896 took effect in 1900, the French Code remained in effect in those parts of Germany which are situated on the left bank of the Rhine, in the Grand-Duchy of Baden, and in a small sector of the Rhine Province east of the Rhine.

During the nineteenth century the CODE CIVIL, in translation and with inconsiderable modifications, became the law of the Netherlands, Italy (now replaced by a new Code of 1942), Rumania, Egypt, Quebec, Louisiana, Portugal, and Spain. The Spanish Code, with slight amendments, is still in effect in Puerto Rico, Cuba, and the Philippine Republic, and has constituted the model for most of the codes of Latin America.

New types of codification were started with the German Civil Code of 1896 and the Swiss Civil Code of 1912. The former was taken over, with slight changes, in Japan, the latter in Turkey. In the modern codes of pre-communist China, Thailand, Brazil, Mexico (federal law), and a few other Latin American countries, the models of the French, German, and Swiss codes are combined, partly also with indigenous ideas. Cf. Fisher, *The Codes*, 9 CAMBRIDGE MODERN HISTORY 148; Amos, *The Code Napoleon and the Modern World* (1928), 10 J. COMP. LEGISL. 22; A. REPPY (ed.), DAVID DUDLEY FIELD CENTENARY ESSAYS (1949).

3. Cf., for instance:

ART. 2. La loi ne dispose que pour l'avenir; elle n'a point d'effet rétroactif (The law disposes only for the future; it has no retroactive effect).

ART. 1134. Les conventions légalement formées tiennent lieu de loi à ceux qui les ont faites (A contract properly concluded holds the place of law for those who have made it).

ART. 1382. Tout fait quelconque de l'homme, qui a causé à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer (Every act of man which causes harm to another binds the one through whose fault it has occurred to make reparation).

ART. 2279, para. 1. En fait de meubles, la possession vaut titre ("As to chattels, possession amounts to title"—meaning: a bona fide purchaser from the possessor acquires a good title).

So great a French writer as Stendhal is said to have had such a high opinion of the Code's literary style that he made it a habit to read a chapter of it before sitting down to write. Cf. SEAGLE 286.

4. Cf. *supra*, sec. *vi*:4, at nn. 54ff.

5. *Coutumes*—customary law of Northern France. Apart from the law of property and contract, which was primarily derived from Roman law, almost everything else in the code was based on customary law. Thus it was the customary law as systematized by Pothier to which, as has been said, three-quarters of the code can be traced back: see EHRLICH 415–416.

6. An instance of this kind is provided by the two articles of the code (arts. 1382 and 1383) which purport to formulate the general principles of almost the whole French law of delicts (torts). For an analysis see Walton, *Delictual Responsibility in the Modern Civil Law* (1933), 49 L.Q. REV. 70. Compare with the two laconic articles of the French Code the 951 sections of the RESTATEMENT OF THE LAW OF TORTS by the American Law Institute (4 vols. 1939).

7. For concise surveys of, and bibliographies on, the various forms of Natural Law concepts and their role and significance, see G. Gurvitch, *Natural Law*, 11 ENCYC. SOC. SCI. 284; STONE 215; I. W. JONES, HISTORICAL INTRODUCTION TO THE THEORY OF LAW (1947); see also C. G. HAINES, REVIVAL OF NATURAL LAW CONCEPTS IN AMERICA (1930) and ROMMEN, NATURAL LAW (1947).

8. Seech. VI:xiii:3.

9. See E. TROELTSCH, THE SOCIAL TEACHINGS OF THE CHRISTIAN CHURCHES (2 vols., tr. by O. Wyon, London, 1931) and Weber's remarks on Troeltsch's paper on *The Stoic-Christian Natural Law* in VERHANDLUNGEN DES DEUTSCHEN SOZIOLOGENTAGS (1910) I, 196, 210, repr. in *GAzSS* 462.

10. Cf. *supra*, sec. *iii*:2, at n. 9.

11. This attitude is represented by the Historical School, especially the Germanists, among whom Gierke has been particularly prominent. An American representative was James C. Carter, the chief opponent of David Dudley Field's codification plans (see the article on him by Llewellyn in 3 ENCYC. SOC. SCI. 243).

12. The so-called Whig conception of English history: cf. H. BUTTERFIELD, THE ENGLISHMAN AND HIS HISTORY (1944). On the real and the imaginary Magna Carta see W. S. McKechnie, *Magna Carta 1215–1915*, MAGNA CARTA COMMEMORATION ESSAYS (1917) I, 18; M. Radin, *The Myth of Magna Carta* (1947) 60 HARV. L. REV. 1060.

13. *Sic.* What is meant is obviously the due process clause of the Fourteenth Amendment of the Constitution of the United States.

14. See WEBER, ECONOMIC HISTORY 236 and literature cited at p. 377; also *supra*, Part One, ch. II:6 and II:32–36.

15. See, for instance, Leibniz, who derives inheritance from the immortality of the soul (NOVA METHODUS DOCENDI DISCENDIQUE JURIS, Part II, Sec. 20,

17); his argumentation is also followed by Ahrens (COURS DE DROIT NATUREL [1838], Part II, Sec. 102). Grotius finds the basis of testate succession in natural freedom and that of intestate succession in its implied agreement with the will of the decedent (DE IURE PACIS AC BELLI [1625], II, c. vii; cf. on his theory MAINE 190).

The natural law theories were attacked by Pufendorf, who declared inheritance to be an institution of positive law (DE IURE NATURAE ET GENTIUM [1672], 4.10. 2–6). This opinion was followed by Blackstone (Book II, c. xiv).

16. What Weber has in mind is the shift from natural law thinking to utilitarianism, as expressed by Bentham, John Stuart Mill, and Spencer.

17. See Knoxville Iron Co. v. Harbison (1901) 183 U.S. 13; McLean v. Arkansas (1908) 211 U.S. 539; Erie R.R. v. Williams (1914) 233 U.S. 685:—statutes prescribing the character, methods, and time for payment of wages.

Holden v. Hardy (1898) 169 U.S. 366; Bunting v. Oregon (1917) 243 U.S. 426; Muller v. Oregon (1908) 208 U.S. 412; Riley v. Massachusetts (1914) 232 U.S. 671; Miller v. Wilson (1915) 236 U.S. 373; Bosley v. McLaughlin (1915) 236 U.S. 385:—statutes fixing hours of labor.

N.Y. Central R.R. Co. v. White (1917) 243 U.S. 188:—workmen's compensation laws.

Later decisions, such as Adkins v. Children's Hospital (1923) 261 U.S. 525, in which the rule of reason was temporarily nullified, or the New Deal cases, could, of course, not be considered by Weber.

For a penetrating survey and analysis, from the continental point of view, of the attitudes of the American judiciary toward social legislation, see ED. LAMBERT, LE GOUVERNEMENT DES JUGES ET LA LUTTE JUDICIARE CONTRE LA LÉGISLATION SOCIALE AUX ETATS-UNIS (1921).

18. On this and the following, see Weber's discussion of the Russian revolution of 1905 in ARCHIV F. SOZIALWISSENSCHAFT (1906), XXII, 234 and XXIII, 165; see also his article on *Russlands Übergang zur Scheindemokratie* (1917) 23 DIE HILFE 272, repr. in *GPS*, 192ff.

19. In the second of the two articles mentioned in n. 18 *supra* Weber, at p. 314, predicted the coming of a new revolution in Russia, which would be oriented toward communism rather than natural law and which would create a state of affairs different from anything that had ever existed before.

20. For a monographic inquiry into the influence of natural law ideologies upon one particular code, viz., that of Austria, see SWOBODA, DAS ALLGEMEINE BÜRGERLICHE GESETZBUCH IM LICHTE KANTS (1924).

21. The mode of a completely "positivist" treatment of public law was represented in Germany particularly by Paul Laband (1838–1918) and his disciples. On Laband, see the article by E. von Hippel in 8 ENCYC. SOC. SCI. 614.

22. See *supra*, sec. *i*:9.

23. Weber here states an opinion expressed by Hatschek (ENGLISCHES STAATSRECHT 153), but opposed by J. Lucas (*Zur Lehre von dem Willen des Gesetzgebers*, FESTGABE FÜR LABAND [1908]), who traced the dogma of the gaplessness of the legal order to the natural law tendencies of absolute monarchy and denied any possible influence in this respect of Bentham. The controversy was carried on in a series of articles by Hatschek (1909), 24 ARCHIV F. ÖFFENTLICHES RECHT 442; (1910) 26 *ibid.* 458; and Lukas (1910) 26 *ibid.* 67 and 465.

24. On positivism in Germany see G. RADBRUCH, RECHTSPHILOSOPHIE (1950) 115. This latest book of Radbruch's (as to his earlier views, see the 20th

Century Legal Philosophy Series, Vol. IV, *The Legal Philosophies of Lask, Radbruch, and Dabin* [1950]) is also typical of the revival of natural law thinking in post-World-War-II Germany; cf. in this respect also H. COING, DIE OBERSTEN GRUNDSÄTZE DES RECHTS (1947), and GRUNDZÜGE DER RECHTSPHILOSOPHIE (1950); on the transformations of Radbruch's thought, see F. v. HIPPEL, GUSTAV RADBRUCH ALS RECHTSPHILOSOPHISCHER DENKER (1951).

25. Cf. RECHTSPHILOSOPHIE (1914 ed.); the terminology is no longer used, however, in the versions of 1932 and 1950.

26. This intended investigation was not carried out by Weber.

27. *Kreisrichterparlament*—so called because a considerable number of its members were *Kreisrichter* (circuit judges), who, at the time, were predominantly Liberals and opposed to the policies of Bismarck.

VIII

The Formal Qualities of Modern Law

1. *Particularism in Modern Law*

As we have seen, the specifically modern occidental type of administration of justice has arisen on the basis of rational and systematic legislation. However, its basic formal qualities are by no means unambiguously definable. Indeed, this ambiguity is a direct result of more recent developments.

The ancient principles which were decisive for the interlocking of "right" and "law" have disappeared, especially the idea that one's right has a "valid" quality only by virtue of one's membership in a group of persons by whom this quality is monopolized. To the past now also belongs the tribal or status-group quality of the sum total of a person's rights and, with it, their "particularity" as it once existed on the basis of free association or of usurped or legalized privilege. Equally gone are the status and other special courts and procedures. Yet neither all special and personal law nor all special jurisdictions have disappeared completely. On the contrary, very recent legal developments have brought an increasing particularism within the legal system. Only the principle of demarcation of the various spheres has been characteristically changed. A typical case is that of commercial law, which is, indeed, one of the most important instances of modern particularism. Under the German Commercial Code this special law applies to certain types of contracts,[1] the most important of which is the contract for acquisition

of goods with the intention of profitable resale. This definition of commercial contract is entirely in accordance with a rationalized legal system; the definition does not refer to formal qualities, but to the intended functional meaning of the concrete transaction. On the other hand, commercial law also applies to certain categories of persons whose decisive characteristic consists in the fact that contracts are made by them in the course of their business.[2] What is thus really decisive for the demarcation of the sphere of this type of law is the concept of "enterprise." An enterprise is a commercial enterprise when transactions of such peculiar kind are its constitutive elements. Thus every contract which "belongs" substantively, i.e., in its intention, to a commercial enterprise is under the Commercial Code, even though, when regarded alone and by itself, it does not belong to that category of transactions which are generically defined as commercial and even though, in a particular case, such a contract may happen to be made by a nonmerchant. The application of this body of special law is thus determined either by substantive qualities of an individual transaction, especially its intended meaning, or by the objective association of a transaction with the rational organization of an enterprise. It is not determined, however, by a person's membership in a status group legally constituted by free agreement or privilege, which was in the past the operative factor for the application of a special law.

Commercial law, then, inasmuch as its application is personally delimited, is a class law rather than a status-group law. However, this contrast with the past is but a relative one. Indeed, so far as the law of commerce and the law of other purely economic "occupations" are concerned, the principle of jurisdictional delimitation has always had a purely substantive character, which, while often varying in externals, has essentially been the same throughout. But those particularities in the legal system which constituted a definite status law were more significant both quantitatively and qualitatively. Besides, even the vocational special jurisdictions, so far as their jurisdictions did not depend upon the litigants' membership in a certain corporate body, have usually depended upon mere formal criteria such as acquisition of a license or a privilege. For example, under the new German Commercial Code, a person is characterized as a merchant by the mere fact that he is listed in the register of commercial firms.[3] The personal scope of application of the commercial law is thus determined by a purely formal test, while in other respects its sphere is delimited by the economic purpose which a given transaction purports to achieve. The spheres of the special laws applicable to other occupational groups are also predominantly defined along substantive or functional criteria, and it is only under certain cir-

cumstances that applicability is governed by formal tests. Many of these modern special laws are also combined with special courts and procedures of their own.[4]

Mainly two causes are responsible for the emergence of these particularistic laws. In the first place, they have been a result of the occupational differentation and the increasing attention which commercial and industrial pressure groups have obtained for themselves. What they expect from these particularistic arrangements is that their legal affairs will be handled by specialized experts.[5] The second cause, which has played an increasingly important role in most recent times, has been the desire to eliminate the formalities of normal legal procedure for the sake of a settlement that would be both expeditious and better adapted to the concrete case.[6] In practice, this trend signifies a weakening of legal formalism out of considerations of substantive expediency and thus constitutes but one instance among a whole series of similar contemporary phenomena.

2. *The Anti-Formalistic Tendencies of Modern Legal Development*

From a theoretical point of view, the general development of law and procedure may be viewed as passing through the following stages: first, charismatic legal revelation through "law prophets"; second, empirical creation and finding of law by legal honoratiores, i.e., law creation through cautelary jurisprudence and adherence to precedent; third, imposition of law by secular or theocratic powers; fourth and finally, systematic elaboration of law and professionalized administration of justice by persons who have received their legal training in a learned and formally logical manner. From this perspective, the formal qualities of the law emerge as follows: arising in primitive legal procedure from a combination of magically conditioned formalism and irrationality conditioned by revelation, they proceed to increasingly specialized juridical and logical rationality and systematization, sometimes passing through the detour of theocratically or patrimonially conditioned substantive and informal expediency. Finally, they assume, at least from an external viewpoint, an increasingly logical sublimation and deductive rigor and develop an increasingly rational technique in procedure.

Since we are here only concerned with the most general lines of development, we shall ignore the fact that in historical reality the theoretically constructed stages of rationalization have not everywhere followed in the sequence which we have just outlined, even if we ignore the

world outside the Occident. We shall not be troubled either by the multiplicity of causes for the particular type and degree of rationalization that a given law has actually assumed, which even our brief sketch has shown. We shall only recall that the great differences in the line of development have been essentially influenced, first, by the diversity of political power relationships, which, for reasons to be discussed later, have resulted in very different degrees of power for the *imperium* vis-à-vis the powers of the kinship groups, the folk community, and the status group; second, by the relations between the theocratic and the secular powers; and, third, by the differences in the structure of the [strata of] "legal notables" significant for the development of a given law, differences which also were largely dependent upon political factors.

Only the Occident has witnessed the fully developed administration of justice of the folk-community (*Dinggenossenschaft*) and the status-stereotyped form of patrimonialism; and only the Occident has witnessed the rise of the national economic system, whose agents first allied themselves with the princely powers to overcome the estates and then turned against them in revolution; and only the West has known "Natural Law," and with it the complete elimination of the system of personal laws and of the ancient maxim that special law prevails over general law. Nowhere else, finally, has there occurred any phenomenon resembling Roman law and anything like its reception. All these events have to a very large extent been caused by concrete political factors, which have only the remotest analogies elsewhere in the world. For this reason, the stage of law decisively shaped by trained legal specialists has not been fully reached anywhere outside of the Occident. Economic conditions have, as we have seen, everywhere played an important role, but they have nowhere been decisive alone and by themselves. To the extent that they contributed to the formation of the specifically modern features of present-day occidental law, the direction in which they worked has been by and large the following: To those who had interests in the commodity market, the rationalization and systematization of the law in general and, with certain reservations to be stated later, the increasing calculability of the functioning of the legal process in particular, constituted one of the most important conditions for the existence of economic enterprise intended to function with stability and, especially, of capitalistic enterprise, which cannot do without legal security. Special forms of transactions and special procedures, like the bill of exchange and the special procedure for its speedy collection, serve this need for the purely formal certainty of the guaranty of legal enforcement.

On the other hand, the modern and, to a certain extent, the ancient

Roman, legal developments have contained tendencies favorable to the dilution of legal formalism. At a first glance, the displacement of the formally bound law of evidence by the "free evaluation of proof" appears to be of a merely technical character.[7] We have seen that the primitive system of magically bound proof was exploded through the rationalism of either the theocratic or the patrimonial kind, both of which postulated procedures for the disclosure of the real truth. Thus the new system clearly appears as a product of substantive rationalization. Today, however, the scope and limits of the free evaluation of proof are determined primarily by commercial interests, i.e., by economic factors. It is clear that, through the system of free evaluation of proof, a very considerable domain which was once subject to formal juristic thought is being increasingly withdrawn therefrom.[8] But we are here more concerned with the corresponding trends in the sphere of substantive law. One such trend lies in the intrinsic necessities of legal thought. Its growing logical sublimation has meant everywhere the displacement of dependence on externally tangible formal characteristics by an increasingly logical interpretation of *meaning* in relation to the legal norms themselves as well as in relation to legal transactions. In the doctrine of the continental "common law" this interpretation claimed that it would give effect to the "real" intentions of the parties; in precisely this manner it introduced an individualizing and relatively substantive factor into legal formalism. This kind of interpretation seeks to construct the relations of the parties to one another from the point of view of the "inner" kernel of their behavior, from the point of view of their mental "attitudes" (such as good faith or malice).[9] Thus it relates legal consequences to informal elements of the situation and this treatment provides a telling parallel to that systematization of religious ethics which we have already considered previously. Much of the system of commodity exchange, in primitive as well as in technically differentiated patterns of trade, is possible only on the basis of far-reaching personal confidence and trust in the loyalty of others. Moreover, as commodity exchange increases in importance, the need in legal practice to guarantee or secure such trustworthy conduct becomes proportionally greater. But in the very nature of the case, we cannot, of course, define with formal certainty the legal tests according to which the new relations of trust and confidence are to be governed. Hence, through such ethical (*gesinnungsethisch*) rationalization the courts have been helpful to powerful interests. Also, outside of the sphere of commodity exchange, the rationalization of the law has substituted attitude-evaluation as the significant element for assessment of events according to external criteria. In criminal law, legal rationalization has replaced the purely mechanistic

remedy of vengeance by rational "ends of punishment" of an either ethical or utilitarian character, and has thereby introduced increasingly nonformal elements into legal practice. In the sphere of private law the concern for a party's mental attitude has quite generally entailed evaluation by the judge. "Good faith and fair dealing" or the "good" usage of trade or, in other words, ethical categories have become the test of what the parties are entitled to mean by their "intention."[10] Yet, the reference to the "good" usage of trade implies in substance the recognition of such attitudes which are held by the average party concerned with the case, i.e., a general and purely business criterion of an essentially factual nature, such as the average expectation of the parties in a given transaction. It is this standard which the law has consequently to accept.[11]

Now we have already seen that the expectations of parties will often be disappointed by the results of a strictly professional legal logic.[12] Such disappointments are inevitable indeed where the facts of life are juridically "construed" in order to make them fit the abstract propositions of law and in accordance with the maxim that nothing can exist in the realm of law unless it can be "conceived" by the jurist in conformity with those "principles" which are revealed to him by juristic science. The expectations of the parties are oriented towards the economic or the almost utilitarian *meaning* of a legal proposition. However, from the point of view of legal logic, this *meaning* is an "irrational" one. For example, the layman will never understand why it should be impossible under the traditional definition of larceny to commit a larceny of electric power.[13] It is by no means the peculiar foolishness of modern jurisprudence which leads to such conflicts. To a large extent such conflicts rather are the inevitable consequence of the incompatibility that exists between the intrinsic necessities of logically consistent formal legal thinking and the fact that the legally relevant agreements and activities of private parties are aimed at economic results and oriented towards economically determined expectations. It is for this reason that we find the ever-recurrent protests against the professional legal method of thought as such, which are finding support even in the lawyers' own reflections on their work. But a "lawyers' law" has never been and never will be brought into conformity with lay expectation unless it totally renounce that formal character which is immanent in it. This is just as true of the English law which we glorify so much today,[14] as it has been of the ancient Roman jurists or of the methods of modern continental legal thought. Any attempt, like that of Erich Jung,[15] to replace the antiquated "law of nature" by a new "natural law" aiming at "dispute settlement" (*Streitschlichtung*) in accordance with the average expectations of average parties would thus come up against certain im-

manent limitations. But, nevertheless, this idea does have some validity in relation to the realities of legal history. The Roman law of the later Republic and the Empire developed a type of commercial ethics that was in fact oriented towards that which is to be expected on the average. Such a view means, of course, that only a small group of clearly corrupt or fraudulent practices would be outlawed, and the law would not go beyond what is regarded as the "ethical minimum."[16] In spite of the *bona fides* (which a seller had to display), the maxim of *caveat emptor* remained valid.

New demands for a "social law" to be based upon such emotionally colored ethical postulates as "justice" or "human dignity," and directed against the very dominance of a mere business morality, have arisen with the emergence of the modern class problem. They are advocated not only by labor and other interested groups but also by legal ideologists.[17] By these demands legal formalism itself has been challenged. Such a concept as economic duress,[18] or the attempt to treat as immoral, and thus as invalid, a contract because of a gross disproportion between promise and consideration,[19] are derived from norms which, from the legal standpoint, are entirely amorphous and which are neither juristic nor conventional nor traditional in character but ethical and which claim as their legitimation substantive justice rather than formal legality.

Status ideologies of the lawyers themselves have been operative in legal theory and practice along with those influences which have been engendered by both the social demands of democracy and the welfare ideology of monarchical bureaucracy. Being confined to the interpretation of statutes and contracts, like a slot machine into which one just drops the facts (plus the fee) in order to have it spew out the decision (plus opinion), appears to the modern lawyer as beneath his dignity; and the more universal the codified formal statute law has become, the more unattractive has this notion come to be. The present demand is for "judicial creativeness," at least where the statute is silent. The school of "free law" has undertaken to prove that such silence is the inevitable fate of every statute in view of the irrationality of the facts of life; that in countless instances the application of the statutes as "interpreted" is a delusion, and that the decision is, and ought to be, made in the light of concrete evaluations rather than in accordance with formal norms.[20]

For the case where the statute fails to provide a clear rule, the well-known Article 1 of the Swiss Civil Code orders the judge to decide according to that rule which he himself would promulgate if he were the legislator.[21] This provision, the practical import of which should not be overestimated, however,[22] corresponds formally with the Kantian formula. But in reality a judicial system which would practice such ideals

would, in view of the inevitability of value-compromises, very often have to forget about abstract norms and, at least in cases of conflict, would have to admit concrete evaluations, i.e., not only nonformal but irrational lawfinding. Indeed, the doctrine of the inevitability of gaps in the legal order as well as the campaign to recognize as fiction the systematic coherence of the law has been given further impetus by the assertions that the judicial process never consisted, or, at any rate never should consist, in the "application" of general norms to a concrete case, just as no utterance in language should be regarded as an application of the rules of grammar.[23] In this view, the "legal propositions" are regarded as secondary and as being derived by abstraction from the concrete decisions which, as the products of judicial practice, are said to be the real embodiment of the law. Going still farther, one has pointed out the quantitative infrequency of those cases which ever come to trial and judicial decision as against the tremendous mass of rules by which human behavior is actually determined; from this observation one has come derogatively to call "mere rules of decision" those norms which appear in the judicial process, to contrast them with those norms which are factually valid in the course of everyday life and independently of their reaffirmation or declaration in legal procedure, and, ultimately, to establish the postulate that the true foundation of the law is entirely "sociological."[24]

Use has also been made of the historical fact that for long periods, including our own, private parties have to a large extent been advised by professional lawyers and judges who have had technical legal training or that, in other words, all customary law is in reality lawyers' law. This fact has been associated with the incontrovertible observation that entirely new legal principles are being established not only *praeter legem* but also *contra legem*[25] by judicial practice, for instance, that of the German Supreme Court after the entry into force of the Civil Code. From all these facts the idea was derived that case law is superior to the rational establishment of objective norms and that the expediential balancing of concrete interests is superior to the creation and recognition of "norms" in general.[26] The modern theory of legal sources has thus disintegrated both the half-mystical concept of "customary law," as it had been created by historicism, as well as the equally historicist concept of the "will of the legislator" that could be discovered through the study of the legislative history of an enactment as revealed in committee reports and similar sources. The statute rather than the legislator has been thus proclaimed to be the jurists' main concern. Thus isolated from its background, the "law" is then turned over for elaboration and application to the jurists, among whom the predominant influence is assigned

at one time to the practitioners and at others, for instance, in the reports accompanying certain of the modern codes, to the scholars.[27] In this manner the significance of the legislative determination of a legal command is, under certain circumstances, degraded to the role of a mere "symptom" of either the validity of a legal proposition or even of the mere desire of such validity which, however, until it has been accepted in legal practice, is to remain uncertain. But the preference for a case law which remains in contact with legal reality—which means with the reality of the lawyers—to statute law is in turn subverted by the argument that no precedent should be regarded as binding beyond its concrete facts. The way is thus left open to the free balancing of values in each individual case.

In opposition to all such value-irrationalism, there have also arisen attempts to reëstablish an objective standard of values. The more the impression grows that legal orders as such are no more than "technical tools," the more violently will such degradation be rejected by the lawyers. For to place on the same level such merely "technical rules" as a customs tariff and legal norms concerning marriage, parental power, or the incidents of ownership, offends the sentiment of the legal practitioners, and there emerges the nostalgic notion of a metapositive law above that merely technical positive law which is acknowledged to be subject to change. The old natural law, it is true, looks discredited by the criticisms leveled at it from the historical and positivist points of view. As a substitute there are now advanced the religiously inspired natural law of the Catholic scholars,[28] and certain efforts to deduce objective standards from the "nature" of the law itself. The latter effort has taken two forms. In the *a-prioristic*, Neo-Kantian doctrines, the "right law," as the normative system of a "society of free men," is to be both a legislative standard for rational legislation and a source for judicial decisions where the law refers the judge to apparently nonformal criteria.[29] In the empiricist, Comtean, way those "expectations" which private parties are justified to have in view of the average conception existing with regard to the obligations of others, are to serve as the ultimate standard, which is to be superior even to the statute and which is to replace such concepts as equity, etc., which are felt to be too vague.[30]

At this place we cannot undertake a detailed discussion or a full criticism of these tendencies which, as our brief sketch has shown, have produced quite contradictory answers. All these movements are international in scope, but they have been most pronounced in Germany and France.[31] They are agreed only in their rejection of the once universally accepted and until recently prevalent *petitio principii* of the consistency

and "gaplessness" of the legal order. Moreover, they have directed themselves against very diverse opponents, for instance, in France against the school of the Code-interpreters and in Germany against the methodology of the Pandectists. Depending upon who are the leaders of a particular movement, the results favor either the prestige of "science," i.e., of the legal scholars, or that of the practitioners. As a result of the continuous growth of formal statute law and, especially, of systematic codification, the academic scholars feel themselves to be painfully threatened both in their importance and in their opportunities for unencumbered intellectual activity. The rapid growth of anti-logical as well as the anti-historical movements in Germany can be historically explained by the fear that, following codification, German legal science might have to undergo the same decline which befell French jurisprudence after the enactment of the Napoleonic Code or Prussian jurisprudence after the enactment of the *Allgemeine Landrecht*. Up to this point these fears are thus the result of an internal constellation of intellectual interests. However, all variants of the developments which have led to the rejection of that purely logical systematization of the law as it had been developed by Pandectist learning, including even the irrational variants, are in their turn products of a self-defeating scientific rationalization of legal thought as well as of its relentless self-criticism. To the extent that they do not themselves have a rationalistic character, they are a flight into the irrational and as such a consequence of the increasing rationalization of legal technique. In that respect they are a parallel to the irrationalization of religion. One must not overlook, however, that the same trends have also been inspired by the desire of the modern lawyers, through the pressure groups in which they are so effectively organized, to heighten their feeling of self-importance and to increase their sense of power. This is undoubtedly one of the reasons why in Germany such continuous reference is made to the "distinguished" position of the English judge who is said not to be bound to any rational law. Yet, the differences in the attribution of honorific status on the Continent and in England are rather rooted in circumstances which are connected with differences in the general structure of authority. We have dealt with this before, and shall do so again in a different context.

3. *Contemporary Anglo-American Law*

The differences between Continental and Common Law methods of legal thought have been produced mostly by factors which are respectively connected with the internal structure and the modes of existence

of the legal profession as well as by factors related to differences in political development. The economic elements, however, have been determinative only in connection with these elements. What we are concerned with here is the fact that, once everything is said and done about these differences in historical developments, modern capitalism prospers equally and manifests essentially identical economic traits under legal systems containing rules and institutions which considerably differ from each other at least from the juridical point of view. Even what is on the face of it so fundamental a concept of Continental law as *dominium* still does not exist in Anglo-American law.[32] Indeed, we may say that the legal systems under which modern capitalism has been prospering differ profoundly from each other even in their ultimate principles of formal structure.

Even today, and in spite of all influences by the ever more rigorous demands for academic training, English legal thought is essentially an empirical art. Precedent still fully retains its old significance, except that it is regarded as unfair to invoke a case from too remote a past, which means older than about a century. One can also still observe the charismatic character of lawfinding, especially, although not exclusively, in the new countries, and quite particularly the United States. In practice, varying significance is given to a decided case not only, as happens everywhere, in accordance with the hierarchal position of the court by which it was decided but also in accordance with the very personal authority of an individual judge. This is true for the entire common-law sphere, as illustrated, for instance, by the prestige of Lord Mansfield. But in the American view, the judgment is the very personal creation of the concrete individual judge, to whom one is accustomed to refer by name, in contrast to the impersonal "District Court" of Continental-European officialese. The English judge, too, lays claim to such a position. All these circumstances are tied up with the fact that the degree of legal rationality is essentially lower than, and of a type different from, that of continental Europe. Up to the recent past, and at any rate up to the time of Austin, there was practically no English legal science which would have merited the name of "learning" in the Continental sense. This fact alone would have sufficed to render any such codification as was desired by Bentham practically impossible. But it is also this feature which has been responsible for the "practical" adaptability of English law and its "practical" character from the standpoint of the public.

The legal thinking of the layman is, on the one hand, literalistic. He tends to be a definition-monger when he believes he is arguing "legally." Closely connected with this trait is the tendency to draw conclusions from individual case to individual case; the abstractionism of the "pro-

fessional" lawyer is far from the layman's mind. In both respects, however, the art of empirical jurisprudence is cognate to him, although he may not like it. No country, indeed, has produced more bitter complaints and satires about the legal profession than England. The formularies of the conveyancers, too, may be quite unintelligible to the layman, as again is the case in England. Yet, he can understand the basic character of the English way of legal thinking, he can identify himself with it and, above all, he can make his peace with it by retaining once and for all a solicitor as his legal father confessor for all contingencies of life, as is indeed done by practically every English businessman. He simply neither demands nor expects of the law anything which could be frustrated by "logical" legal construction.

Safety valves are also provided against legal formalism. As a matter of fact, in the sphere of private law, both Common Law and Equity are "formalistic" to a considerable extent in their practical treatment. It could hardly be otherwise under the traditionalist spirit of the legal profession. But the institution of the civil jury imposes on rationality limits which are not merely accepted as inevitable but are actually prized because of the binding force of precedent and the fear that a precedent might thus create "bad law" in a sphere which one wishes to keep open for a concrete balancing of interests. We must forego the analysis of the way in which this division of the two spheres of *stare decisis* and concrete balancing of interests is actually functioning in practice. It does in any case represent a softening of rationality in the administration of justice. Alongside all this we find the still quite patriarchal, summary and highly irrational jurisdiction of the justices of the peace. They deal with the petty causes of everyday life and, as can be readily seen in Mendelssohn's description, they represent a kind of kadi justice which is quite unknown in Germany.[33] All in all, the Common Law thus presents a picture of an administration of justice which in the most fundamental formal features of both substantive law and procedure differs from the structure of Continental law as much as is possible within a secular system of justice, that is, a system that is free from theocratic and patrimonial powers. Quite definitely, English law-finding is not, like that of the Continent, "application" of "legal propositions" logically derived from statutory texts.

These differences have had some tangible consequences both economically and socially; but these consequences have all been isolated single phenomena rather than differences touching upon the total structure of the economic system. For the development of capitalism two features of Common Law have been relevant and both have helped to support the capitalistic system. Legal training has primarily been in the

hands of the lawyers from among whom also the judges are recruited, i.e., in the hands of a group which is active in the service of propertied, and particularly capitalistic, private interests and which has to gain its livelihood from them. Furthermore and in close connection with this, the concentration of the administration of justice at the central courts in London and its extreme costliness have amounted almost to a denial of access to the courts for those with inadequate means. At any rate, the essential similarity of the capitalistic development on the Continent and in England has not been able to eliminate the sharp contrasts between the two types of legal systems. Nor is there any visible tendency towards a transformation of the English legal system in the direction of the Continental under the impetus of the capitalist economy. On the contrary, wherever the two kinds of administration of justice and of legal training have had the opportunity to compete with one another, as for instance in Canada, the Common Law way has come out on top and has overcome the Continental alternative rather quickly. We may thus conclude that capitalism has not been a decisive factor in the promotion of that form of rationalization of the law which has been peculiar to the continental West ever since the rise of Romanist studies in the medieval universities.

4. *Lay Justice and Corporative Tendencies in the Modern Legal Profession*

Modern social development, aside from the already mentioned political and internal professional motives, has given rise to certain other factors by which formal legal rationalism is being weakened. Irrational kadi justice is exercised today in criminal cases clearly and extensively in the "popular" justice of the jury.[84] It appeals to the sentiments of the layman, who feels annoyed whenever he meets with formalism in a concrete case, and it satisfies the emotional demands of those underprivileged classes which clamor for substantive justice.

Against this "popular justice" element of the jury system, attacks have been directed from two quarters. The jury has been attacked because of the strong interest orientation of the jurors as against the technical matter-of-factness of the specialist. Just as in ancient Rome the jurors' list was the object of class conflict, so today the selection of jurors is attacked, especially by the working class, as favoring class justice, upon the ground that the jurors, even though they may be "plebeians," are picked predominantly from among those who can afford the loss of time. Although such a test of selection can hardly be avoided

entirely, it also depends, in part at least, on political considerations. Where, on the other hand, the jurors' bench is occupied by working-class people, it is attacked by the propertied class. Moreover, not only "classes" as such are the interested parties. In Germany, for instance, male jurors can practically never be moved to find a fellow male guilty of rape, especially where they are not absolutely convinced of the girl's chaste character. But in this connection we must consider that in Germany female virtue is not held in great respect anyway.

From the standpoint of professional legal training lay justice has been criticized on the ground that the laymen's verdict is delivered as an irrational oracle without any statement of reasons and without the possibility of any substantive criticism. Thus one has come to demand that the lay judges be subjected to the control of the legal experts. In answer to this demand there was created the system of the mixed bench, which, however, experience has shown to be a system in which the laymen's influence is inferior to that of the experts. Thus their presence has practically no more significance than that of giving some compulsory publicity to the deliberation of professional judges in a way similar to that of Switzerland, where the judges must hold their deliberation in full view of the public. The professional judges, in turn, are threatened, in the sphere of criminal law, by the overshadowing power of the professional psychiatrist, onto whom more and more responsibility is passed, especially in the most serious cases, and on whom rationalism is thus imposing a task which can by no means be solved by means of pure science.

Obviously all of these conflicts are caused by the course of technical and economic development only indirectly, namely in so far as it has favored intellectualism. Primarily they are rather consequences of the insoluble conflict between the formal and the substantive principles of justice, which may clash with one another even where their respective protagonists belong to one and the same social class. Moreover, it is by no means certain that those classes which are negatively privileged today, especially the working class, may safely expect from an informal administration of justice those results which are claimed for it by the ideology of the jurists. A bureaucratized judiciary, which is being planfully recruited in the higher ranks from among the personnel of the career service of the prosecutor's office and which is completely dependent on the politically ruling powers for advancement, cannot be set alongside the Swiss or English judiciary, and even less the (Federal) judges in the United States. If one takes away from such judges their belief in the sacredness of the purely objective legal formalism and directs them simply to balance interests, the result will be

very different from those legal systems to which we have just referred. However, the problem does not belong to this discussion. There remains only the task of correcting a few historical errors.

Prophets are the only ones who have taken a really consciously "creative" attitude toward existing law; only through them has new law been consciously created. For the rest, as must be stressed again and again, even those jurists who, from the objective point of view, have been the most creative ones, have always and not only in modern times, regarded themselves to be but the mouthpiece of norms already existing, though, perhaps, only latently, and to be their interpreters or appliers rather than their creators. This subjective belief is held by even the most eminent jurists. It is due to the disillusionment of the intellectuals that today this belief is being confronted with objectively different facts and that one is trying to elevate this state of facts to the status of a norm for subjective judicial behavior. As the bureaucratization of formal legislation progresses, the traditional position of the English judge is also likely to be transformed permanently and profoundly. On the other hand, it may be doubted whether, in a code country, the bestowal of the "creator's" crown upon bureaucratic judges will really turn them into law prophets. In any case, the juristic precision of judicial opinions will be seriously impaired if sociological, economic, or ethical argument were to take the place of legal concepts.

All in all the movement is one of those characteristic reactions against the dominance of "specialization" and rationalism, which latter has in the last analysis been its very parent. The development of the formal qualities of the law certainly shows some peculiarly antinomial traits. Rigorously formalistic and dependent on what is tangibly perceivable as far as it is required for security to do business, the law has at the same time become informal for the sake of business good-will where this is required by the logical interpretation of the intention of the parties or by the "good usage" of business intercourse, interpreted as some "ethical minimum."

The law is drawn into antiformal directions, moreover, by all those powers which demand that it be more than a mere means of pacifying conflicts of interest. These forces include the demand for substantive justice by certain social class interests and ideologies; they also include the tendencies inherent in certain forms of political authority of either authoritarian or democratic character concerning the ends of law which are respectively appropriate to them; and also the demand of the "laity" for a system of justice which would be intelligible to them; finally, as we have seen, anti-formal tendencies are being promoted by the ideologically rooted power aspirations of the legal profession itself.

Whatever form law and legal practice may come to assume under the impact of these various influences, it will be inevitable that, as a result of technical and economic developments, the legal ignorance of the layman will increase. The use of jurors and similar lay judges will not suffice to stop the continuous growth of the technical elements in the law and hence of its character as a specialists' domain. Inevitably the notion must expand that the law is a rational technical apparatus, which is continually transformable in the light of expediential considerations and devoid of all sacredness of content. This fate may be obscured by the tendency of acquiescence in the existing law, which is growing in many ways for several reasons, but it cannot really be stayed. All of the modern sociological and philosophical analyses, many of which are of a high scholarly value, can only contribute to strengthen this impression, regardless of the content of their theories concerning the nature of law and the judicial process.

NOTES

1. These transactions, which are enumerated in Sec. 1 of the German Commercial Code of 1861/97, are the following:

(a) purchase and resale of commodities or securities such as bonds; (b) enterprise by an independent contractor to do work on materials or goods supplied by the other party; (c) underwriting of insurance; (d) banking; (e) transportation of goods or passengers, on land, at sea, and on inland waterways; (f) transactions of factors, brokers, forwarding agents, and warehousemen; (g) transactions of commercial brokers, jobbers, and agents; (h) transactions of publishers, book and art dealers; (i) transactions of printers.

2. The German Commercial Code, in Sec. 2, has the following definition: "Any enterprise which requires an established business because of its size or because of the manner in which it is carried on, is a commercial enterprise, even though it does not fall within any of the categories stated in Sec. 1." Similarly, the French Commercial Code of 1807 states in Art. 1: "Merchants are all those who carry on commercial transactions and make this activity their habit and profession."

3. *Handelsregister* (register of firms): cf. Commercial Code, Secs. 2, 5, 8, *et seq.*

4. The most important special law of this kind is the labor law with its special hierarchy of labor courts. There are, furthermore, the administrative tribunals of general administrative jurisdiction and a set of special tribunals dealing respectively with claims arising under the social security laws or the war pensions laws, with tax matters, with certain matters of agricultural administration, etc.

5. Both the commercial and the labor courts are usually organized in panels chosen from those lines of business or industry whose affairs are dealt with by the particular division of the court. Cf. ARBEITSGERICHTSGESETZ of 23 December, 1926 (R.G. BL. I., 507), Sec. 17.

6. In the labor courts representation by attorneys is, as a general rule, not

permitted at the trial stage (ARBEITSGERICHTSGESETZ of 23 December, 1926 [R.G. BL. I, 507], Sec. 11).

7. Roman-canonical procedure, as it had come to be adopted generally in the continental courts, was characterized by its system of "formal proof," which was in many respects similiar to the law of evidence of Anglo-American procedure. There were rules about exclusion of certain kinds of evidence and, quite particularly, detailed rules about corroboration and about the mechanical ways in which the judge had to evaluate conflicting evidence. The testimony of two credible witnesses constituted full proof (*probatio plena*); one credible witness made half proof (*probatio semiplena*), but one doubtful witness (*testis suspectus*) made less than half proof (*probatio semiplena minor*), etc.

This entire system of formal proof was swept away by the procedural reforms of the nineteenth century and replaced by the system of free or rational proof, which did away with most of the exclusionary rules, released the judge from his arithmetical shackles, and authorized him to evaluate the evidence in the light of experience and reason. Cf. ENGELMANN-MILLAR 39.

8. Together with the rule of stare decisis and, to some extent, the jury system, the fact that the Common Law has preserved a much more formalistic law of evidence is the principal cause why in such fields as torts, damages, interpretation and construction of legal instruments, English and American law have developed so much more numerous and detailed rules of law than the systems of the Civil Law. The comparison, for instance, of the 951 sections of the Restatement of Torts and the 31 sections dealing with torts in the German Civil Code (Secs. 823–853) or the 5 sections of the French Code (Arts. 1382–86) is revealing in this respect, just as is the comparison of the few sections of the German Code dealing with the interpretation of wills (Secs. 2087 *et seq.*) with the elaborate treatment of the topic in American law.

As to the law of evidence itself, compare the ten volumes of Wigmore's treatise (3rd ed. 1940) with the complete absence of books on evidence in Germany or the brief treatment of a few evidentiary problems in the French treatises on private law, for instance, in JOSSERAND'S COURS DE DROIT CIVIL POSITIF FRANCAIS (1939) where the chapter on "preuves" covers 43 pages.

9. Cf. HEDEMANN I, 117.

10. For illustrations of this judicial attitude see the case surveys given in connection with Sec. 242 of the German Civil Code (good faith and fair dealing) or Sec. 346 of the Commercial Code ("good" custom of trade) in the annotated editions of these Codes. The dangers of excessive judicial resort to legal provisions referring the judge to such indefinite standards have been pointed out by HEDEMANN, DIE FLUCHT IN DIE GENERALKLAUSELN, EINE GEFAHR FÜR RECHT UND STAAT (1933).

11. The German Supreme Court has consistently maintained, however, that a usage is not to be considered when it is unfair, and especially when it constitutes a gross abuse of a position of economic power; see, for instance, 114 ENTSCHEIDUNGEN DES REICHSGERICHTS IN ZIVILSACHEN 97; [1922] JURISTISCHE WOCHENSCHRIFT 488; [1932] o.c. 586.

12. The possibilities of such discrepancies have been pointed out especially in the writings of Heck and other advocates of the "jurisprudence of interests." See in this respect THE JURISPRUDENCE OF INTERESTS, vol. II of this 20th Century Legal Philosophy Series.

13. Such was the decision of the German Supreme Court in 29 ENTSCHEIDUNGEN DES REICHSGERICHTS IN STRAFSACHEN 111 and 32 o.c. 165. In Sec. 242 of the German Criminal Code larceny is defined as the unlawful taking of a

chattel. Electric power is not a chattel; hence it cannot be the subject matter of larceny. The gap in the law was filled by the enactment of a Special Law Concerning the Unlawful Taking of Electric Power, of 9 April 1900 (R.G. Bl. 1900, 228). The decisions just mentioned have become the stock "horrible" in modern German excoriations of conceptual jurisprudence.

14. In the years preceding the First World War the English administration of justice and, particularly, the creative role and prominent position of the English "judicial kings" (*Richterkönige*) were highly praised and advocated for adoption, particularly by A. Mendelssohn Bartholdy, Imperium des Richters (1908), and F. Adickes, Grundlinien einer durchgreifenden Justizreform (1906).

15. Das Problem des natürlichen Rechts (1912).

16. Expression of G. Jellinek, in Die sozial-ethische Bedeutung von Recht, Unrecht und Strafe (2nd ed. 1908).

17. On Gierke as the leading legal scholar in the movement for law as an expression of "social justice," see G. Böhmer, Grundlagen der bürgerlichen Rechtsordnung (1951) II, 155; see, especially, Gierke's lecture on The Social Task of Private Law (Die soziale Aufgabe des Privatrechts, 1899), repr. E. Wolf, Deutsches Rechtsdenken (1948).

18. On the development of the doctrine of economic duress in positive German law, see J. Dawson, *Economic Duress and the Fair Exchange in French and German Law* (1937), 12 Tulane L. Rev. 42.

19. In Sec. 138 the German Civil Code provides as follows:

"A legal transaction which violates good morals is void.

"Void, in particular, is any transaction in which one party, by exploiting the emergency situation, the imprudence, or the inexperience of another causes such other person to promise or to give to him or to a third person a pecuniary benefit which so transcends the value of his own performance that under the circumstances of the case the relationship between them appears as manifestly disproportionate."

20. The School of Free Law (*Freirecht*) constitutes the German counterpart of American and Scandinavian "realism." The basic theoretical idea of these three schools, viz., that law is not "found" by the judges but "made" by them, was anticipated in 1885 by Oskar Bülow in his Gesetz und Richteramt. The first attack upon the Pandectist "Konstruktionsjurisprudenz" (conceptual jurisprudence) or, in Weber's terminology, rational formalism, was made in 1848 by v. Kirchmann in his sensational pamphlet Über die Wertlosigkeit der Jurisprudenz als Wissenschaft. The attack was later joined by no less a scholar than Jhering, who until then had been one of the most prominent expounders of the traditional method, but who now came to emphasize the role of the law as a means to obtain utilitarian ends in a way which would now be called "social engineering" or, in Weber's terms, "substantive rationality" (Der Zweck im Recht, 1877/83; Husik's tr. s.t. Law as a Means to an End, 1913) and to ridicule legal conceptualism in his Scherz und Ernst in der Jurisprudenz (1855; on Jhering see Stone 299). At the turn of the century the attack was intensified and combined with the postulates that the courts should shake off the technique of conceptual jurisprudence (i.e., in Weber's terminology, the technique of rational formalism), should give up the fiction of the gaplessness of the legal order, should thus treat statutes and codes as ordaining nothing beyond the narrowest meaning of the words of the text, and should fill in the gaps thus created, i.e., in the great mass of problems, in a process of free, "kingly" creativeness. The leaders of this movement were E. Fuchs, a practicing attorney (principal works: Die Gemeinschädlichkeit der konstruktiven Jurisprudenz

["The Dangers of the Conceptual Jurisprudence to the Common Weal," 1909]; WAS WILL DIE FREIRECHTSSCHULE? ["What Are the Aims of the School of Free Law?" 1929]). Professor H. Kantorowicz (writing under the pen name of Gnaeus Flavius: DER KAMPF UM DIE RECHTSWISSENSCHAFT [1908]; AUS DER VORGESCHICHTE DER FREIRECHTSLEHRE [1925]; see also the article by him and E. Patterson, *Legal Science—a Summary of its Methodology* [1928], 28 COL. L. REV. 679, and *Some Rationalizations about Realism* [1934], 43 YALE L.J., 1240, where Kantorowicz recedes from some of his earlier theses), and the judge J. G. Gmelin (QUOUSQUE? BEITRAG ZUR SOZIOLOGISCHEN RECHTSFINDUNG [1910, Bruncken's transl. in Modern Legal Philosophy Series, IX, SCIENCE OF LEGAL METHOD (1917)]). These passionate radicals were joined by E. Ehrlich, who provided for the new movement a broad historical and sociological basis (FREIE RECHTSFINDUNG UND FREIE RECHTSWISSENSCHAFT [1903, Bruncken's transl. in Modern Legal Philosophy Series, IX. SCIENCE OF LEGAL METHOD (1917), 47]; *Die juristische Logik* [1918], 115 ARCHIV FÜR DIE CIVILISTISCHE PRAXIS, nos. 2 and 3, repr. as a book in 1925; and his GRUNDLEGUNG DER SOZIOLOGIE DES RECHTS [1913], Moll's transl. s.t. FUNDAMENTAL PRINCIPLES OF THE SOCIOLOGY OF LAW [1936]).

The movement stirred up violent discussion (see especially H. REICHEL, GESETZ UND RICHTERSPRUCH [1915]; G. BÖHMER, GRUNDLAGEN DER BÜRGERLICHEN RECHTSORDNUNG [1951], II, 158) and also found some attention in the United States. (See the translations listed above in this note.) Its exaggerations were generally repudiated, however, and actual developments came to be more effectively influenced by the ideas of the so-called school of jurisprudence of interests, whose principal writings are collected in vol. II of this 20th Century Legal Philosophy Series, entitled THE JURISPRUDENCE OF INTERESTS (1948). The method was elaborated primarily by M. Rümelin, P. Heck, and their companions at Tübingen, and R. Müller-Erzbach, who has been working at the elaboration of social and concrete bases for that "balancing of interests" which the method requires (see especially DAS PRIVATE RECHT DER MITGLIEDSCHAFT ALS PRÜFSTEIN EINES KAUSALEN RECHTSDENKENS [1948] and DIE RECHTSWISSENSCHAFT IM UMBAU [1950]). The Jurisprudence of Interests is close to Roscoe Pound's sociological jurisprudence. It aims at replacing the system of formally rational with one of substantively rational concepts, and it has come to establish itself firmly in German legal practice (for a concise survey and evaluation see BÖHMER, *op. cit.* 190, and, very brief, W. FRIEDMANN, LEGAL THEORY [2nd ed. 1949] 225; no complete survey is as yet available in English).

The following passages in Weber's text are concerned with the School of Free Law.

21. "The law must be applied in all cases which come within the letter or the spirit of its provisions.

"Where no provision is applicable, the judge shall decide according to the existing customary law and, in default thereof, according to the rule which he would lay down if he had himself to act as legislator.

"Herein he must be guided by tested doctrine and tradition."

22. Cf. I. WILLIAMS, THE SOURCES OF LAW IN THE SWISS CIVIL CODE (1923) 34; see also the discussion of this provision and the similarly worded Sec. 1 of the Civil Code of the Russian Federal Soviet Socialist Republic by V. E. Greaves, *Social-economic Purpose of Private Rights* (1934/5, 12 N.Y.U.L.Q. REV. 165, 439).

23. Cf. H. ISAY, RECHTSNORM UND ENTSCHEIDUNG (1929).

24. Cf. EHRLICH, esp. chapters 5 and 6.

25. *Praeter legem*—alongside the (statute) law; *contra legem*—in contradiction to the (statute) law.

26. So especially LAMBERT, *op. cit.* (1903); EHRLICH.

27. In the last two sentences of the text three different phenomena are brought together in a way which indicates the possibility that some connecting link has been omitted The postulate that in statutory interpretation the judge has to look upon the text "objectively" as a self-sufficient entity and that he should not, or that he is not even allowed to, inquire into the intentions of the legislature has not been confined to Germany. It has long been the established method of statutory interpretation in England and for a considerable time it was dominant in the United States. In Germany its principal representatives were A. Wach (HANDBUCH DES ZIVILPROZESSES [1885]) and K. Binding (HANDBUCH DES STRAFRECHTS [1885]); see also J. Kohler, *Über die Interpretation von Gesetzen* (1886), 13 GRÜNHUT'S ZEITSCHRIFT 1. The theory has had some influence on the German courts but could not prevent them in the long run from paying careful attention to parliamentary hearings and other legislative materials.

The idea that statutes ought to be interpreted narrowly so as to leave free reign to free judicial law creation in the interstices constituted one of the postulates of the School of Free Law (see *supra* n. 20).

The phrase that the solution of certain problems be left to "legal science and doctrine" recurs constantly in the report (*Motive*) accompanying the Draft of the German Civil Code. The draftsmen used it whenever they felt that too much detail would be detrimental to the purposes of the codification. It is difficult to see what it might have to do with the Free Law tenet stated in the following sentence of the text.

28. Especially VICTOR CATHREIN, RECHT, NATURRECHT UND POSITIVES RECHT (2nd ed. 1909); v. HERTLING, RECHT, STAAT UND GESELLSCHAFT (4th ed. 1917); MAUSBACH, NATURRECHT UND VÖLKERRECHT (1918); more recently H. ROMMEN, DIE EWIGE WIEDERKEHR DES NATURRECHTS (1936; Hanley's transl. s.t. THE NATURAL LAW, 1948), and the survey of the latest Catholic literature by I. Zeiger *in* (1952) 149 STIMMEN DER ZEIT 468.

29. On Neo-Kantianism, see FRIEDMANN, *op. cit.*, 91; the principal representative is R. Stammler, whose LEHRE VON DEM RICHTIGEN RECHT (1902) has been translated by Husik s.t. THE THEORY OF JUSTICE (1925). For a trenchant criticism, see E. KAUFMANN, KRITIK DER NEUKANTISCHEN RECHTSPHILOSOPHIE (1921).

30. The reference is to the continuation and elaboration of Jhering's ideas through the school of jurisprudence of interests; see *supra*, n. 20.

31. On French legal theory, see vol. VII of the Modern Legal Philosophy Series: MODERN FRENCH LEGAL PHILOSOPHY (1916) containing writings by A. Fouillée, J. Charmont, L. Duguit, and R. Demogue. A comprehensive, critical history is presented by J. BONNECASE, LA PENSÉE JURIDIQUE FRANÇAISE DE 1804 À L'HEURE PRÉSENTE (1933). Cf. also in the 20th Century Legal Philosophy Series, vol. IV, THE LEGAL PHILOSOPHIES OF LASK, RADBRUCH, AND DABIN (1950) 227; and, for latest trends, B. Horváth, *Social Value and Reality in Current French Legal Thought* (1952), 1 AM. J. OF COMPAR. LAW 243.

The principal representatives of the trends mentioned by Weber are François Gény, the founder of the French counterpart to the jurisprudence of interests (MÉTHODE D'INTERPRÉTATION [1899]; cf. his article in Modern Legal Philosophy Series, vol. IX, SCIENCE OF LEGAL METHOD [1917] 498); the sociological jurists Edouard Lambert (*op. cit.*), Léon Duguit (LE DROIT SOCIAL, LE DROIT INDIVIDUEL, ET LA TRANSFORMATION DE L'ÉTAT [1910]; L'ÉTAT, LE DROIT OBJECTIF

ET LA LOI POSITIVE [1901]; LES TRANSFORMATIONS GÉNÉRALES DU DROIT PRIVÉ [1912], transl. in Continental Legal History Series, vol. XI, s.t. THE PROGRESS OF CONTINENTAL LAW IN THE 19TH CENTURY [1918]; LES TRANSFORMATIONS DU DROIT PUBLIC [1913], transl. by Laski s.t. LAW IN THE MODERN STATE [1919]), and RAYMOND SALEILLES (MÉTHODE ET CODIFICATION [1903]; *Le code civil et la méthode historique* in LIVRE DU CENTENAIRE DU CODE CIVIL [1904]).

32. Apparently Weber was not conversant with recent common law use of the concept of title. In the classical form of the law of real property, it is true, the various ways in which one might be entitled to the use and disposition of a piece of land were defined by the various tenures, estates, and other rights in land which had come to be recognized in the royal courts of law and equity. There did not exist, however, any term which comprehensively covered, like the Roman term *dominium*, the fullness of all rights, privileges, powers, and immunities, which can possibly exist in a piece of land. But in modern usage the terms of title, fee, or fee title, are generally used in exactly this sense, especially in the United States.

33. *Das Imperium des Richters* (1908).

34. Written before the abolition of the jury in Germany by the Law of 1924; see *infra*, ch. XI:6.

CHAPTER IX

POLITICAL COMMUNITIES

1. *Nature and "Legitimacy" of Territorial Political Organizations*

The term "political community" shall apply to a community whose social action is aimed at subordinating to orderly domination by the participants a "territory" and the conduct of the persons within it, through readiness to resort to physical force, including normally force of arms. The territory must at any time be in some way determinable, but it need not be constant or definitely limited. The persons are those who are in the territory either permanently or temporarily. Also, the aim of the participants may be to acquire additional territory for themselves.[1]

"Political" community in this sense has existed neither everywhere nor always. As a separate community it does not exist wherever the task of armed defense against enemies has been assigned to the household, the neighborhood association, or some association of a different kind and essentially oriented toward economic interests. Nor has political community existed everywhere and at all times in the sense that its conceptual minimum, viz., "forcible maintenance of orderly dominion over a territory and its inhabitants," be conceived necessarily as the function of one and the same community. The tasks implied in this function have often been distributed among several communities whose actions partly complement and partly overlap each other. For example, "external" violence and defense have often been in the hands partly of kinship groups, partly of neighborhood associations, and partly of warrior consociations established *ad hoc*. "Internal" domination of the "territory" and the control of intragroup relations have likewise been distributed among various powers, including religious ones; and even in so

far as violence has been used it has not necessarily been monopolized by any one community. Under certain circumstances, "external" violence can even be rejected in principle, as it was, for a while, by the community of the Pennsylvania Quakers; at any rate, organized preparation for its use may be entirely lacking. As a rule, however, readiness to apply violence is associated with domination over a territory.

As a separate structure, a political community can be said to exist only if, and in so far as, a community constitutes more than an "economic group"; or, in other words, in so far as it possesses value systems ordering matters other than the directly economic disposition of goods and services. The particular content of social action, beyond the forcible domination of territory and inhabitants, is conceptually irrelevant. It may vary greatly according to whether we deal with a "robber state," a "welfare state," a "constitutional," or a "culture" state. Owing to the drastic nature of its means of control, the political association is particularly capable of arrogating to itself all the possible values toward which associational conduct might be oriented, there is probably nothing in the world which at one time or another has not been an object of social action on the part of some political association.

On the other hand, a political community may restrict its social action exclusively to the bare maintenance of its dominion over a territory, and it has in fact done so frequently enough. Even in the exercise of this function, the action of a political community is, in many cases, intermittent, no matter what its general level of development may be in other respects. Such action flares up in response to external threat or to an internal sudden impulse to violence, however motivated; it dies down, yielding factually to a state of "anarchy" during "normal" peaceful times, when coexistence and social action on the part of the inhabitants of the territory take the form of merely factual mutual respect for the accustomed economic spheres, without the availability of any kind of coercion either for external or for internal use.

In our terminology, a separate "political" community is constituted where we find (1) a "territory"; (2) the availability of physical force for its domination; and (3) social action which is not restricted exclusively to the satisfaction of common economic needs in the frame of a communal economy, but regulates more generally the interrelations of the inhabitants of the territory.

The opponents against whom the possibly violent social action is directed may be located outside or inside the boundaries of the territory in question. Since the political power has become the monopoly of organized, today "institutional," action, the objects of coercion are to be found primarily among the compulsory members of the organization.

For the political community, even more than other institutionally organized communities, is so constituted that it imposes obligations on the individual members which many of them fulfill only because they are aware of the probability of physical coercion backing up such obligations. The political community, furthermore, is one of those communities whose action includes, at least under normal circumstances, coercion through jeopardy and destruction of life and freedom of movement applying to outsiders as well as to the members themselves. The individual is expected ultimately to face death in the group interest. This gives to the political community its particular pathos and raises its enduring emotional foundations. The community of political destiny, i.e., above all, of common political struggle of life and death, has given rise to groups with joint memories which often have had a deeper impact than the ties of merely cultural, linguistic, or ethnic community. It is this "community of memories" which, as we shall see [see sec. 5 below], constitutes the ultimately decisive element of "national consciousness."

The political community never has been, nor is it today, the only community in which the renunciation of life is an essential part of the shared obligations. The obligations of other groups may lead to the same extreme consequences. To name but a few: blood vengeance on the part of kinship groups; martyrdom in religious communities; the "code of honor" of status groups; or the demands of a good many athletic associations; of groups like the *Camorra*[2] or, especially, of all groups created for the purpose of violent appropriation of the economic goods of others.

From such groups the political community differs, sociologically, in only one respect, viz., its particularly enduring and manifest existence as a well-established power over a considerable territory of land and possibly also sea expanse. Accordingly, the differentiation between the political community on the one hand and, on the other, the groups enumerated above, becomes less clearly perceptible the further we go back in history. In the minds of the participants the notion that the political community is just one among others turns into the recognition of its qualitatively different character in step with the change of its activities from merely intermittent reaction to active threats into a permanent and institutionalized consociation whose coercive means are both drastic and effective but which also create the possibility of a rationally casuistic order for their application.

The modern position of political associations rests on the prestige bestowed upon them by the belief, held by their members, in a specific consecration: the "legitimacy" of that social action which is ordered

and regulated by them. This prestige is particularly powerful where, and in so far as, social action comprises physical coercion, including the power to dispose over life and death. It is on this prestige that the consensus on the specific legitimacy of action is founded.

The belief in the specific legitimacy of political action can, and under modern conditions actually does, increase to a point where only certain political communities, viz., the "states," are considered to be capable of "legitimizing," by virtue of mandate or permission, the exercise of physical coercion by any other community. For the purpose of threatening and exercising such coercion, the fully matured political community has developed a system of casuistic rules to which that particular "legitimacy" is imputed. This system of rules constitutes the "legal order," and the political community is regarded as its sole normal creator, since that community has, in modern times, normally usurped the monopoly of the power to compel by physical coercion respect for those rules.

This preëminence of the "legal order" guaranteed by the political power has arisen only in the course of a very gradual development. It was due to the fact that those other groups which once had exercised their own coercive powers lost their grip on the individual. Under the pressure of economic and structural displacements they either disintegrated or subjected themselves to the political community which would then delegate to them their coercive powers, but would simultaneously also reduce them.

The rise to preëminence of the politically guaranteed legal order was also due to the simultaneous development of constantly arising new interests requiring a protection which could not be provided within the earlier autonomous communities. Consequently, a steadily widening sphere of interests, especially economic ones, could find adequate protection only in those rationally regulated guaranties which none but the political community was able to create. The process by which this "nationalization" of all "legal norms" took place, and is still taking place, has been discussed elsewhere.[3]

2. *Stages in the Formation of Political Association*

Violent social action is obviously something absolutely primordial. Every group, from the household to the political party, has always resorted to physical violence when it had to protect the interests of its members and was capable of doing so. However, the monopolization of legitimate violence by the political-territorial association and its

rational consociation into an institutional order is nothing primordial, but a product of evolution.

Where economic conditions are undifferentiated, it is hardly possible to discern a special political community. As we consider them today, the basic functions of the "state" are: the enactment of law (legislative function); the protection of personal safety and public order (police); the protection of vested rights (administration of justice); the cultivation of hygienic, educational, social-welfare, and other cultural interests (the various branches of administration); and, last but not least, the organized armed protection against outside attack (military administration). These basic functions are either totally lacking under primitive conditions, or they lack any form of rational order. They are performed, instead, by amorphous *ad hoc* groups, or they are distributed among a variety of groups such as the household, the kinship group, the neighborhood association, the rural commune, and completely voluntary associations formed for some specific purpose. Furthermore, private association enters domains of action which we are used to regard exclusively as the sphere of political associations. Police functions are thus performed in West Africa by private secret societies.[4] Hence one cannot even include the maintenance of internal peace as a necessary component of the general concept of political action.

If the idea of a specific legitimacy of violence is connected with any particular type of consensual action, it is with that of the kinship group in the fulfillment of the obligation of blood vengeance. This connection is weak, on the other hand, with regard to organizational action of a military type, directed against an external enemy, or of a police type, directed against the disturbers of internal order. It becomes more clearly perceptible where a territorial association is attacked by an external enemy in its traditional domain, and arms are taken up by the members in the manner of a home guard. Increasing rational precautions against such eventualities may engender a political organization regarded as enjoying a particular legitimacy. Such an organization can emerge as soon as there exists a certain stability of usages as well as at least a rudimentary corporate apparatus, ready to take precautions against violent attack from without. This, however, represents a fairly advanced stage.

The fact that "legitimacy" originally had little bearing upon violence—in the sense that it was not bound by norms—can be observed even more clearly in situations where the most warlike members of a group on their own initiative consociate through personal fraternization to organize marauding raids. This has been, at all stages of economic development up to the formation of the rational state, the typical

way in which aggressive wars were initiated in sedentary societies. The freely selected leader is then normally legitimated by his personal qualities (charisma), and we have discussed elsewhere the kind of structure of domination which then emerges. Violence acquires legitimacy only in those cases, however—at least initially—in which it is directed against members of the fraternity who have acted treasonably or who have harmed it by disobedience or cowardice. This state is transcended gradually, as this *ad hoc* consociation develops into a permanent structure. Through the cultivation of military prowess and war as a vocation such a structure develops into a coercive apparatus able to lay effective and comprehensive claims to obedience. These claims will be directed against the inhabitants of conquered territories as well as against the militarily unfit members of the territorial community from which the warriors' fraternity has emerged. The bearer of arms acknowledges only those capable of bearing arms as political equals. All others, those untrained in arms and those incapable of bearing arms, are regarded as women and are explicitly designated as such in many primitive languages. Within these consociations of warriors freedom is identical with the right to bear arms. The men's house, which has been studied by Schurtz with so much sympathetic care, and which, in various forms, recurs in all parts of the world, is one of those structures resulting eventually from such a consociation of warriors, or, in Schurtz's terminology, a "men's league." In the sphere of political action—assuming a highly developed profession of warriors—it is the almost exact counterpart to the consociation of monks in the monastery in the religious sphere. Only those are members who have demonstrated prowess in the use of arms and have been taken into the warriors' brotherhood after a novitiate, while he who has not passed the test remains outside as a "woman," among the women and children, who are also joined by those no longer capable of bearing arms. The man enters a family household only when he has reached a certain age, a change in status analogous to the present-day transfer to the reserves after service as a draftee. Until that moment the man belongs to the warriors' fraternity with every fiber of his existence. The members of the fraternity live, as a communistic association, apart from wives and households. They live on war booty and on the contributions they levy on non-members, especially on the women by whom the agricultural work is done. The only work, in addition to the conduct of war, regarded as worthy of them is the production and upkeep of the implements of war, which they frequently reserve for themselves as their exclusive privilege.

Depending on the social regulations in question, the warriors steal or purchase girls in common, or demand as their right the prostitution

of all the girls of the territory dominated. The numerous traces of so-called premarital promiscuity, which so often are taken for residues of primitive, undifferentiated, endogamous sexual habits, would rather seem to be connected with this political institution of the men's house. In other cases, as in Sparta, each member of the warrior fraternity had his wife and children living outside as maternal groups. In most cases, the two forms appear in combination with one another.

In order to secure their economic position, which is based on the continuous plundering of outsiders, especially women, the consociated warriors resort under certain circumstances to the use of religiously colored means of intimidation. The spirit manifestations which they stage with masked processions very often are nothing but plundering campaigns which require for their undisrupted execution that, on the first sound of the tom-tom, the women and all outsiders flee, on pain of instant death, from the villages into the woods and thus allow the "spirits" conveniently and without danger of being unmasked to take from the houses whatever may please them. The well-known procession of the Duk-Duks in Indonesia is an example in point.

Obviously, the warriors do not believe at all in the legitimacy of their conduct. The crude and simple swindle is recognized by them as such and is protected by the magical prohibition against entry into the men's house by outsiders and by the draconic obligations of silence which are imposed upon the members. The prestige of the men's league comes to an end, as far as the women are concerned, when the secret is broken by indiscretion or, as has happened occasionally, when it is intentionally unveiled by missionaries. It goes without saying that such activities, like all uses of religion for black police purposes, are linked to popular cults. But despite its own disposition towards magical superstition, the warrior society remains specifically earthly and oriented towards robbery and booty, and thus it functions as an agent of skepticism vis-à-vis popular piety. At all stages of evolution it treats the gods and spirits with that disrespect with which the Homeric warrior society treated Olympus.

Only when the warrior group, consociated freely beyond and above the everyday round of life, is, so to speak, fitted into a permanent territorial community, and when thereby a political organization is formed, do both obtain a specific legitimation for the use of violence. This process, where it takes place at all, is gradual. The larger community, among whose members are the warriors who had so far been organized as marauders or as a permanent warriors' league, may acquire the power to subject the freely consociated warriors' raids to its control. It may achieve this success through either of two processes: the warriors'

organization may disintegrate owing to a long period of pacification; or a comprehensive political consociation may be imposed either autonomously or heteronomously. The larger community will be interested in obtaining such control because all of its members may have to suffer from the reprisals against the warriors' raids. An illustration of successful acquisition of such control is presented by the suppression by the Swiss of the practice of their young men to hire out as soldiers to foreign powers.[5]

Such control over the booty campaigns was already exercised in early Germanic history by the political community of the districts (*Landsgemeinde*). If the coercive apparatus is strong enough, it will suppress private violence in any form. The effectiveness of this suppression rises with the development of the coercive apparatus into a permanent structure, and with the growing interest in solidarity against outsiders. Initially it is directed only against those forms of private violence which would injure directly the military interests of the political community itself. Thus in the thirteenth century the French monarchy suppressed the feuds of the royal vassals for the duration of a foreign war conducted by the king himself. Subsequently, it engenders, more generally, a form of permanent public peace, with the compulsory submission of all disputes to the arbitration of the judge, who transforms blood vengeance into rationally ordered punishment, and feuds and expiatory actions into rationally ordered legal procedures.

Whereas in early times even actions which were openly recognized as felonious were not proceeded against by the organized community except upon pressure on the part of religious or military interests, now the prosecution of an ever widening sphere of injuries to persons and property is being placed under the guaranty of the political coercive apparatus. Thus the political community monopolizes the legitimate application of violence for its coercive apparatus and is gradually transformed into an institution for the protection of rights. In so doing it obtains a powerful and decisive support from all those groups which have a direct or indirect economic interest in the expansion of the market community, as well as from the religious authorities. These latter are best able to control the masses under conditions of increasing pacification. Economically, however, the groups most interested in pacification are those guided by market interests, especially the burghers of the towns, as well as all those who are interested in river, road, or bridge tolls and in the tax-paying capacity of their tenants and subjects. These interest groups expand with an expanding money economy. Even before the political authority imposed public peace in its own interest, it was they who, in the Middle Ages, attempted, in coöperation with

the church, to limit feuds and to establish temporary, periodical, or permanent leagues for the maintenance of public peace (*Landfriedensbünde*). And as the expansion of the market disrupted the monopolistic organizations and led their members to the awareness of their interests in the market, it cut out from under them the basis of that community of interests on which the legitimacy of their violence had developed. The spread of pacification and the expansion of the market thus constitute a development which is accompanied, along parallel lines, by (1) that monopolization of legitimate violence by the political organization which finds its culmination in the modern concept of the *state* as the ultimate source of every kind of legitimacy of the use of physical force; and (2) that rationalization of the rules of its application which has come to culminate in the concept of the legitimate legal order.

[Excursus:] We cannot deal with the interesting, but hitherto imperfectly developed, typology of the various stages in the development of primitive political organization.[6] Even under conditions of a relatively advanced property system, a separate political organization and all its organs can be completely lacking. Such, for instance, was, according to Wellhausen,[7] the situation among the Arabs during their "pagan" age. Beyond the kinship groups with their elders (*sheiks*), they did not recognize any extra-familial permanent authority. The free community of nomads, tenting, wandering, and herding together, which arose out of the need for security, lacked any special organs and was essentially unstable, and whatever authority it accepted in the event of a conflict with outside enemies was only of an intermittent character.

Such a situation can continue for very long periods of time and under any type of economic organization. The only regular, permanent authorities are the family heads, the elders of the kinship groups, and, besides them, the magicians and diviners. Whatever disputes arise between kinship groups are arbitrated by the elders with the aid of the magicians. This situation corresponds to the form of economic life of the Bedouins. But, like the latter, it is nothing primordial. Wherever the type of settlement creates economic needs which require permanent and continuous provision beyond that which the kinship group and household can provide, the institution of village chieftain arises. The village chieftain frequently emerges from among the magicians, especially the rainmakers, or he is an especially successful leader of marauding raids. Where the appropriation of property has reached an advanced stage, the position of chieftain becomes easily accessible to any man distinguished by his wealth and the corresponding standard of living. But he cannot exercise real authority except in situations of emergency and even then exclusively upon the basis of some purely personal qualities

of some magical or similar kind. Otherwise, especially under conditions of continuous peace, he is no more than a popular arbitrator and his directions are followed as statements of good advice. The total absence of any such chieftain is by no means a rare occurrence in peaceful periods. The consensual action of neighbors is then regulated merely by the respect for tradition, the fear of blood vengeance and the wrath of magical powers. In any case, however, the functions of the peacetime chieftain are in substance largely economic, such as the regulation of tillage, and, occasionally, magico-therapeutic or arbitrational. But, in general, there is no fixed type. Violence is legitimate only when it is applied by the chieftain, and only in those manners and cases in which it is sanctioned by fixed tradition. For its application the chieftain has to rely upon the voluntary aid of the members of the group. The more magical *charisma* and economic eminence he possesses, the more he is in a position to obtain that aid.

3. *Power Prestige and the "Great Powers"*

All political structures use force, but they differ in the manner in which they use or threaten to use it against other political organizations. These differences play a specific role in determining the form and destiny of political communities. Not all political structures are equally "expansive." They do not all strive for an outward expansion of their power, or keep their force in readiness for acquiring political power over other territories and communities by incorporating them or making them dependent. Hence, as structures of power, political organizations vary in the extent to which they are turned outward.

The political structure of Switzerland is "neutralized" through a collective guarantee of the Great Powers. For various reasons, Switzerland is not very strongly desired as an object for incorporation. Mutual jealousies existing among neighboring communities of equal strength protect it from this fate. Switzerland, as well as Norway, is less threatened than is the Netherlands, which possesses colonies; and the Netherlands is less threatened than Belgium, which has precarious colonial posessions and is herself threatened in case of war between her powerful neighbors. Sweden too is quite exposed. Thus, the attitude of political structures towards the outside may be more "isolationist" or more "expansive." And such attitudes change. The power of political structures has a specific internal dynamic. On the basis of this power, the members may pretend to a special "prestige," and their pretensions may influence the external conduct of the power structures. Experience

teaches that claims to prestige have always played into the origin of wars. Their part is difficult to gauge; it cannot be determined in general, but it is very obvious. The realm of "honor," which is comparable to the "status order" within a social structure, pertains also to the interrelations of political structures.

Feudal lords, like modern officers or bureaucrats, are the natural and primary exponents of this desire for power-oriented prestige for one's own political structure. Power for their political community means power for themselves, as well as the prestige based on this power. For the bureaucrat and the officer, an expansion of power means more office positions, more sinecures, and better opportunities for promotion. (For the officer, this last may be the case even in a lost war.) For the feudal vassal, expansion of power means the acquisition of new objects for infeudation and more provisions for his progeny. In his speech promoting the crusades, Pope Urban focused attention on these opportunities and not, as has been said, on overpopulation.

Besides and beyond these direct economic interests, which naturally exist everywhere among strata living off the exercise of political power, the striving for prestige pertains to all specific power structures and hence to all political structures. This striving is not identical simply with "national pride"—of this, more later—and it is not identical with the mere pride in the excellent qualities, actual or presumed, of one's own political community or in the mere possession of such a polity. Such pride can be highly developed, as is the case among the Swiss and the Norwegians, yet it may actually be strictly isolationist and free from pretension to political prestige.

The prestige of power means in practice the glory of power over other communities; it means the expansion of power, though not always by way of incorporation or subjection. The big political communities are the natural exponents of such pretensions to prestige.

Every political structure naturally prefers to have weak rather than strong neighbors. Furthermore, as every big political community is a potential aspirant to prestige, it is also a potential threat to all its neighbors; hence, the big political community, simply because it is big and strong, is latently and constantly endangered. Finally, by virtue of an unavoidable "dynamic of power," wherever claims to prestige flame up—and this normally results from an acute political danger to peace—they challenge and call forth the competition of all other possible bearers of prestige. The history of the last decade [1900–1910], especially the relations between Germany and France, shows the prominent effect of this irrational element in all political foreign relations. The sentiment of prestige is able to strengthen the ardent belief in the actual

existence of one's own might, and this is important for positive self-assurance in case of conflict. Therefore, all those having vested interests in the political structure tend systematically to cultivate this prestige sentiment.

Nowadays one usually refers to those polities that appear to be the bearers of power prestige as the "Great Powers." Among a plurality of co-existing polities, some, the Great Powers, usually ascribe to themselves and usurp an interest in political and economic processes over a wide orbit. Today such orbits encompass the whole surface of the planet. During Hellenic Antiquity, the "King," that is, the Persian king, despite his defeat, was the most widely recognized Great Power. Sparta turned to him in order to impose, with his sanction, the King's Peace (Peace of Antalcidas) upon the Hellenic world [387 B.C.]. Later on, before the establishment of an empire, the Roman polity assumed such a role. However, for general reasons of "power dynamics," the Great Powers are very often expansive powers; that is, they are associations aiming at expanding the territories of their respective political communities, by the use or the threat of force. Yet Great Powers are not necessarily and not always oriented towards expansion. Their attitude in this respect often changes, and in these changes economic factors play a weighty part.

For a time British policy, for instance, quite deliberately renunciated further political expansion. It renounced even the retention of colonies by means of force in favor of a "little England" policy, resting upon an isolationist limitation and a reliance on an economic primacy held to be unshakable. Influential representatives of the Roman rule by notables would have liked to carry through a similar program of a "little Rome" after the Punic Wars, to restrict Roman political subjection to Italy and the neighboring islands. The Spartan aristocrats, so far as they were able, quite deliberately limited their political expansion for the sake of isolation. They restricted themselves to the smashing of all other political structures that endangered their power and prestige. They favored the particularism of city states. Usually, in such cases, and in many similar ones, the ruling groups of notables (the Roman nobility of office, the English and other liberal notables, the Spartan overlords) harbor more or less distinct fears lest a perpetual "imperialism" produce an "imperator," that is, a charismatic warlord, who might gain the ascendancy at their expense. However, like the Romans, the British, after a short time, were forced out of their policy of self-restraint and pressed into political expansion. This occurred, in part, through capitalist interests in expansion.

4. *The Economic Foundations of "Imperialism"*

One might be inclined to believe that the formation as well as the expansion of Great Power structures is always and primarily determined economically. The assumption that trade, especially if it is intensive and if it already exists in an area, is the normal prerequisite and the reason for its political unification might readily be generalized. In individual cases this assumption does actually hold. The example of the ***Zollverein***[8] lies close at hand, and there are numerous others. Closer attention, however, very often reveals that this coincidence is not a necessary one, and that the causal nexus by no means always points in a single direction.

Germany, for instance, has been made into a unified economic territory, that is one whose inhabitants seek to sell their products primarily in their own market, only through custom frontiers at her borders, which were determined in a purely political manner. Were all custom barriers eliminated, the economically determined market for the Eastern German cereal surplus, poor in gluten, would not be Western Germany but rather England. The economically determined market of the mining products and the heavy iron goods of Western Germany is by no means Eastern Germany; and Western Germany is not, in the main, the economically determined supplier of the industrial products for Eastern Germany. Above all, the interior lines of communications (railroads) of Germany would not be—and, in part, are not now—economically determined routes for transporting heavy goods between east and west. Eastern Germany, however, would be the economic location for strong industries, the economically determined market and hinterland for which would be the whole of Western Russia. Such industries are now cut off by Russian custom barriers and have been moved to Poland, directly behind the Russian custom frontier. Through this development, as is known, the political *Anschluss* of the Russian Poles to the Russian imperial idea, which seemed to be politically out of the question, has been brought into the realm of possibility. Thus, in this case, purely economically determined market relations have a politically unifying effect.

Germany, however, has been politically united *against* the economic determinants as such. It is not unusual for the frontiers of a polity to conflict with the mere geographically given conditions of economic location; the political frontiers may encompass areas that, in terms of economic factors, strive to separate. In such situations, tensions among economic interests nearly always arise. However, if the political bond is once created, it is very often, so incomparably stronger that under otherwise favorable conditions (e.g. the existence of a common language)

nobody would even think of political separation because of such economic tensions. This applies, for instance, to Germany.

[Excursus:] Empire formation does not always follow the routes of export trade, although nowadays we are inclined to see things in this imperialist way. As a rule, the "continental" imperialism—Russian, and American—just like the "overseas imperialism" of the British and of those modeled after it, follow the tracks of previously existing capitalist interests, especially in foreign areas that are politically weak. And of course, at least for the formation of great overseas dominions of the past—in the overseas empires of Athens, Carthage, and Rome—export trade played its decisive part.

Yet, even in these ancient polities other economic interests were at least of equal and often of far greater importance than were commercial profits: ground rents, farmed-out taxes, office fees, and similar gains were especially desired. In foreign trade, in turn, the interest in selling definitely receded into the background as a motive for expansion. In the age of modern capitalism the interest in exporting to foreign territories is dominant, but in the ancient states the interest was rather in the possession of territories from which goods (raw materials) could be *imported.*

Among the great states that have formed on the inland plains, the exchange of goods played no regular or decisive part. The trading of goods are most relevant for the river-border states of the Orient, especially for Egypt; that is, for states that in this respect were similar to overseas states. The "empire" of the Mongols, however, certainly did not rest on any intensive trade in goods. There, the mobility of the ruling stratum of horsemen made up for the lack of material means of communication and made centralized administration possible. Neither the empires of China, Persia, or Imperial Rome after its transformation from a coastal to a continental empire, were originated or maintained on the basis of a pre-existing and a particularly intensive inland traffic in goods or highly developed means of communication. The continental expansion of Rome was undoubtedly very strongly determined by capitalist interests; and these interests were above all the interests of tax-farmers, office hunters, and land speculators. They were not, in the first place, the interests of groups pursuing a particularly intensive trade in goods.

The expansion of Persia was not in any way served by capitalist interest groups. Such groups did not exist there as motivating forces or as pace-makers, and just as little did they serve the founders of the Chinese empire or the founders of the Carolingian monarchy.

Of course, even in these cases, the economic importance of trade was

not altogether absent; yet other motives have played their part in every political overland expansion of the past, including the Crusades. These motives have included the interest in higher royal incomes, in prebends, fiefs, offices, and social honors for the vassals, knights, officers, officials, the younger sons of hereditary officeholders, and so on. The interests of trading seaports have not, of course, been so decisive, although they were important as secondary factors: the first Crusade was mainly an overland campaign.

By no means has trade always pointed the way for political expansion. The causal nexus has very often been the reverse. Among the empires named above, those which had an administration technically able to establish at least overland means of communication did so for administrative purposes. In principle, this has often been the exclusive purpose, regardless of whether or not the means of communication were advantageous for existing or future trading needs.

Under present-day conditions, Russia may well be considered a country whose means of communication (railroads today) have been primarily determined politically. The Austrian southern railroad is another example. (Its shares are still called "lombards," a term loaded with political reminiscences.) And there is hardly a polity without "strategic railroads." Nevertheless, many projects of this kind have been undertaken with the concomitant expectation of a traffic guaranteeing long-run profitableness. It was no different in the past. On the one hand, it cannot be proved that the ancient Roman military highroads served a commercial purpose; and it certainly was not the case for the Persian and Roman mail posts, which served exclusively political purposes; on the other, the development of trade in the past has of course been the normal result of political unification. Political unification first placed trade upon an assured and guaranteed legal basis. Even this rule, however, is not without exceptions. For, besides depending on pacification and formal guarantees of law enforcement, the development of trade has been bound to certain economic conditions (especially the development of capitalism). Moreover, the evolution of capitalism may be strangled by the manner in which a unified political structure is administered. This was the case, for instance, in the late Roman Empire. Here a unified structure took the place of a league of city states; it was based upon a strong subsistence agrarian economy. This increasingly made for liturgies as the way of raising the means for the army and the administration; and these directly suffocated capitalism.[8] [End of Excursus.]

If trade in itself is by no means the decisive factor in political expansion, the economic structure in general does co-determine the extent and manner of political expansion. Besides women, cattle, and slaves,

scarce land is one of the original and foremost objects of forceful acquisition. For conquering peasant communities, the natural way is to take the land directly and to wipe out its settled population. The Teutonic Migration has, on the whole, taken this course only to a moderate degree. As a compact mass, this movement probably went somewhat beyond the present linguistic frontiers, but only in scattered zones. How far a land scarcity, caused by overpopulation, contributed, how far the political pressure of other tribes, or simply good opportunities, must be left open. In any case, for a long time some of the individual groups who went out for conquest reserved their claims to the arable land back home, in case they should return.

In other than peasant communities, too, the more or less violently taken lands are important for the way in which the victor will exploit his rights. As Franz Oppenheimer has rightly emphasized, ground rent is frequently the product of violent political subjection.[10] Given a subsistence economy and a feudal structure this subjection means, of course, that the peasantry of the incorporated area will not be wiped out but rather will be spared and made tributary to the conqueror, who becomes the landlord. This has happened wherever the army was no longer a levy composed of self-equipped freemen, or yet a mercenary or bureaucratic mass army, but rather an army of self-equipped knights, as was the case with the Persians, the Arabs, the Turks, the Normans, and the Occidental feudal vassals in general.

The interest in ground rent has also meant a great deal for plutocratic trading communities engaged in conquest. As commercial profits were preferably invested in land and indebted bondsmen, the normal aim of warfare, even in Antiquity, was to gain fertile land fit to yield ground rent. The Lelantine War [c. 590 B.C.], which marked a sort of epoch in early Hellenic history, was almost wholly carried on at sea and among trading cities. But the original object of dispute between the leading patricians of Chalcis and Eretria was the fertile Lelantine plain. Besides tributes of various sorts, one of the most important privileges that the Attic Maritime League evidently offered to the *demos* of the ruling city was to break up the land monopoly of the subject cities. The Athenians were to receive the right to acquire and mortgage land anywhere.

The establishment of *commercium* among cities allied to Rome meant in practice the same thing. Also, the overseas interests of the mass of Italics settled throughout the Roman sphere of influence certainly represented, at least in part, land interests of an essentially capitalist nature, as we know them from [Cicero's] speeches against Gaius Verres.[11]

During its expansion, the capitalist interest in land may come into

conflict with the land interest of the peasantry. Such a conflict has played its part in the status struggles in the long epoch ending with the Gracchi. The big holders of money, cattle, and men naturally wished the newly gained land to be dealt with as public land for lease (*ager publicus*). As long as the regions were not too remote, the peasants demanded that the land be partitioned in order to provide for their progeny. The compromises between these two interests are distinctly reflected in tradition, although the details are certainly not very reliable.

Rome's overseas expansion, as far as it was economically determined, shows features that have since recurred in basic outline again and again and which still recur today. These features occurred in Rome in pronounced fashion and in gigantic dimensions, for the first time in history. However fluid the transitions to other types may be, these "Roman" features are peculiar to what we wish to call *imperialist capitalism*, or rather, they provide the conditions for the existence of this specific type. These features are rooted in the capitalist interests of tax-farmers, of state creditors, of suppliers to the state, of overseas traders privileged by the state, and of colonial capitalists. The profit opportunities of all these groups rest upon the direct exploitation of political power directed towards expansion.

By forcibly enslaving the inhabitants, or at least tying them to the soil (*glebae adscriptio*) and exploiting them as plantation labor, the acquisition of overseas colonies brings tremendous opportunities for profit for capitalist interest-groups. The Carthaginians seem to have been the first to have arranged such an organization on a large scale; the Spaniards in South America, the English in the Southern States of the Union, and the Dutch in Indonesia were the last to do it in the grand manner. The acquisition of overseas colonies also facilitates the compulsory monopolization of trade with these colonies and possibly with other areas. Wherever the administrative apparatus of the polity is not suited for the collection of taxes from the newly occupied territories—of this, later—the taxes give opportunities for profit to capitalist tax-farmers.

The material implements of war may be part of the equipment provided by the army itself, as is the case in pure feudalism. But if these implements are furnished by the polity, rather than by the army, then expansion through war and the procurement of armaments to prepare for war represent by far the most profitable occasion for loan operations on the largest scale. The profit opportunities of capitalist state creditors then increase. Even during the Second Punic War capitalist state creditors prescribed their own conditions to the Roman polity.

Where the ultimate state creditors are a mass stratum of state rentiers (bondholders) such credits provide profit opportunities for bond-issuing

banks, as is characteristic of our day. The interests of those who supply the materials of war point in the same direction. In all this, economic forces interested in the emergence of military conflagrations *per se*, no matter what be the outcome for their own community, are called into life.

Aristophanes distinguished between industries interested in war and industries interested in peace, although as is evident from his enumeration, the center of gravity in his time was still the self-equipped army. The individual citizen gave orders to artisans such as the sword-maker and the armorer.[12] But even then the large private commercial storehouses, often designated as "factories," were above all stores of armaments. Today the polity as such is almost the sole agent to order war material and the engines of war. This enhances the capitalist nature of the process. Banks, which finance war loans, and today large sections of heavy industry are *quand même* economically interested in warfare; the direct suppliers of armor plates and guns are not the only ones so interested. A lost war, as well as a successful war, brings increased business to these banks and industries. Moreover, the powers-that-be in a polity are politically and economically interested in the existence of large home factories for war engines. This interest compels them to allow these factories to provide the whole world with their products, political opponents included.

The extent to which the interests of imperialist capitalism are counter-balanced depends above all on the profitableness of imperialism as compared with the capitalist interests of pacifist orientation, insofar as purely capitalist motives here play a direct part. And this in turn is closely connected with the extent to which economic needs are satisfied by a private or a public economy. The relation between the two is highly important for the nature of expansive economic tendencies backed up by political communities.

In general and at all times, imperialist capitalism, especially colonial booty capitalism based on direct force and compulsory labor, has offered by far the greatest opportunities for profit. They have been greater by far than those normally open to industrial enterprises which worked for exports and which oriented themselves to peaceful trade with members of other polities. Therefore, imperialist capitalism has always existed wherever to any relevant degree the polity *per se*, or its subdivisions (municipalities), satisfied its wants through a public economy. The stronger such an economy has been, the more important imperialist capitalism has been.

Increasing opportunities for profit abroad emerge again today, especially in territories that are opened up politically and economically, that

is, brought into the specifically modern forms of public and private enterprise. These opportunities spring from public arms contracts; from railroad and other construction tasks carried out by the polity or by builders endowed with monopoly rights; from monopolist organizations for the collection of levies for trade and industry; from monopolist concessions; and from government loans.

The preponderance of such profit opportunities increases, at the expense of profits from the usual private trade, the more that public enterprises gain in economic importance as a general form of supplying needs. This tendency is directly paralleled by politically backed economic expansion and competition among individual polities, whose members can afford to invest capital. These members aim at securing for themselves such monopolies and shares in public commissions. And the importance of the mere "open door" for the private importation of goods recedes into the background.

The safest way of monopolizing for the members of one's own polity profit opportunities which are linked to the public economy of the foreign territory is to occupy it or at least to subject the foreign political power in the form of a "protectorate" or some such arrangement. Therefore, this "imperialist" tendency increasingly displaces the "pacifist" tendency of expansion, which aims merely at freedom of trade. The latter gained the upper hand only so long as the organization of supply by private capitalism shifted the optimum of capitalist profit opportunities towards pacifist trade and not towards monopolist trade, or at least trade not monopolized by political power.

The universal revival of "imperialist" capitalism, which has always been the normal form in which capitalist interests have influenced politics, and the revival of political drives for expansion are thus not accidental. For the predictable future, the prognosis will have to be made in its favor.

This situation would hardly change fundamentally if for a moment we were to make the mental experiment of assuming the individual polities to be somehow "state-socialist" communities, that is, organizations supplying a maximum amount of their needs through a collective economy. They would seek to buy as cheaply as possible indispensable goods not produced on their own territory (cotton in Germany, for instance) from others that have natural monopolies and would seek to exploit them. It is probable that force would be used where it would lead easily to favorable conditions of exchange; the weaker party would thereby be obliged to pay tribute, if not formally then at least actually. For the rest, one cannot see why the strong state-socialist communities should disdain to squeeze tribute out of the weaker communities for their own partners

where they could do so, just as happened everywhere during early history. Even in a polity without state-socialism the mass of citizens need be as little interested in pacifism as is any single stratum. The Attic *demos*—and not it alone—lived economically off war. War brought soldiers' pay and, in case of a victory, tribute from the subjects. This tribute was actually distributed among the full citizens in the hardly veiled form of attendance-fees at popular assemblies, court hearings, and public festivities. Here, every full citizen could directly grasp the interest in imperialist policy and power. Nowadays, the yields flowing from abroad to the members of a polity, including those of imperialist origin and those actually representing "tribute," do not result in a constellation of interests so comprehensible to the masses. For under the present economic order, the tribute to "creditor nations" assumes the forms of interest payments on debts or of capital profits transferred from abroad to the propertied strata of the "creditor nation." Were one to imagine these tributes abolished, it would mean for countries like England, France, and Germany a very palpable decline of purchasing power for home products. This would influence the labor market in an unfavorable manner.

In spite of this, labor in creditor nations is of strongly pacifist mind and on the whole shows no interest whatsoever in the continuation and compulsory collection of such tributes from foreign debtor communities that are in arrears. Nor does labor show an interest in forcibly participating in the exploitation of foreign colonial territories and public commissions. This is a natural outcome of the immediate class situation, on the one hand, and, on the other, of the internal social and political situation of communities in a capitalist era. Those entitled to tribute belong to the opponent class, who dominate the community. Every successful imperialist policy of coercing the outside normally—or at least at first—also strengthens the domestic prestige and therewith the power and influence of those classes, status groups, and parties, under whose leadership the success has been attained.

In addition to the pacifist sympathies determined by the social and political constellation, there are economic sources of pacifist sympathy among the masses, especially among the proletariat. Every investment of capital in the production of war engines and war material creates job and income opportunities; every defense contract may become a factor directly contributing to prosperity by increasing demand and fostering the intensity of business enterprise. Even more so, this may indirectly become a source of enhanced confidence in the economic opportunities of the participating industries and lead to a speculative boom. Such investment, however, withdraws capital from alternate uses and makes it

more difficult to satisfy demands in other fields. Above all, the means of war are raised by way of levies, which the ruling strata, by virtue of their social and political power, usually know how to transfer to the masses, quite apart from the limits set to the regimentation of property for "mercantilist" considerations.

Countries little burdened by military expenses (the United States) and especially the small countries (Switzerland, for example) often experience a stronger economic expansion than do some of the Great Powers and sometimes are more readily admitted to the economic exploitation of foreign countries because they do not arouse the fear that political intervention might follow economic intrusion.

Experience shows that the pacifist interests of petty bourgeois and proletarian strata very often and very easily fail. This is partly because of the easier accessibility of all unorganized "masses" to emotional influences and partly because of the definite notion (which they entertain) of some unexpected opportunity somehow arising through war. Specific interests, like the hope entertained in overpopulated countries of acquiring territories for emigration, are, of course, also important in this connection. Another contributing cause is the fact that the "masses," in contrast to other interest-groups, subjectively risk a smaller stake in the game. In case of a lost war, the monarch has to fear for his throne; republican power-holders and groups having vested interests in a republican constitution have to fear their own victorious general. The majority of the propertied bourgeoisie have to fear economic loss from the brakes being placed upon business as usual. Under certain circumstances, should disorganization follow defeat, the ruling stratum of notables has to fear a violent shift in power in favor of the propertyless. The "masses" as such, at least in their subjective conception and in the extreme case, have nothing concrete to lose but their lives. The valuation and effect of this danger strongly fluctuates in their own minds. On the whole, it can easily be reduced to zero through emotional influence.

5. *The Nation*

The fervor of this emotional influence does not, in the main, have an economic origin. It is based upon sentiments of prestige, which often extend deep down to the petty-bourgeois masses of states rich in the historical attainment of power-positions. The attachment to all this political prestige may fuse with a specific belief in responsibility towards succeeding generations. The great power structures *per se* are then held to have a responsibility of their own for the way in which power

and prestige are distributed between their own and foreign polities. It goes without saying that all those groups who hold the power to steer common conduct within a polity will most strongly instill themselves with this idealist fervor of power prestige. They remain the specific and most reliable bearers of the idea of the state as an imperialist power structure demanding unqualified devotion.

In addition to the direct and material imperialist interests, discussed above, there are the indirectly material as well as the ideological interests of strata that are in various ways privileged within a polity and, indeed, privileged by its very existence. They comprise especially all those who think of themselves as being the specific "partners" of a specific "culture" diffused among the members of the polity. Under the influence of these circles, the naked prestige of "power" is unavoidably transformed into other special forms of prestige and especially into the idea of the "nation."

If the concept of "nation" can in any way be defined unambiguously, it certainly cannot be stated in terms of empirical qualities common to those who count as members of the nation. In the sense of those using the term at a given time, the concept undoubtedly means, above all, that *it is proper* to expect from certain groups a specific sentiment of solidarity in the face of other groups. Thus, the concept belongs in the sphere of values. Yet, there is no agreement on how these groups should be delimited or about what concerted action should result from such solidarity.

In ordinary language, "nation" is, first of all, not identical with the "people of a state," that is, with the membership of a given polity. Numerous polities comprise groups who emphatically assert the independence of their "nation" in the face of other groups; or they comprise merely *parts* of a group whose members declare themselves to be one homogenous "nation" (Austria is an example for both). Furthermore, a "nation" is not identical with a community speaking the same language; that this by no means always suffices is indicated by the Serbs and Croats, the North Americans, the Irish, and the English. On the contrary, a common language does not seem to be absolutely necessary to a "nation." In official documents, besides "Swiss People" one also finds the phrase "Swiss Nation." And some language groups do not think of themselves as a separate "nation," for example, at least until recently, the White Russians. As a rule, however, the pretension to be considered a special "nation" is associated with a common language as a culture value of the masses; this is predominantly the case in the classic country of language conflicts, Austria, and equally so in Russia and in eastern Prussia. But this linkage of the common language and "nation" is of

varying intensity; for instance, it is very low in the United States as well as in Canada.

"National" solidarity among men speaking the same language may be just as well rejected as accepted. Solidarity, instead, may be linked with differences in the other great culture value of the masses, namely, a religious creed, as is the case with the Serbs and Croats. National solidarity may be connected with differing social structure and mores and hence with "ethnic" elements, as is the case with the German Swiss and the Alsatians in the face of the Germans of the Reich, or with the Irish facing the British. Yet above all, national solidarity may be linked to memories of a common political destiny with other nations, among the Alsatians with the French since the Revolutionary War which represents their common heroic age, just as among the Baltic Barons with the Russians whose political destiny they helped to steer.

It goes without saying that "national" affiliation need not be based upon common blood. Indeed, especially radical "nationalists" are often of foreign descent. Furthermore, although a specific common anthropological type is not irrelevant to nationality, it is neither sufficient nor prerequisite to nation founding. Nevertheless, the idea of the "nation" is apt to include the notions of common descent and of an essential, though frequently indefinite, homogeneity. The "nation" has these notions in common with the sentiment of solidarity of ethnic communities, which is also nourished from various sources, as we have seen before [ch. V.:4]. But the sentiment of ethnic solidarity does not by itself make a "nation." Undoubtedly, even the White Russians in the face of the Great Russians have always had a sentiment of ethnic solidarity, yet even at the present time they would hardly claim to qualify as a separate "nation." The Poles of Upper Silesia, until recently, had hardly any feeling of solidarity with the "Polish Nation." They felt themselves to be a separate ethnic group in the face of the Germans, but for the rest they were Prussian subjects and nothing else.

Whether the Jews may be called a "nation" is an old problem. Most of the time, the answer will be negative. At any rate, the answers of the Russian Jews, of the assimilating West-European and American Jews, and of the Zionists would vary in nature and extent. In particular, the question would be answered very differently by the peoples of their environment, for example, by the Russians on the one side and the Americans on the other—or at least by those Americans who at the present time still maintain American and Jewish nature to be essentially similar, as an American President [T.R.] has asserted in an official document.

Those German-speaking Alsatians who refuse to belong to the German "nation" and who cultivate the memory of political union with

France do not thereby consider themselves simply as members of the French "nation." The Negroes of the United States, at least at present, consider themselves members of the American "nation," but they will hardly ever be so considered by the Southern Whites.

Only fifteen years ago, men knowing the Far East still denied that the Chinese qualified as a "nation"; they held them to be only a "race." Yet today, not only the Chinese political leaders but also the very same observers would judge differently. Thus it seems that a group of people under certain conditions may attain the quality of a nation through specific behavior, or they may claim this quality as an "attainment"—and within short spans of time at that.

There are, on the other hand, social groups that profess indifference to, and even directly relinquish, any evaluational adherence to a single nation. At the present time, certain leading strata of the class movement of the modern proletariat consider such indifference and relinquishment to be an accomplishment. Their argument meets with varying success, depending upon political and linguistic affiliations and also upon different strata of the proletariat; on the whole, their success is rather diminishing at the present time.

An unbroken scale of quite varied and highly changeable attitudes toward the idea of the "nation" is to be found among social strata within single groups to whom language usage ascribes the quality of "nations." The scale extends from emphatic affirmation to emphatic negation and finally complete indifference, as may be characteristic of the citizens of Luxembourg and of nationally "unawakened" peoples. Feudal strata, strata of officials, bourgeois strata of various occupational categories, strata of "intellectuals" do not have homogeneous or historically constant attitudes towards the idea.

The reasons for the belief that one represents a nation vary greatly, just as does the empirical conduct that actually results from affiliation or lack of it with a nation. The "national sentiments" of the German, the Englishman, the North American, the Spaniard, the Frenchman, or the Russian do not function in an identical manner—to take only the simplest illustration—in relation to the polity, with the geographical boundaries of which the "idea" of the nation may come into conflict. This antagonism may lead to quite different results. Certainly the Italians in the Austrian state would fight Italian troops only if coerced into doing so. Large portions of the German Austrians would today fight against Germany only with the greatest reluctance; they could not be relied upon. The German-Americans, however, even those valuing their [former] "nationality" most highly, would fight against Germany, not gladly, yet, given the occasion, unconditionally. The Poles in the Ger-

man State would fight readily against a Russian Polish army but hardly against an autonomous Polish army. The Austrian Serbs would fight against Serbia with very mixed feelings and only in the hope of attaining common autonomy. The Russian Poles would fight more reliably against a German than against an Austrian army.

It is a well-known historical fact that within the same nation the intensity of solidarity felt toward the outside is changeable and varies greatly in strength. On the whole, this sentiment has grown even where internal conflicts of interest have not diminished. Only sixty years ago the [Prussian conservative] *Kreuzzeitung* still appealed for the intervention of the emperor of Russia in internal German affairs; today, in spite of increased class antagonism, this would be difficult to imagine.

In any case, the differences in national sentiment are both significant and fluid and, as is the case in all other fields, fundamentally different answers are given to the question: What conclusions are a group of people willing to draw from the "national sentiment" found among them? No matter how emphatic and subjectively sincere a pathos may be formed among them, what sort of specific joint action are they ready to develop? The extent to which in the diaspora a custom, more correctly, a convention is adhered to as a "national" trait varies just as much as does the importance of common conventions for the belief in the existence of a separate "nation." In the face of this value concept of the "idea of the nation," which empirically is entirely ambiguous, a sociological typology would have to analyze all the individual kinds of sentiments of group membership and solidarity in their genetic conditions and in their consequences for the social action of the participants. This cannot be attempted here.

Instead, we shall have to look a little closer into the fact that the idea of the nation for its advocates stands in very intimate relation to "prestige" interests. The earliest and most energetic manifestations of the idea, in some form, even though it may have been veiled, have contained the legend of a providential "mission." Those to whom the representatives of the idea zealously turned were expected to shoulder this mission. Another element of the early idea was the notion that this mission was facilitated solely through the very cultivation of the peculiarity of the group set off as a nation. Therewith, in so far as its self-justification is sought in the value of its content, this mission can consistently be thought of only as a specific "culture" mission. The significance of the "nation" is usually anchored in the superiority, or at least the irreplaceability, of the culture values that are to be preserved and developed only through the cultivation of the peculiarity of the group. It therefore goes without saying that, just as those who wield

power in the polity invoke the idea of the *state*, the intellectuals, as we shall tentatively call those who usurp leadership in a *Kulturgemeinschaft* (that is, within a group of people who by virtue of their peculiarity have access to certain products that are considered "culture goods"), are specifically predestined to propagate the "*national*" idea. This happens when those culture agents. . . .

[The presentation breaks off here. Notes on the margin of the manuscript indicate that Weber intended to deal with the idea and development of the nation state throughout history. The following observations were found on the margin of the sheet: Cultural prestige and power prestige are closely associated. Every *victorious* war enhances the cultural prestige (Germany [1871], Japan [1905], etc.). Whether war *furthers* the "development of culture" is another question, one which cannot be solved in a "value neutral" way. It certainly does *not* do it in an *unambiguous* way (see Germany after 1871!). Even on the basis of purely empirical criteria it would *not* seem to do so: Pure art and literature of a specifically German character did *not* develop in the political *center* of Germany.]

6. *The Distribution of Power Within the Political Community: Class, Status, Party*[13]

A. ECONOMICALLY DETERMINED POWER AND THE STATUS ORDER. The structure of every legal order directly influences the distribution of power, economic or otherwise, within its respective community. This is true of all legal orders and not only that of the state. In general, we understand by "power" the chance of a man or a number of men to realize their own will in a social action even against the resistance of others who are participating in the action.

"Economically conditioned" power is not, of course, identical with "power" as such. On the contrary, the emergence of economic power may be the consequence of power existing on other grounds. Man does not strive for power only in order to enrich himself economically. Power, including economic power, may be valued for its own sake. Very frequently the striving for power is also conditioned by the social honor it entails. Not all power, however, entails social honor: The typical American Boss, as well as the typical big speculator, deliberately relinquishes social honor. Quite generally, "mere economic" power, and especially "naked" money power, is by no means a recognized basis of social honor. Nor is power the only basis of social honor. Indeed, social honor, or prestige, may even be the basis of economic power, and very frequently has been. Power, as well as honor, may be guaranteed by

the legal order, but, at least normally, it is not their primary source. The legal order is rather an additional factor that enhances the chance to hold power or honor; but it can not always secure them.

The way in which social honor is distributed in a community between typical groups participating in this distribution we call the "status order." The social order and the economic order are related in a similar manner to the legal order. However, the economic order merely defines the way in which economic goods and services are distributed and used. Of course, the status order is strongly influenced by it, and in turn reacts upon it.

Now: "classes," "status groups," and "parties" are phenomena of the distribution of power within a community.

B. DETERMINATION OF CLASS SITUATION BY MARKET SITUATION. In our terminology, "classes" are not communities; they merely represent possible, and frequent, bases for social action. We may speak of a "class" when (1) a number of people have in common a specific causal component of their life chances, insofar as (2) this component is represented exclusively by economic interests in the possession of goods and opportunities for income, and (3) is represented under the conditions of the commodity or labor markets. This is "class situation."

It is the most elemental economic fact that the way in which the disposition over material property is distributed among a plurality of people, meeting competitively in the market for the purpose of exchange, in itself creates specific life chances. The mode of distribution, in accord with the law of marginal utility, excludes the non-wealthy from competing for highly valued goods; it favors the owners and, in fact, gives to them a monopoly to acquire such goods. Other things being equal, the mode of distribution monopolizes the opportunities for profitable deals for all those who, provided with goods, do not necessarily have to exchange them. It increases, at least generally, their power in the price struggle with those who, being propertyless, have nothing to offer but their labor or the resulting products, and who are compelled to get rid of these products in order to subsist at all. The mode of distribution gives to the propertied a monopoly on the possibility of transferring property from the sphere of use as "wealth" to the sphere of "capital," that is, it gives them the entrepreneurial function and all chances to share directly or indirectly in returns on capital. All this holds true within the area in which pure market conditions prevail. "Property" and "lack of property" are, therefore, the basic categories of all class situations. It does not matter whether these two categories become effective in the competitive struggles of the consumers or of the producers.

Within these categories, however, class situations are further dif-

ferentiated: on the one hand, according to the kind of property that is usable for returns; and, on the other hand, according to the kind of services that can be offered in the market. Ownership of dwellings; workshops; warehouses; stores; agriculturally usable land in large or small holdings—a quantitative difference with possibly qualitative consequences; ownership of mines; cattle; men (slaves); disposition over mobile instruments of production, or capital goods of all sorts, especially money or objects that can easily be exchanged for money; disposition over products of one's own labor or of others' labor differing according to their various distances from consumability; disposition over transferable monopolies of any kind—all these distinctions differentiate the class situations of the propertied just as does the "meaning" which they can give to the use of property, especially to property which has money equivalence. Accordingly, the propertied, for instance, may belong to the class of rentiers or to the class of entrepreneurs.

Those who have no property but who offer services are differentiated just as much according to their kinds of services as according to the way in which they make use of these services, in a continuous or discontinuous relation to a recipient. But always this is the generic connotation of the concept of class: that the kind of chance in the *market* is the decisive moment which presents a common condition for the individual's fate. Class situation is, in this sense, ultimately market situation. The effect of naked possession *per se*, which among cattle breeders gives the non-owning slave or serf into the power of the cattle owner, is only a fore-runner of real "class" formation. However, in the cattle loan and in the naked severity of the law of debts in such communities for the first time mere "possession" as such emerges as decisive for the fate of the individual; this is much in contrast to crop-raising communities, which are based on labor. The creditor-debtor relation becomes the basis of "class situations" first in the cities, where a "credit market," however primitive, with rates of interest increasing according to the extent of dearth and factual monopolization of lending in the hands of a plutocracy could develop. Therewith "class struggles" begin.

Those men whose fate is not determined by the chance of using goods or services for themselves on the market, e.g., slaves, are not, however, a class in the technical sense of the term. They are, rather, a status group.

c. SOCIAL ACTION FLOWING FROM CLASS INTEREST. According to our terminology, the factor that creates "class" is unambiguously economic interest, and indeed, only those interests involved in the existence of the market. Nevertheless, the concept of class-interest is an ambiguous one: even as an empirical concept it is ambiguous as soon as one under-

stands by it something other than the factual direction of interests following with a certain probability from the class situation for a certain average of those people subjected to the class situation. The class situation and other circumstances remaining the same, the direction in which the individual worker, for instance, is likely to pursue his interests may vary widely, according to whether he is constitutionally qualified for the task at hand to a high, to an average, or to a low degree. In the same way, the direction of interests may vary according to whether or not social action of a larger or smaller portion of those commonly affected by the class situation, or even an association among them, e.g., a trade union, has grown out of the class situation, from which the individual may expect promising results for himself. The emergence of an association or even of mere social action from a common class situation is by no means a universal phenomenon.

The class situation may be restricted in its efforts to the generation of essentially *similar* reactions, that is to say, within our terminology, of "mass behavior." However, it may not even have this result. Furthermore, often merely amorphous social action emerges. For example, the "grumbling" of workers known in ancient Oriental ethics: The moral disapproval of the work-master's conduct, which in its practical significance was probably equivalent to an increasingly typical phenomenon of precisely the latest industrial development, namely, the slowdown of laborers by virtue of tacit agreement. The degree in which "social action" and possibly associations emerge from the mass behavior of the members of a class is linked to general cultural conditions, especially to those of an intellectual sort. It is also linked to the extent of the contrasts that have already evolved, and is especially linked to the transparency of the connections between the causes and the consequences of the class situation. For however different life chances may be, this fact in itself, according to all experience, by no means gives birth to "class action" (social action by the members of a class). For that, the real conditions and the results of the class situation must be distinctly recognizable. For only then the contrast of life chances can be felt not as an absolutely given fact to be accepted, but as a resultant from either (1) the given distribution of property, or (2) the structure of the concrete economic order. It is only then that people may react against the class structure not only through acts of intermittent and irrational protest, but in the form of rational association. There have been "class situations" of the first category (1), of a specifically naked and transparent sort, in the urban centers of Antiquity and during the Middle Ages; especially then when great fortunes were accumulated by factually monopolized trading in local industrial products or in foodstuffs; furthermore, under certain

conditions, in the rural economy of the most diverse periods, when agriculture was increasingly exploited in a profit-making manner. The most important historical example of the second category (2) is the class situation of the modern proletariat.

D. TYPES OF CLASS STRUGGLE. Thus every class may be the carrier of any one of the innumerable possible forms of class action, but this is not necessarily so. In any case, a class does not in itself constitute a group (*Gemeinschaft*). To treat "class" conceptually as being equivalent to "group" leads to distortion. That men in the same class situation regularly react in mass actions to such tangible situations as economic ones in the direction of those interests that are most adequate to their average number is an important and after all simple fact for the understanding of historical events. However, this fact must not lead to that kind of pseudo-scientific operation with the concepts of class and class interests which is so frequent these days and which has found its most classic expression in the statement of a talented author, that the individual may be in error concerning his interests but that the class is infallible about its interests.

If classes as such are not groups, nevertheless class situations emerge only on the basis of social action. However, social action that brings forth class situations is not basically action among members of the identical class; it is an action among members of different classes. Social actions that directly determine the class situation of the worker and the entrepreneur are: the labor market, the commodities market, and the capitalistic enterprise. But, in its turn, the existence of a capitalistic enterprise presupposes that a very specific kind of social action exists to protect the possession of goods *per se*, and especially the power of individuals to dispose, in principle freely, over the means of production: a certain kind of legal order. Each kind of class situation, and above all when it rests upon the power of property *per se*, will become most clearly efficacious when all other determinants of reciprocal relations are, as far as possible, eliminated in their significance. It is in this way that the use of the power of property in the market obtains its most sovereign importance.

Now status groups hinder the strict carrying through of the sheer market principle. In the present context they are of interest only from this one point of view. Before we briefly consider them, note that not much of a general nature can be said about the more specific kinds of antagonism between classes (in our meaning of the term). The great shift, which has been going on continuously in the past, and up to our times, may be summarized, although at a cost of some precision: the struggle in which class situations are effective has progressively shifted

from consumption credit toward, first, competitive struggles in the commodity market and then toward wage disputes on the labor market. The class struggles of Antiquity—to the extent that they were genuine class struggles and not struggles between status groups—were initially carried on by peasants and perhaps also artisans threatened by debt bondage and struggling against urban creditors. For debt bondage is the normal result of the differentiation of wealth in commercial cities, especially in seaport cities. A similar situation has existed among cattle breeders. Debt relationships as such produced class action up to the days of Catilina. Along with this, and with an increase in provision of grain for the city by transporting it from the outside, the struggle over the means of sustenance emerged. It centered in the first place around the provision of bread and determination of the price of bread. It lasted throughout Antiquity and the entire Middle Ages. The propertyless flocked together against those who actually and supposedly were interested in the dearth of bread. This fight spread until it involved all those commodities essential to the way of life and to handicraft production. There were only incipient discussions of wage disputes in Antiquity and in the Middle Ages. But they have been slowly increasing up into modern times. In the earlier periods they were completely secondary to slave rebellions as well as to conflicts in the commodity market.

The propertyless of Antiquity and of the Middle Ages protested against monopolies, pre-emption, forestalling, and the withholding of goods from the market in order to raise prices. Today the central issue is the determination of the price of labor. The transition is represented by the fight for access to the market and for the determination of the price of products. Such fights went on between merchants and workers in the putting-out system of domestic handicraft during the transition to modern times. Since it is quite a general phenomenon we must mention here that the class antagonisms that are conditioned through the market situations are usually most bitter between those who actually and directly participate as opponents in price wars. It is not the rentier, the share-holder, and the banker who suffer the ill will of the worker, but almost exclusively the manufacturer and the business executives who are the direct opponents of workers in wage conflicts. This is so in spite of the fact that it is precisely the cash boxes of the rentier, the share-holder, and the banker into which the more or less unearned gains flow, rather than into the pockets of the manufacturers or of the business executives. This simple state of affairs has very frequently been decisive for the role the class situation has played in the formation of political parties. For example, it has made possible the varieties of patriarchal socialism and the frequent attempts—formerly, at least—of threatened

status groups to form alliances with the proletariat against the bourgeoisie.

E. STATUS HONOR. In contrast to classes, *Stände* (*status groups*) are normally groups. They are, however, often of an amorphous kind. In contrast to the purely economically determined "class situation," we wish to designate as *status situation* every typical component of the life of men that is determined by a specific, positive or negative, social estimation of *honor*. This honor may be connected with any quality shared by a plurality, and, of course, it can be knit to a class situation: class distinctions are linked in the most varied ways with status distinctions. Property as such is not always recognized as a status qualification, but in the long run it is, and with extraordinary regularity. In the subsistence economy of neighborhood associations, it is often simply the richest who is the "chieftain." However, this often is only an honorific preference. For example, in the so-called pure modern democracy, that is, one devoid of any expressly ordered status privileges for individuals, it may be that only the families coming under approximately the same tax class dance with one another. This example is reported of certain smaller Swiss cities. But status honor need not necessarily be linked with a class situation. On the contrary, it normally stands in sharp opposition to the pretensions of sheer property.

Both propertied and propertyless people can belong to the same status group, and frequently they do with very tangible consequences. This equality of social esteem may, however, in the long run become quite precarious. The equality of status among American gentlemen, for instance, is expressed by the fact that outside the subordination determined by the different functions of business, it would be considered strictly repugnant—wherever the old tradition still prevails—if even the richest boss, while playing billiards or cards in his club would not treat his clerk as in every sense fully his equal in birthright, but would bestow upon him the condescending status-conscious "benevolence" which the German boss can never dissever from his attitude. This is one of the most important reasons why in America the German clubs have never been able to attain the attraction that the American clubs have.

In content, status honor is normally expressed by the fact that above all else a specific *style of life* is expected from all those who wish to belong to the circle. Linked with this expectation are restrictions on social intercourse (that is, intercourse which is not subservient to economic or any other purposes). These restrictions may confine normal marriages to within the status circle and may lead to complete endogamous closure. Whenever this is not a mere individual and socially irrelevant imitation of another style of life, but consensual action of this closing character, the status development is under way.

In its characteristic form, stratification by status groups on the basis of conventional styles of life evolves at the present time in the United States out of the traditional democracy. For example, only the resident of a certain street ("the Street") is considered as belonging to "society," is qualified for social intercourse, and is visited and invited. Above all, this differentiation evolves in such a way as to make for strict submission to the fashion that is dominant at a given time in society. This submission to fashion also exists among men in America to a degree unknown in Germany; it appears as an indication of the fact that a given man puts forward a *claim* to qualify as a gentleman. This submission decides, at least *prima facie,* that he will be treated as such. And this recognition becomes just as important for his employment chances in swank establishments, and above all, for social intercourse and marriage with "esteemed" families, as the qualification for dueling among Germans. As for the rest, status honor is usurped by certain families resident for a long time, and, of course, correspondingly wealthy (e.g. F.F.V., the First Families of Virginia), or by the actual or alleged descendants of the "Indian Princess" Pocahontas, of the Pilgrim fathers, or of the Knickerbockers, the members of almost inaccessible sects and all sorts of circles setting themselves apart by means of any other characteristics and badges. In this case stratification is purely conventional and rests largely on usurpation (as does almost all status honor in its beginning). But the road to legal privilege, positive or negative, is easily traveled as soon as a certain stratification of the social order has in fact been "lived in" and has achieved stability by virtue of a stable distribution of economic power.

F. ETHNIC SEGREGATION AND CASTE. Where the consequences have been realized to their full extent, the status group evolves into a closed caste. Status distinctions are then guaranteed not merely by conventions and laws, but also by religious sanctions. This occurs in such a way that every physical contact with a member of any caste that is considered to be lower by the members of a higher caste is considered as making for a ritualistic impurity and a stigma which must be expiated by a religious act. In addition, individual castes develop quite distinct cults and gods.

In general, however, the status structure reaches such extreme consequences only where there are underlying differences which are held to be "ethnic." The caste is, indeed, the normal form in which ethnic communities that believe in blood relationship and exclude exogamous marriage and social intercourse usually associate with one another. As mentioned before [ch. VI:*vi*:6], such a caste situation is part of the phenomenon of pariah peoples and is found all over the world. These people form communities, acquire specific occupational traditions of handicrafts or of other arts, and cultivate a belief in their ethnic community.

They live in a diaspora strictly segregated from all personal intercourse, except that of an unavoidable sort, and their situation is legally precarious. Yet, by virtue of their economic indispensability, they are tolerated, indeed frequently privileged, and they live interspersed in the political communities. The Jews are the most impressive historical example.

A status segregation grown into a caste differs in its structure from a mere ethnic segregation: the caste structure transforms the horizontal and unconnected coexistences of ethnically segregated groups into a vertical social system of super- and subordination. Correctly formulated: a comprehensive association integrates the ethnically divided communities into one political unit. They differ precisely in this way: ethnic coexistence, based on mutual repulsion and disdain, allows each ethnic community to consider its own honor as the highest one; the caste structure brings about a social subordination and an acknowledgement of "more honor" in favor of the privileged caste and status groups. This is due to the fact that in the caste structure ethnic distinctions as such have become "functional" distinctions within the political association (warriors, priests, artisans that are politically important for war and for building, and so on). But even pariah peoples who are most despised (for example, the Jews) are usually apt to continue cultivating the belief in their own specific "honor," a belief that is equally peculiar to ethnic and to status groups.

However, with the negatively privileged status groups the sense of dignity takes a specific deviation. A sense of dignity is the precipitation in individuals of social honor and of conventional demands which a positively privileged status group raises for the deportment of its members. The sense of dignity that characterizes positively privileged status groups is naturally related to their "being" which does not transcend itself, that is, it is related to their "beauty and excellence" (καλοκάγαθία). Their kingdom is "of this world." They live for the present and by exploiting their great past. The sense of dignity of the negatively privileged strata naturally refers to a future lying beyond the present, whether it is of this life or of another. In other words, it must be nurtured by the belief in a providential mission and by a belief in a specific honor before God. The chosen people's dignity is nurtured by a belief either that in the beyond "the last will be the first," or that in this life a Messiah will appear to bring forth into the light of the world which has cast them out the hidden honor of the pariah people. This simple state of affairs, and not the resentment which is so strongly emphasized in Nietzsche's much-admired construction in the *Genealogy of Morals*, is the source of the religiosity cultivated by pariah status groups (see above, ch. VI:*vi*:5);

moreover, resentment applies only to a limited extent; for one of Nietzsche's main examples, Buddhism, it is not at all applicable.

For the rest, the development of status groups from ethnic segregations is by no means the normal phenomenon. On the contrary. Since objective "racial differences" are by no means behind every subjective sentiment of an ethnic community, the question of an ultimately racial foundation of status structure is rightly a question of the concrete individual case. Very frequently a status group is instrumental in the production of a thoroughbred anthropological type. Certainly status groups are to a high degree effective in producing extreme types, for they select personally qualified individuals (e.g. the knighthood selects those who are fit for warfare, physically and psychically). But individual selection is far from being the only, or the predominant, way in which status groups are formed: political membership or class situation has at all times been at least as frequently decisive. And today the class situation is by far the predominant factor. After all, the possibility of a style of life expected for members of a status group is usually conditioned economically.

G. STATUS PRIVILEGES. For all practical purposes, stratification by status goes hand in hand with a monopolization of ideal and material goods or opportunities, in a manner we have come to know as typical. Besides the specific status honor, which always rests upon distance and exclusiveness, honorific preferences may consist of the privilege of wearing special costumes, of eating special dishes taboo to others, of carrying arms—which is most obvious in its consequences—, the right to be a dilettante, for example, to play certain musical instruments. However, material monopolies provide the most effective motives for the exclusiveness of a status group; although, in themselves, they are rarely sufficient, almost always they come into play to some extent. Within a status circle there is the question of intermarriage: the interest of the families in the monopolization of potential bridegrooms is at least of equal importance and is parallel to the interest in the monopolization of daughters. The daughters of the members must be provided for. With an increased closure of the status group, the conventional preferential opportunities for special employment grow into a legal monopoly of special offices for the members. Certain goods become objects for monopolization by status groups, typically, entailed estates, and frequently also the possession of serfs or bondsmen and, finally, special trades. This monopolization occurs positively when the status group is exclusively entitled to own and to manage them; and negatively when, in order to maintain its specific way of life, the status group must *not* own and manage them. For the decisive role of a style of life in status honor means that status groups

are the specific bearers of all conventions. In whatever way it may be manifest, all stylization of life either originates in status groups or is at least conserved by them. Even if the principles of status conventions differ greatly, they reveal certain typical traits, especially among the most privileged strata. Quite generally, among privileged status groups there is a status disqualification that operates against the performance of common physical labor. This disqualification is now "setting in" in America against the old tradition of esteem for labor. Very frequently every rational economic pursuit, and especially entrepreneurial activity, is looked upon as a disqualification of status. Artistic and literary activity is also considered degrading work as soon as it is exploited for income, or at least when it is connected with hard physical exertion. An example is the sculptor working like a mason in his dusty smock as over against the painter in his salon-like studio and those forms of musical practice that are acceptable to the status group.

H. ECONOMIC CONDITIONS AND EFFECTS OF STATUS STRATIFICATION. The frequent disqualification of the gainfully employed as such is a direct result of the principle of status stratification, and of course, of this principle's opposition to a distribution of power which is regulated exclusively through the market. These two factors operate along with various individual ones, which will be touched upon below.

We have seen above that the market and its processes knows no personal distinctions: "functional" interests dominate it. It knows nothing of honor. The status order means precisely the reverse: stratification in terms of honor and styles of life peculiar to status groups as such. The status order would be threatened at its very root if mere economic acquisition and naked economic power still bearing the stigma of its extra-status origin could bestow upon anyone who has won them the same or even greater honor as the vested interests claim for themselves. After all, given equality of status honor, property *per se* represents an addition even if it is not overtly acknowledged to be such. Therefore all groups having interest in the status order react with special sharpness precisely against the pretensions of purely economic acquisition. In most cases they react the more vigorously the more they feel themselves threatened. Calderon's respectful treatment of the peasant, for instance, as opposed to Shakespeare's simultaneous ostensible disdain of the *canaille* illustrates the different way in which a firmly structured status order reacts as compared with a status order that has become economically precarious. This is an example of a state of affairs that recurs everywhere. Precisely because of the rigorous reactions against the claims of property *per se*, the "parvenu" is never accepted, personally and without reservation, by the privileged status groups, no matter how completely

his style of life has been adjusted to theirs. They will only accept his descendants who have been educated in the conventions of their status group and who have never besmirched its honor by their own economic labor.

As to the general *effect* of the status order, only one consequence can be stated, but it is a very important one: the hindrance of the free development of the market. This occurs first for those goods that status groups directly withhold from free exchange by monopolization, which may be effected either legally or conventionally. For example, in many Hellenic cities during the "status era" and also originally in Rome, the inherited estate (as shown by the old formula for placing spendthrifts under a guardian)[14] was monopolized, as were the estates of knights, peasants, priests, and especially the clientele of the craft and merchant guilds. The market is restricted, and the power of naked property *per se*, which gives its stamp to class formation, is pushed into the background. The results of this process can be most varied. Of course, they do not necessarily weaken the contrasts in the economic situation. Frequently they strengthen these contrasts, and in any case, where stratification by status permeates a community as strongly as was the case in all political communities of Antiquity and of the Middle Ages, one can never speak of a genuinely free market competition as we understand it today. There are wider effects than this direct exclusion of special goods from the market. From the conflict between the status order and the purely economic order mentioned above, it follows that in most instances the notion of honor peculiar to status absolutely abhors that which is essential to the market: hard bargaining. Honor abhors hard bargaining among peers and occasionally it taboos it for the members of a status group in general. Therefore, everywhere some status groups, and usually the most influential, consider almost any kind of overt participation in economic acquisition as absolutely stigmatizing.

With some over-simplification, one might thus say that classes are stratified according to their relations to the production and acquisition of goods; whereas status groups are stratified according to the principles of their *consumption* of goods as represented by special styles of life.

An "occupational status group," too, is a status group proper. For normally, it successfully claims social honor only by virtue of the special style of life which may be determined by it. The differences between classes and status groups frequently overlap. It is precisely those status communities most strictly segregated in terms of honor (viz. the Indian castes) who today show, although within very rigid limits, a relatively high degree of indifference to pecuniary income. However, the Brahmins seek such income in many different ways.

As to the general economic conditions making for the predominance of stratification by status, only the following can be said. When the bases of the acquisition and distribution of goods are relatively stable, stratification by status is favored. Every technological repercussion and economic transformation threatens stratification by status and pushes the class situation into the foreground. Epochs and countries in which the naked class situation is of predominant significance are regularly the periods of technical and economic transformations. And every slowing down of the change in economic stratification leads, in due course, to the growth of status structures and makes for a resuscitation of the important role of social honor.

1. PARTIES. Whereas the genuine place of classes is within the economic order, the place of status groups is within the social order, that is, within the sphere of the distribution of honor. From within these spheres, classes and status groups influence one another and the legal order and are in turn influenced by it. "*Parties*" reside in the sphere of power. Their action is oriented toward the acquisition of social power, that is to say, toward influencing social action no matter what its content may be. In principle, parties may exist in a social club as well as in a state. As over against the actions of classes and status groups, for which this is not necessarily the case, party-oriented social action always involves association. For it is always directed toward a goal which is striven for in a planned manner. This goal may be a cause (the party may aim at realizing a program for ideal or material purposes), or the goal may be personal (sinecures, power, and from these, honor for the leader and the followers of the party). Usually the party aims at all these simultaneously. Parties are, therefore, only possible within groups that have an associational character, that is, some rational order and a staff of persons available who are ready to enforce it. For parties aim precisely at influencing this staff, and if possible, to recruit from it party members.

In any individual case, parties may represent interests determined through class situation or status situation, and they may recruit their following respectively from one or the other. But they need be neither purely class nor purely status parties; in fact, they are more likely to be mixed types, and sometimes they are neither. They may represent ephemeral or enduring structures. Their means of attaining power may be quite varied, ranging from naked violence of any sort to canvassing for votes with coarse or subtle means: money, social influence, the force of speech, suggestion, clumsy hoax, and so on to the rougher or more artful tactics of obstruction in parliamentary bodies.

The sociological structure of parties differs in a basic way according

to the kind of social action which they struggle to influence; that means, they differ according to whether or not the community is stratified by status or by classes. Above all else, they vary according to the structure of domination. For their leaders normally deal with its conquest. In our general terminology, parties are not only products of modern forms of domination. We shall also designate as parties the ancient and medieval ones, despite the fact that they differ basically from modern parties. Since a party always struggles for political control (*Herrschaft*), its organization too is frequently strict and "authoritarian." Because of these variations between the forms of domination, it is impossible to say anything about the structure of parties without discussing them first. Therefore, we shall now turn to this central phenomenon of all social organization.

Before we do this, we should add one more general observation about classes, status groups and parties: The fact that they presuppose a larger association, especially the framework of a polity, does not mean that they are confined to it. On the contrary, at all times it has been the order of the day that such association (even when it aims at the use of military force in common) reaches beyond the state boundaries. This can be seen in the [interlocal] solidarity of interests of oligarchs and democrats in Hellas, of Guelphs and Ghibellines in the Middle Ages, and within the Calvinist party during the age of religious struggles; and all the way up to the solidarity of landlords (International Congresses of Agriculture), princes (Holy Alliance, Karlsbad Decrees [of 1819]), socialist workers, conservatives (the longing of Prussian conservatives for Russian intervention in 1850). But their aim is not necessarily the establishment of a new territorial dominion. In the main they aim to influence the existing polity.

NOTES

1. This is the early formulation of territorial political organization and of the state, which Weber later summarized in sec. 17 of Part One, ch. I. (R)

2. *Camorra*—well-organized large-scale criminal gang operating in Southern Italy, especially Naples: first appearance c. 1820; achieved effective power over Naples municipal government in the 1890's, was defeated in the elections of 1901 through the effort of the Honest Government League, but flared up repeatedly in later times, especially about 1911. (Rh)

3. Cf. Soc. of Law, above, ch. VIII:*iii*: 1 and 5, and *vi*: 1. (W)

4. Cf. in this respect the role of the "military societies" as police organs among the Plains Indians, as described by K. N. Llewellyn and E. A. Hoebel, *The Cheyenne Way* (1941), esp. c. 5. (Rh)

5. Cf. E. Fischer, *Schweizergeschichte* (3rd ed. 1947) 150. (Rh)

6. For a recent survey and synthesis of such studies, see R. Thurnwald,

Werden, Wandel und Gestaltung von Staat und Kultur (1934); for illustrations of the type of society mentioned in the following sentences, see R. F. Barton, *Ifugao Law* (1919) and *The Kalingas* (1948). (Rh)

7. See *Reste arabischen Heidentums* (sec. ed., 1897; also *Medina vor dem Islam* (*Skizzen und Vorarbeiten*, vol. IV, 1, 1889). (W)

8. The German Customs Union (*Zollverein*) was gradually established under Prussian leadership in the 1820's and 1830's. After January 1, 1834, it comprised all German states with the exception of Austria and two smaller states, i.e., practically that part of Germany which under Bismarck's leadership emerged in 1871 as the new German Reich. In this development of German unity under Prussian hegemony, but also toward the exclusion of Austria, which became final through the Prussian-Austrian war of 1866, the *Zollverein* constituted an important step. (Rh)

9. Cf. Weber, *Agrarverhältnisse*, in *GAzSW*, 271, 273f, 295f. (W)

10. On Franz Oppenheimer, see *supra*, Part One, ch. II, nn. 3 and 22. (Wi)

11. Gaius Verres (c. 120–43 B.C.), Roman magistrate who as governor of Sicily ruthlessly exploited the local population. On their behalf he was in 70 B.C. prosecuted in the *Repetundae* (extortion) Court by Cicero, whose "Verrine" orations contain much valuable information on agrarian conditions—specifically, on the decline of peasant farming in favor of capitalistic, slave-operated *latifundia*—in the Roman provinces. Cf. also Weber, *Agrarverhältrisse*, in *GAzSW*, 252f. (Wi)

12. Cf. now Victor Ehrenberg, *The People of Aristophanes* (New York: Schocken paperback, 1962), chs. V (esp. 123f.) and XI (esp. 307ff.). (Wi)

13. All subheadings by Gerth and Mills. The major terminological change in this section is the elimination of the dichotomy of "communal" versus "societal" action and the substitution of "group" for "community." (R)

14. On the *bona paterna avitaque* of the Roman disemancipation formula, cf. also *infra*, ch. XVI:*v*, at n. 33. (Wi)

CHAPTER X

DOMINATION AND LEGITIMACY

1. *Domination by Economic Power and by Authority*[1]

Domination in the most general sense is one of the most important elements of social action. Of course, not every form of social action reveals a structure of dominancy. But in most of the varieties of social action domination plays a considerable role, even where it is not obvious at first sight. Thus, for example, in linguistic communities the elevation by authoritative fiat of a dialect to the status of an official language of a political entity has very often had a decisive influence on the development of a large community with a common literary language, as, for instance, Germany.[2] On the other hand, political separation has determined the final form of a corresponding linguistic differentiation, as, for instance, in the case of Holland as against Germany.[3] Furthermore, the domination exercised in the schools stereotypes the form and the predominance of the official school language most enduringly and decisively. Without exception every sphere of social action is profoundly influenced by structures of dominancy. In a great number of cases the emergence of rational association from amorphous social action has been due to domination and the way in which it has been exercised. Even where this is not the case, the structure of dominancy and its unfolding is decisive in determining the form of social action and its orientation toward a "goal." Indeed, domination has played the decisive role particularly in the economically most important social structures of the past and present, viz., the manor on the one hand, and the large-scale capitalistic enterprise on the other.

Domination constitutes a special case of power, as we shall see

presently. As in the case of other forms of power, those who exercise domination do not apply it exclusively, or even usually, to the pursuit of purely economic ends, such as, for example, a plentiful supply of economic goods. It is true, however, that the control over economic goods, i.e., economic power, is a frequent, often purposively willed, consequence of domination as well as one of its most important instruments. Not every position of economic power, however, represents domination in our sense of the word. Nor does domination utilize in every case economic power for its foundation and maintenance. But in the vast majority of cases, and indeed in the most important ones, this is just what happens in one way or another and often to such an extent that the mode of applying economic means for the purpose of maintaining domination, in turn, exercises a determining influence on the structure of domination. Furthermore, the great majority of all economic organizations, among them the most important and the most modern ones, reveal a structure of dominancy. The crucial characteristics of any form of domination may, it is true, not be correlated in any clearcut fashion with any particular form of economic organization. Yet, the structure of dominancy is in many cases both a factor of great economic importance and, at least to some extent, a result of economic conditions.

Our first aim here is that of stating merely general propositions regarding the relationship between forms of economic organization and of domination. Because of this very general character, these propositions will inevitably be abstract and sometimes also somewhat indefinite. For our purpose we need, first of all, a more exact definition of what we mean by "domination" and its relationship to the general term "power." Domination in the quite general sense of power, i.e., of the possibility of imposing one's own will upon the behavior of other persons, can emerge in the most diverse forms. If, as has occasionally been done, one looks upon the claims which the law accords to one person against one or more others as a power to issue commands to debtors or to those to whom no such claim is accorded, one may thereby conceive of the whole system of modern private law as the decentralization of domination in the hands of those to whom the legal rights are accorded. From this angle, the worker would have the power to command, i.e., "domination," over the entrepreneur to the extent of his wage claim, and the civil servant over the king to the extent of his salary claim. Such a terminology would be rather forced and, in any case, it would not be of more than provisional value since a distinction in kind must be made between "commands" directed by the judicial authority to an adjudged debtor and "commands" directed by the claimant himself to a debtor prior to judgment. However, a position ordinarily designated as "dominating"

can emerge from the social relations in a drawing room as well as in the market, from the rostrum of a lecture-hall as well as from the command post of a regiment, from an erotic or charitable relationship as well as from scholarly discussion or athletics. Such a broad definition would, however, render the term "domination" scientifically useless. A comprehensive classification of all forms, conditions, and concrete contents of "domination" in that widest sense is impossible here. We will only call to mind that, in addition to numerous other possible types, there are two diametrically contrasting types of domination, viz., domination by virtue of a constellation of interests (in particular: by virtue of a position of monopoly), and domination by virtue of authority, i.e., power to command and duty to obey.

The purest type of the former is monopolistic domination in the market; of the latter, patriarchal, magisterial, or princely power. In its purest form, the first is based upon influence derived exclusively from the possession of goods or marketable skills guaranteed in some way and acting upon the conduct of those dominated, who remain, however, formally free and are motivated simply by the pursuit of their own interests. The latter kind of domination rests upon alleged absolute duty to obey, regardless of personal motives or interests. The borderline between these two types of domination is fluid. Any large central bank or credit institution, for instance, exercises a "dominating" influence on the capital market by virtue of its monopolistic position. It can impose upon its potential debtors conditions for the granting of credit, thus influencing to a marked degree their economic behavior for the sake of the liquidity of its own resources. The potential debtors, if they really need the credit, must in their own interest submit to these conditions and must even guarantee this submission by supplying collateral security. The credit banks do not, however, pretend that they exercise "authority," i.e., that they claim "submission" on the part of the dominated without regard to the latters' own interests; they simply pursue their own interests and realize them best when the dominated persons, acting with formal freedom, rationally pursue their own interests as they are forced upon them by objective circumstances.

Even the owner of an incomplete monopoly finds himself in that same position if, despite existing competition, he is able by and large to "prescribe" prices to both exchange partners and competitors; in other words, if by his own conduct he can impose upon them a way of conduct according to his own interest, without, however, imposing on them the slightest "obligation" to submit to this domination. Any type of domination by virtue of constellation of interests may, however, be transformed gradually into domination by authority. This applies particularly to

domination originally founded on a position of monopoly. A bank, for instance, in order to control more effectively a debtor corporation, may demand as a condition for credit that some member of its board be made a member of the board of the debtor corporation. That board, in turn, can give decisive orders to the management by virtue of the latter's obligation to obey.

Or a central bank of issue causes the credit institutions to agree on uniform terms of credit and in this way tries, by virtue of its position of power, to secure to itself a continuous control and supervision of the relationships between the credit institutions and their customers. It may then utilize its control for ends of currency management or for the purpose of influencing the business cycle or for political ends such as, for instance, the preparation of financial readiness for war. The latter kind of use will be made in particular where the central bank itself is exposed to influence from the political power. Theoretically, it is conceivable that such controls can actually be established, that the ends for and the ways of its exercise become articulated in reglementations, that special agencies are created for its exercise and special appellate agencies for the resolution of questions of doubt, and that, finally, the controls are constantly made more strict. In such a case this kind of domination might become quite like the authoritative domination of a bureaucratic state agency over its subordinates, and the subordination would assume the character of a relationship of obedience to authority.

The same observation can be made with respect to the domination by the breweries over the tavern owners whom they supply with their equipment, or the domination to which book dealers would have to submit if there should some day be a German publishers' cartel with power to issue and withhold retailers' licenses, or the domination of the gasoline dealers by the Standard Oil Company, or the domination exercised through their common sales office by the German coal producers over the coal dealers. All these retailers may well be reduced to employed sales agents, little different from linemen working outside the employer's plant or other private employees but subject to the authority of a department chief. The transitions are gradual from the ancient debtor's factual dependency on his creditor to formal servitude for debt; or, in the Middle Ages and in modern times, from the craftsman's dependence on the market-wise exporter over the various forms of dependency of the home industry to the completely authoritarian labor regulation of the sweatshop worker. And from there other gradations lead to the position of the secretary, the engineer, or the worker in the office or plant, who is subject to a discipline no longer different in its nature from that of the civil service or the army, although it has been created by a

contract concluded in the labor market by formally "equal" parties through the "voluntary" acceptance of the terms offered by the employer. More important than the difference between private and public employment is certainly that between the military service and the other situations. The latter are concluded and terminated voluntarily, while the former is imposed by compulsion, at least in those countries where, as in ours, the ancient system of mercenary service has been replaced by the draft. Yet, even the relationship of political allegiance can be entered into and, to some extent, be dissolved voluntarily; the same holds true of the feudal and, under certain circumstances, even of the patrimonial dependency relationships of the past. Thus even in these cases the transitions are but gradual to those relationships of authority, for instance slavery, which are completely involuntary and, for the subject, normally nonterminable. Obviously, a certain minimum interest of the subordinate in his own obeying will normally constitute one of the indispensable motives of obedience even in the completely authoritarian duty-relationship. Throughout, transitions are thus vague and changing. And yet, if we wish at all to obtain fruitful distinctions within the continuous stream of actual phenomena, we must not overlook the clear-cut antithesis between factual power which arises completely out of possession and by way of interest compromises in the market, and, on the other hand, the authoritarian power of a patriarch or monarch with its appeal to the duty of obedience simply as such. The varieties of power are in no way exhausted by the examples just given. Even mere possession can be a basis of power in forms other than that of the market. As we pointed out before, even in socially undifferentiated situations wealth, accompanied by a corresponding way of life, creates prestige, corresponding to the position in present society of one who "keeps an open house" or the lady who has her "salon." Under certain circumstances, every one of these relationships may assume authoritarian traits. Domination in the broader sense can be produced not only by the exchange relationships of the market but also by those of "society"; such phenomena may range all the way from the "drawing room lion" to the patented *arbiter elegantiarum*[4] of imperial Rome or the courts of love of the ladies of Provence.[5] Indeed, such situations of domination can be found also outside the sphere of private markets and relationships. Even without any formal power of command an "empire state" or, more correctly, those individuals who are the decisive ones within it either through authority or through the market, can exercise a far-reaching and occasionally even a despotic hegemony. A typical illustration is afforded by Prussia's position within the German Customs Union or, later, in the German Reich. To some, although much lesser extent, New York's posi-

tion within the United States affords another illustration. In the German Customs Union the Prussian officials were dominant, because their state's territory constituted the largest and thus the decisive market; in the German Reich they are paramount because they dispose of the largest net of railroads, the greatest number of university positions, etc., and can thus cripple the corresponding administrative departments of the other, formally equal, states. New York can exercise political power because it is the seat of the great financial powers. All such forms of power are based upon constellations of interests. They thus resemble those which occur in the market, and in the course of development they can easily be transformed into formally regulated relationships of authority or, more correctly, into associations with heterocephalous power of command and coercive apparatus. Indeed, because of the very absence of rules, domination which originates in the market or other interest constellations may be felt to be much more oppressive than an authority in which the duties of obedience are set out clearly and expressly. That aspect must not affect, however, the terminology of the sociologist.

In the following discussion we shall use the term domination exclusively in that narrower sense which excludes from its scope those situations in which power has its source in a formally free interplay of interested parties such as occurs especially in the market. In other words, in our terminology *domination* shall be identical with *authoritarian power of command*.

To be more specific, *domination* will thus mean the situation in which the manifested will (*command*) of the *ruler* or rulers is meant to influence the conduct of one or more others (*the ruled*) and actually does influence it in such a way that their conduct to a socially relevant degree occurs as if the ruled had made the content of the command the maxim of their conduct for its very own sake. Looked upon from the other end, this situation will be called *obedience*.

FURTHER NOTES: 1. The definition sounds awkward, especially due to the use of the "as if" formula. This cannot be avoided, however. The merely external fact of the order being obeyed is not sufficient to signify domination in our sense; we cannot overlook the meaning of the fact that the command is accepted as a "valid" norm. On the other hand, however, the causal chain extending from the command to the actual fact of compliance can be quite varied. Psychologically, the command may have achieved its effect upon the ruled either through empathy or through inspiration or through persuasion by rational argument or through some combination of these three principal types of influence of one person over another.[6] In a concrete case the performance of the command may have been motivated by the ruled's own conviction of its propriety, or

by his sense of duty, or by fear, or by "dull" custom, or by a desire to obtain some benefit for himself. Sociologically, those differences are not necessarily relevant. On the other hand, the sociological character of domination will differ according to the basic differences in the major modes of legitimation.

2. Many transitions exist, as we have seen, between that narrower concept of domination as we have defined it now and those situations of setting the tone in the market, the drawing room, in a discussion, etc., which we have discussed earlier. We shall briefly revert to some of these latter cases so as to elucidate more clearly the former.

It is obvious that relationships of domination may exist reciprocally. In modern bureaucracy, among officials of different departments, each is subject to the others' powers of command insofar as the latter have jurisdiction. There are no conceptual difficulties involved, but where a customer places with a shoemaker an order for a pair of shoes, can it then be said that either one has control over the other? The answer will depend upon the circumstances of each individual case, but almost always will it be found that in some limited respect the will of the one has influenced that of the other even against that other's reluctance and that, consequently, to that extent one has dominated over the other. No precise concept of domination could be built up, however, upon the basis of such considerations; and this statement holds true for all relationships of exchange, including those of intangibles. Or what shall we say of the village craftsman who, as is often the case in Asia, is employed at fixed terms by the village? Is he, within his vocational jurisdiction, a ruler, or is he the ruled, and, if so, by whom? One will be inclined rather not to apply the concept of domination to such relationships, except with respect to the powers which he, the craftsman, exercises over his assistants or which are exercised over him by those persons who are to control him by virtue of their official position. As soon as we do this, we narrow the concept of domination to that technical one which we have defined above. Yet, the position of a village chief, that is, a person of official authority, may be exactly like that of the village craftsman. The distinction between private business and public office, as we know it, is the result of development and it is not at all so firmly rooted elsewhere as it is with us in Germany. In the popular American view, a judge's job is a business just as a banker's. He, the judge, simply is a man who has been granted the monopoly to give a person a decision with the help of which the latter may enforce some performance against another or, as the case may be, may shield himself against the claims of others. By virtue of this monopoly the judge enjoys directly or indirectly a number of benefits, legitimate or illegitimate, and for their enjoyment

he pays a portion of his fees to the party boss to whom he owes his job.

To all of these, the village chief, the judge, the banker, the craftsman, we shall ascribe domination, wherever they claim, and to a socially relevant degree find obedience to, commands given and received as such. No usable concept of domination can be defined in any way other than by reference to power of command; but we must never forget that here, as everywhere else in life, everything is "in transition." It should be self-evident that the sociologist is guided exclusively by the factual existence of such a power of command, in contrast to the lawyer's interest in the theoretical content of a legal norm. As far as sociology is concerned power of command does not exist unless the authority which is claimed by somebody is actually heeded to a socially relevant degree. Yet, the sociologist will normally start from the observation that "factual" powers of command usually claim to exist "by virtue of law." It is exactly for this reason that the sociologist cannot help operating with the conceptual apparatus of the law.

2. *Direct Democracy and Rule by Notables*

We are primarily interested in "domination" insofar as it is combined with "administration." Every domination both expresses itself and functions through administration. Every administration, on the other hand, needs domination, because it is always necessary that some powers of command be in the hands of somebody. Possibly the power of command may appear in a rather innocent garb; the ruler may be regarded as their "servant" by the ruled, and he may look upon himself in that way. This phenomenon occurs in its purest form in the so-called, "*immediately democratic*" *administration* ["direct democracy"].

This kind of administration is called democratic for two reasons which need not necessarily coincide. The first reason is that it is based upon the assumption that everybody is equally qualified to conduct the public affairs. The second: that in this kind of administration the scope of power of command is kept at a minimum. Administrative functions are rotated, or determined by drawing lots, or assigned for short periods by election. All important decisions are reserved to the common resolution of all; the administrative functionaries have only to prepare and carry out the resolutions and to conduct "current business" in accordance with the directives of the general assembly. This type of administration can be found in many private associations, in certain political communities such as the Swiss *Landesgemeinden* or certain townships in the United States, or in universities (insofar as the administration lies in

the hands of the rector and the deans),[a] as well as in numerous other organizations of a similar kind. However modest the administrative function may be, some functionary must have some power of command, and his position is thus always in suspense between that of a mere servant and that of master. It is against the very development of the latter that the "democratic" limits of his position are directed. However, "equality" and "minimization" of the dominant powers of functionaries are also found in many aristocratic groups as against the members of their own ruling layer. Illustrations are afforded by the aristocracy of Venice, Sparta or that of the full professors of a German university. They all have been using those same "democratic" forms of rotation of office, drawing lots, or short-term election.

Normally this kind of administration occurs in organizations which fulfill the following conditions:

1) the organization must be local or otherwise limited in the number of members; 2) the social positions of the members must not greatly differ from each other; 3) the administrative functions must be relatively simple and stable; 4) however, there must be a certain minimum development of training in objectively determining ways and means. This latter requirement exists, for instance, in the direct democratic administrations in Switzerland and the United States just as it existed in the Russian *mir* within the confines of its traditional scope of business. We do not look, however, upon this kind of administration as the historical starting point of any typical course of development but rather as a marginal type case, which lends itself well as the starting point of investigation. Neither taking turns nor drawing lots nor election are "primitive" forms of picking the functionaries of an organization.

Wherever it exists, direct democratic administration is unstable. With every development of economic differentiation arises the probability that administration will fall into the hands of the wealthy. The reason is not that they would have superior personal qualities or more comprehensive knowledge, but simply that they can afford to take the time to carry on the administrative functions cheaply or without any pay and as part-time jobs. Those, however, who are forced to work for a living would have to sacrifice time, which means income, and the more intense labor grows, the more intolerable does this sacrifice become. The bearers of that superiority are thus not simply those who enjoy high incomes but rather those who have an income without personal labor or derive it from intermittent labor. Under otherwise equal conditions a modern manufacturer can thus get away from his work less easily and is correspondingly less available for administrative functions than a landowner or a medieval merchant patrician, both of whom have not had

to work uninterruptedly. For the same reason the directors of the great university clinics and institutes are the least suited to be rectors; although they have plenty of administrative experience, their time is too much occupied with their regular work. Hence in the measure in which those who have to work are becoming unable to get away from it, direct democratic administration will tend to turn into rule by notables (*honoratiores*).

We have already met the type as that of the bearer of a special social honor connected with the mode of living.[9] Here we now encounter another indispensable requirement, viz., that capacity to take care of social administration and rule as an honorific duty which derives from economic position. Hence we shall tentatively define *honoratiores* as follows:

Persons who, *first*, are enjoying an income earned without, or with comparatively little, labor, or at least of such a kind that they can afford to assume administrative functions in addition to whatever business activities they may be carrying on; and who, *second*, by virtue of such income, have a mode of life which attributes to them the social "prestige" of a status honor and thus renders them fit for being called to rule.

Frequently such rule by *honoratiores* has developed in the form of deliberating bodies in which the affairs to be brought before the community are discussed in advance; such bodies easily come to anticipate the resolutions of the community or to eliminate them and thus to establish, by virtue of their prestige, a monopoly of the *honoratiores*. The development of the rule by *honoratiores* in this way has existed a long time in local communities and thus particularly in the neighborhood association. Those *honoratiores* of olden times had a character quite different, however, from those who emerge in the rationalized direct democracy of the present. The original qualification was old age. In all communities which orient their social conduct toward tradition, i.e., toward convention, customary law or sacred law, the elders are, so to speak, the natural *honoratiores* not only because of their prestige of wider experience, but also because they know the traditions. Their consent, advance approval (*προβούλευμα*), or ratification (*auctoritas*)[10] guarantees the properness of a resolution as against the supernatural powers just as it is the most effective decision in a case of dispute. Where all members of a community are in about the same economic position, the "elders" are simply those oldest in the household, the clan, or the neighborhood.

However, the relative prestige of age within a community is subject to much change. Wherever the food resources are scarce, he who can no longer work is just a burden. Also where war is a chronic state of affairs, the prestige of the older men is liable to sink below that of the

warriors and there often develops a democratic bias of the younger groups against the prestige of old age (*sexagenarios de ponte*).[11] The same development occurs in periods of economic or political revolution, whether violent or peaceful, and also where the practical power of religious ideas and thus the veneration of a sacred tradition is little developed or on the decline. The prestige of old age is preserved, on the other hand, wherever the objective usefulness of experience or the subjective power of tradition are estimated highly.

Where the elders are deposed, power normally accrues not to youth but to the bearers of some other kind of social prestige. In the case of economic or status differentiation the councils of elders (γερουσία, *senatus*) may retain its name, but *de facto* it will be composed of *honoratiores* in the sense discussed above, i.e., "economic" *honoratiores*, or bearers of status honor whose power ultimately is also based upon their wealth.

On the other hand, the battle cry that a "democratic" administration must be obtained or preserved may become a powerful tool of the poor in their fight against the *honoratiores*, but also of economically powerful groups which are not admitted to status honor. In that case democratic administration becomes a matter of struggle between political parties, especially since the *honoratiores*, by virtue of their status prestige and the dependency on them of certain groups, can create for themselves "security troops"[12] from among the poor. As soon as it is thus made the object of a struggle for power, direct democratic administration loses its specific feature, the undeveloped state of domination. A political party, after all, exists for the very purpose of fighting for domination in the specific sense, and it thus necessarily tends toward a strict hierarchical structure, however carefully it may be trying to hide this fact.

Something similar to this social alienation of the members, who lived in substantially the same manner in the marginal case of "pure" democracy, occurs where the group grows beyond a certain size or where the administrative function becomes too difficult to be satisfactorily taken care of by anyone whom rotation, the lot, or election may happen to designate. The conditions of administration of mass structures are radically different from those obtaining in small associations resting upon neighborly or personal relationships. As soon as mass administration is involved, the meaning of democracy changes so radically that it no longer makes sense for the sociologist to ascribe to the term the same meaning as in the case discussed so far.

The growing complexity of the administrative tasks and the sheer expansion of their scope increasingly result in the technical superiority of those who have had training and experience, and will thus inevitably

favor the continuity of at least some of the functionaries. Hence, there always exists the probability of the rise of a special, perennial structure for administrative purposes, which of necessity means for the exercise of rule. As mentioned before, this structure may be one of *honoratiores*, acting as equal "colleagues," or it may turn out to be "monocratic," so that all functionaries are integrated into a hierarchy culminating in one single head.

3. *Organizational Structure and the Bases of Legitimate Authority*

The predominance of the members of such a structure of domination rests upon the so-called "law of the small number." The ruling minority can quickly reach understanding among its members; it is thus able at any time quickly to initiate that rationally organized action which is necessary to preserve its position of power. Consequently it can easily squelch any action of the masses (*Massen- oder Gemeinschaftshandeln*) threatening its power as long as the opponents have not created the same kind of organization for the planned direction of their own struggle for domination. Another benefit of the small number is the ease of secrecy as to the intentions and resolutions of the rulers and the state of their information; the larger the circle grows, the more difficult or improbable it becomes to guard such secrets. Wherever increasing stress is placed upon "official secrecy," we take it as a symptom of either an intention of the rulers to tighten the reins of their rule or of a feeling on their part that their rule is being threatened. But every domination established as a continuing one must in some decisive point be *secret rule*.

Generally speaking, however, the specific arrangements for domination, as they are established by association, show the following characteristics:

A circle of people who are accustomed to obedience to the orders of *leaders* and who also have a personal interest in the continuance of the domination by virtue of their own participation and the resulting benefits, have divided among themselves the exercise of those functions which will serve the continuation of the domination and are holding themselves continuously ready for their exercise. (This is what is meant by "organization.")[18] Those leaders who do not derive from grant by others the powers of command claimed and exercised by them, we shall call *masters;* while the term *apparatus* shall mean the circle of those persons who are holding themselves at the disposal of the master or masters in the manner just defined.

The sociological character of the *structure* of any particular case of domination is determined by the kind of relationship between the master or masters and the apparatus, the kind of relationship of both to the ruled, and by its specific *organizational structure*, i.e., its specific way of distributing the powers of command. There can also be considered, of course, a good many other elements, which may then be used to establish a great number of varying sociological classifications. For our limited purposes, we shall emphasize those basic types of domination which result when we search for the ultimate grounds of the *validity* of a domination, in other words, when we inquire into those grounds upon which there are based the claims of obedience made by the master against the "officials" and of both against the ruled.

We have encountered the problem of *legitimacy* already in our discussion of the *legal order*. Now we shall have to indicate its broader significance. For a domination, this kind of justification of its legitimacy is much more than a matter of theoretical or philosophical speculation; it rather constitutes the basis of very real differences in the empirical structure of domination. The reason for this fact lies in the generally observable need of any power, or even of any advantage of life, to justify itself.

The fates of human beings are not equal. Men differ in their states of health or wealth or social status or what not. Simple observation shows that in every such situation he who is more favored feels the never ceasing need to look upon his position as in some way "legitimate," upon his advantage as "deserved," and the other's disadvantage as being brought about by the latter's "fault." That the purely accidental causes of the difference may be ever so obvious makes no difference.

This same need makes itself felt in the relation between positively and negatively privileged groups of human beings. Every highly privileged group develops the myth of its natural, especially its blood, superiority. Under conditions of stable distribution of power and, consequently, of status order, that myth is accepted by the negatively privileged strata. Such a situation exists as long as the masses continue in that natural state of theirs in which thought about the order of domination remains but little developed, which means, as long as no urgent needs render the state of affairs "problematical." But in times in which the class situation has become unambiguously and openly visible to everyone as the factor determining every man's individual fate, that very myth of the highly privileged about everyone having deserved his particular lot has often become one of the most passionately hated objects of attack; one ought only to think of certain struggles of late Antiquity and of the Middle Ages, and quite particularly of the class

struggle of our own time in which such myths and the claim of legitimate domination based upon it have been the target of the most powerful and most effective attacks.

Indeed, the continued exercise of every domination (in our technical sense of the word) always has the strongest need of self-justification through appealing to the principles of its legitimation. Of such ultimate principles, there are only three:

The "validity" of a power of command may be expressed, first, in a system of consciously made *rational* rules (which may be either agreed upon or imposed from above), which meet with obedience as generally binding norms whenever such obedience is claimed by him whom the rule designates. In that case every single bearer of powers of command is legitimated by that system of rational norms, and his power is legitimate insofar as it corresponds with the norm. Obedience is thus given to the norms rather than to the person.

The validity of a power of command can also rest, however, upon *personal authority*.

Such personal authority can, in turn, be founded upon the sacredness of *tradition*, i.e., of that which is customary and has always been so and prescribes obedience to some particular person.

Or, personal authority can have its source in the very opposite, viz., the surrender to the extraordinary, the belief in *charisma*, i.e., actual revelation or grace resting in such a person as a savior, a prophet, or a hero.

The "pure" types of domination correspond to these three possible types of legitimation. The forms of domination occurring in historical reality constitute combinations, mixtures, adaptations, or modifications of these "pure" types.

Rationally regulated association within a structure of domination finds its typical expression in *bureaucracy*. *Traditionally* prescribed social action is typically represented by *patriarchalism*. The *charismatic* structure of domination rests upon individual authority which is based neither upon rational rules nor upon tradition. Here too we shall proceed from the type that is the most rational and the one most familiar to us: modern bureaucratic administration.

NOTES

1. Unless otherwise indicated, all notes are by Rheinstein.

2. Among numerous German dialects and ways in which the language was used in poetry, literature, and polite parlance, acceptance as the standard was achieved by that form which was used in the late fourteenth and fifteenth cen-

turies by the imperial chancery, first in Prague and then in Vienna, especially when a style close to it was used by Luther in his translation of the Bible.

3. The low-German dialect spoken in the present Netherlands achieved, in the form in which it is used in the Province of South Holland, the status of a separate language when the United Provinces separated from Germany and the Dutch dialect became the language of officialdom and of the Bible translation (Statenbijbel, 1626–1635). Significantly no such status as a separate language was achieved by any one of the Swiss German dialects; as there was no central chancery in the loose Swiss Confederation, High German remained the official language in spite of the political separation from Germany, which took place a century earlier than that of the Netherlands.

4. *Arbiter elegantiarum*—According to Tacitus (Ann. XVI 18), Gaius Petronius, who is probably identical with the satirist Petronius Arbiter, was called by Nero the "arbiter of elegance" to whose judgment he bowed in matters of taste. Petronius and his title have been popularized through Henry Sienkiewicz' novel *Quo Vadis*.

5. On courts of love, see Part Two, ch. I, n. 10.

6. On empathy and inspiration as factors influencing the attitude of other persons, see Part Two, ch. I:2:8.

7. Cf. above, Part One, ch. III: 19f. (R)

8. At the German universities both the president (*Rektor*) and the deans are elected by the full professors for one year terms; together with the senate they administer the affairs of the university and represent it, especially as against the ministry of education, by which the universities are supervised.

9. Seech. IX: 6:8 and "Soc. of Law," ch. VIII:iv. (R)

10. *Auctoritas* [sc. *patrum*] (lat.)—the approval of the Roman Senate as required for the validity of certain resolutions of the popular assemblies (*comitia*); on the varying phrases of political significance of the requirement, see Jolowicz, *Historical Introduction to Roman Law* (1932), 30.

11. "Men of sixty, off the bridge!"—a Roman proverb of uncertain origin, which was generally associated by ancient authors with an imputed old practice of human sacrifice under which useless old men were thrown off a bridge into the Tiber. A less generally held interpretation, which Weber has in mind here, is reported in a fragment of Varro's *de vita pop. Rom. lib. IV* (II. 11); this derives the saying from the exclusion of men over military age from the voting assembly of the people in its military array on the campus Martius, access to which was over a bridge. Cf. art. "sexagenarios" in Pauly-Wissowa, RE, 2nd ser., II (1923), 205f. (Rh/Wi)

12. Weber uses the word *Schutztruppe*, a term primarily known at the time as the designation for the colonial troops in the German overseas holdings; particularly prominent was the *Schutztruppe* in Southwest Africa, which repressed the Herero uprising between 1904 and 1908. (R)

13. Cf. Part One, ch. III:13. (R)

CHAPTER XI

BUREAUCRACY

1. *Characteristics of Modern Bureaucracy*

Modern officialdom functions in the following manner:

I. There is the principle of official *jurisdictional areas*, which are generally ordered by rules, that is, by laws or administrative regulations. This means:

(1) The regular activities required for the purposes of the bureaucratically governed structure are assigned as official duties.

(2) The authority to give the commands required for the discharge of these duties is distributed in a stable way and is strictly delimited by rules concerning the coercive means, physical, sacerdotal, or otherwise, which may be placed at the disposal of officials.

(3) Methodical provision is made for the regular and continuous fulfillment of these duties and for the exercise of the corresponding rights; only persons who qualify under general rules are employed.

In the sphere of the state these three elements constitute a bureaucratic *agency*, in the sphere of the private economy they constitute a bureaucratic *enterprise*. Bureaucracy, thus understood, is fully developed in political and ecclesiastical communities only in the modern state, and in the private economy only in the most advanced institutions of capitalism. Permanent agencies, with fixed jurisdiction, are not the historical rule but rather the exception. This is even true of large political structures such as those of the ancient Orient, the Germanic and Mongolian empires of conquest, and of many feudal states. In all these cases, the ruler executes the most important measures through personal trustees, table-companions, or court-servants. Their commissions and powers are not precisely delimited and are temporarily called into being for each case.

II. The principles of *office hierarchy* and of channels of appeal (*Instanzenzug*) stipulate a clearly established system of super- and subordination in which there is a supervision of the lower offices by the higher ones. Such a system offers the governed the possibility of appealing, in a precisely regulated manner, the decision of a lower office to the corresponding superior authority. With the full development of the bureaucratic type, the office hierarchy is *monocratically* organized. The principle of hierarchical office authority is found in all bureaucratic structures: in state and ecclesiastical structures as well as in large party organizations and private enterprises. It does not matter for the character of bureaucracy whether its authority is called "private" or "public."

When the principle of jurisdictional "competency" is fully carried through, hierarchical subordination—at least in public office—does not mean that the "higher" authority is authorized simply to take over the business of the "lower." Indeed, the opposite is the rule; once an office has been set up, a new incumbent will always be appointed if a vacancy occurs.

III. The management of the modern office is based upon written documents (the "files"), which are preserved in their original or draft form, and upon a staff of subaltern officials and scribes of all sorts. The body of officials working in an agency along with the respective apparatus of material implements and the files makes up a *bureau* (in private enterprises often called the "counting house," *Kontor*).

In principle, the modern organization of the civil service separates the bureau from the private domicile of the official and, in general, segregates official activity from the sphere of private life. Public monies and equipment are divorced from the private property of the official. This condition is everywhere the product of a long development. Nowadays, it is found in public as well as in private enterprises; in the latter, the principle extends even to the entrepreneur at the top. In principle, the *Kontor* (office) is separated from the household, business from private correspondence, and business assets from private wealth. The more consistently the modern type of business management has been carried through, the more are these separations the case. The beginnings of this process are to be found as early as the Middle Ages.

It is the peculiarity of the modern entrepreneur that he conducts himself as the "first official" of his enterprise, in the very same way in which the ruler of a specifically modern bureaucratic state [Frederick II of Prussia] spoke of himself as "the first servant" of the state. The idea that the bureau activities of the state are intrinsically different in character from the management of private offices is a continental Euro-

pean notion and, by way of contrast, is totally foreign to the American way.

IV. Office management, at least all specialized office management —and such management is distinctly modern—usually presupposes thorough training in a field of specialization. This, too, holds increasingly for the modern executive and employee of a private enterprise, just as it does for the state officials.

V. When the office is fully developed, official activity demands the *full working capacity* of the official, irrespective of the fact that the length of his obligatory working hours in the bureau may be limited. In the normal case, this too is only the product of a long development, in the public as well as in the private office. Formerly the normal state of affairs was the reverse: Official business was discharged as a secondary activity.

VI. The management of the office follows *general rules*, which are more or less stable, more or less exhaustive, and which can be learned. Knowledge of these rules represents a special technical expertise which the officials possess. It involves jurisprudence, administrative or business management.

The reduction of modern office management to rules is deeply embedded in its very nature. The theory of modern public administration, for instance, assumes that the authority to order certain matters by decree—which has been legally granted to an agency—does not entitle the agency to regulate the matter by individual commands given for each case, but only to regulate the matter abstractly. This stands in extreme contrast to the regulation of all relationships through individual privileges and bestowals of favor, which, as we shall see, is absolutely dominant in patrimonialism, at least in so far as such relationships are not fixed by sacred tradition.

2. *The Position of the Official Within and Outside of Bureaucracy*

All this results in the following for the internal and external position of the official:

1. OFFICE HOLDING AS A VOCATION

That the office is a "vocation" (*Beruf*) finds expression, first, in the requirement of a prescribed course of training, which demands the entire working capacity for a long period of time, and in generally

prescribed special examinations as prerequisites of employment. Furthermore, it finds expression in that the position of the official is in the nature of a "duty" (*Pflicht*). This determines the character of his relations in the following manner: Legally and actually, office holding is not considered ownership of a source of income, to be exploited for rents or emoluments in exchange for the rendering of certain services, as was normally the case during the Middle Ages and frequently up to the threshold of recent times, nor is office holding considered a common exchange of services, as in the case of free employment contracts. Rather, entrance into an office, including one in the private economy, is considered an acceptance of a specific duty of fealty to the purpose of the office (*Amtstreue*) in return for the grant of a secure existence. It is decisive for the modern loyalty to an office that, in the pure type, it does not establish a relationship to a *person*, like the vassal's or disciple's faith under feudal or patrimonial authority, but rather is devoted to *impersonal* and *functional* purposes. These purposes, of course, frequently gain an ideological halo from cultural values, such as state, church, community, party or enterprise, which appear as surrogates for a this-worldly or other-worldly personal master and which are embodied by a given group.

The political official—at least in the fully developed modern state —is not considered the personal servant of a ruler. Likewise, the bishop, the priest and the preacher are in fact no longer, as in early Christian times, carriers of a purely personal charisma, which offers other-worldly sacred values under the personal mandate of a master, and in principle responsible only to him, to everybody who appears worthy of them and asks for them. In spite of the partial survival of the old theory, they have become officials in the service of a functional purpose, a purpose which in the present-day "church" appears at once impersonalized and ideologically sanctified.

II. THE SOCIAL POSITION OF THE OFFICIAL

A. SOCIAL ESTEEM AND STATUS CONVENTION. Whether he is in a private office or a public bureau, the modern official, too, always strives for and usually attains a distinctly elevated *social esteem* vis-à-vis the governed. His social position is protected by prescription about rank order and, for the political official, by special prohibitions of the criminal code against "insults to the office" and "contempt" of state and church authorities.

The social position of the official is normally highest where, as in old civilized countries, the following conditions prevail: a strong de-

mand for administration by trained experts; a strong and stable social differentiation, where the official predominantly comes from socially and economically privileged strata because of the social distribution of power or the costliness of the required training and of status conventions. The possession of educational certificates or patents—discussed below (sec. 13 A)—is usually linked with qualification for office; naturally, this enhances the "status element" in the social position of the official. Sometimes the status factor is explicitly acknowledged; for example, in the prescription that the acceptance of an aspirant to an office career depends upon the consent ("election") by the members of the official body. This is the case in the officer corps of the German army. Similar phenomena, which promote a guild-like closure of officialdom, are typically found in the patrimonial and, particularly, in prebendal officialdom of the past. The desire to resurrect such policies in changed forms is by no means infrequent among modern bureaucrats; it played a role, for instance, in the demands of the largely proletarianized [*zemstvo*-] officials (the *tretii element*) during the Russian revolution [of 1905].

Usually the social esteem of the officials is especially low where the demand for expert administration and the hold of status conventions are weak. This is often the case in new settlements by virtue of the great economic opportunities and the great instability of their social stratification: witness the United States.

B. APPOINTMENT VERSUS ELECTION: CONSEQUENCES FOR EXPERTISE. Typically, the bureaucratic official is appointed by a superior authority. An official elected by the governed is no longer a purely bureaucratic figure. Of course, a formal election may hide an appointment—in politics especially by party bosses. This does not depend upon legal statutes, but upon the way in which the party mechanism functions. Once firmly organized, the parties can turn a formally free election into the mere acclamation of a candidate designated by the party chief, or at least into a contest, conducted according to certain rules, for the election of one of two designated candidates.

In all circumstances, the designation of officials by means of an election modifies the rigidity of hierarchical subordination. In principle, an official who is elected has an autonomous position vis-à-vis his superiors, for he does not derive his position "from above" but "from below," or at least not from a superior authority of the official hierarchy but from powerful party men ("bosses"), who also determine his further career. The career of the elected official is not primarily dependent upon his chief in the administration. The official who is not elected, but appointed by a master, normally functions, from a technical point of view, more accurately because it is more likely that

purely functional points of consideration and qualities will determine his selection and career. As laymen, the governed can evalute the expert qualifications of a candidate for office only in terms of experience, and hence only after his service. Moreover, if political parties are involved in any sort of selection of officials by election, they quite naturally tend to give decisive weight not to technical competence but to the services a follower renders to the party boss. This holds for the designation of otherwise freely elected officials by party bosses when they determine the slate of candidates as well as for the free appointment of officials by a chief who has himself been elected. The contrast, however, is relative: substantially similar conditions hold where legitimate monarchs and their subordinates appoint officials, except that partisan influences are then less controllable.

Where the demand for administration by trained experts is considerable, and the party faithful have to take into account an intellectually developed, educated, and free "public opinion," the use of unqualified officials redounds upon the party in power at the next election. Naturally, this is more likely to happen when the officials are appointed by the chief. The demand for a trained administration now exists in the United States, but wherever, as in the large cities, immigrant votes are "corralled," there is, of course, no effective public opinion. Therefore, popular election not only of the administrative chief but also of his subordinate officials usually endangers, at least in very large administrative bodies which are difficult to supervise, the expert qualification of the officials as well as the precise functioning of the bureaucratic mechanism, besides weakening the dependence of the officials upon the hierarchy. The superior qualification and integrity of Federal judges appointed by the president, as over and against elected judges, in the United States is well known, although both types of officials are selected primarily in terms of party considerations. The great changes in American metropolitan administrations demanded by reformers have been effected essentially by elected mayors working with an apparatus of officials who were appointed by them. These reforms have thus come about in a "caesarist" fashion. Viewed technically, as an organized form of domination, the efficiency of "caesarism," which often grows out of democracy, rests in general upon the position of the "caesar" as a free trustee of the masses (of the army or of the citizenry), who is unfettered by tradition. The "caesar" is thus the unrestrained master of a body of highly qualified military officers and officials whom he selects freely and personally without regard to tradition or to any other impediments. Such "rule of the per-

sonal genius," however, stands in conflict with the formally "democratic" principle of a generally elected officialdom.

C. TENURE AND THE INVERSE RELATIONSHIP BETWEEN JUDICIAL INDEPENDENCE AND SOCIAL PRESTIGE. Normally, the position of the official is held for life, at least in public bureaucracies, and this is increasingly the case for all similar structures. As a factual rule, *tenure for life* is presupposed even where notice can be given or periodic reappointment occurs. In a private enterprise, the fact of such tenure normally differentiates the official from the worker. Such legal or actual life-tenure, however, is not viewed as a proprietary right of the official to the possession of office as was the case in many structures of authority of the past. Wherever legal guarantees against discretionary dismissal or transfer are developed, as in Germany for all judicial and increasingly also for administrative officials, they merely serve the purpose of guaranteeing a strictly impersonal discharge of specific office duties.

Within the bureaucracy, therefore, the measure of "independence" legally guaranteed in this manner by tenure is not always a source of increased status for the official whose position is thus secured. Indeed, often the reverse holds, especially in communities with an old culture and a high degree of differentiation. For the subordination under the arbitrary rule of the master also guarantees the maintenance of the conventional seigneurial style of living for the official, and it does this the better, the stricter it is. Therefore the conventional esteem for the official may rise precisely because of the absence of such legal guarantees, in the same way as, during the Middle Ages, the esteem of the *ministeriales* rose at the expense of the freeman and that of the king's judge at the expense of the folk judge. In Germany, the military officer or the administrative official can be removed from office at any time, or at least far more readily than the "independent" judge, who never pays with loss of his office for even the grossest offense against the "code of honor" or against the conventions of the *salon*. For this very reason the judge is, if other things are equal, considered less socially acceptable by "high society" than are officers and administrative officials whose greater dependence on the master is a better guarantee for the conformity of their life style with status conventions. Of course, the average official strives for a civil-service law which in addition to materially securing his old age would also provide increased guarantees against his arbitrary removal from office. This striving, however, has its limits. A very strong development of the "right to the office" naturally makes it more difficult to staff offices with an eye to technical efficiency and decreases the career opportunities of ambitious candidates. This, as well as the preference of officials to be dependent upon their equals

rather than upon the socially inferior governed strata, makes for the fact that officialdom on the whole does not "suffer" much under its dependency from the "higher-up." The present conservative movement among the Baden clergy, occasioned by the anxiety of a threatening separation of church and state, was admittedly determined by the desire not to be turned "from a master into a servant of the parish."[1]

D. RANK AS THE BASIS OF REGULAR SALARY. The official as a rule receives a *monetary* compensation in the form of a *salary,* normally fixed, and the old age security provided by a pension. The salary is not measured like a wage in terms of work done, but according to "status," that is, according to the kind of function (the "rank") and, possibly, according to the length of service. The relatively great security of the official's income, as well as the rewards of social esteem, make the office a sought-after position, especially in countries which no longer provide opportunities for colonial profits. In such countries, this situation permits relatively low salaries for officials.

E. FIXED CAREER LINES AND STATUS RIGIDITY. The official is set for a "career" within the hierarchical order of the public service. He expects to move from the lower, less important and less well paid, to the higher positions. The average official naturally desires a mechanical fixing of the conditions of promotion: if not of the offices, at least of the salary levels. He wants these conditions fixed in terms of "seniority," or possibly according to grades achieved in a system of examinations. Here and there, such grades actually form a *character indelebilis* of the official and have lifelong effects on his career. To this is joined the desire to reinforce the right to office and to increase status group closure and economic security. All of this makes for a tendency to consider the offices as "prebends" of those qualified by educational certificates. The necessity of weighing general personal and intellectual qualifications without concern for the often subaltern character of such patents of specialized education, has brought it about that the highest political offices, especially the "ministerial" positions, are as a rule filled without reference to such certificates.

3. *Monetary and Financial Presuppositions of Bureaucracy*

The development of the *money economy* is a presupposition of a modern bureaucracy insofar as the compensation of officials today takes the form of money salaries. The money economy is of very great impor-

tance for the whole bearing of bureaucracy, yet by itself it is by no means decisive for the existence of bureaucracy.

Historical examples of relatively clearly developed and quantitatively large bureaucracies are: (a) Egypt, during the period of the New Kingdom, although with strong patrimonial elements; (b) the later Roman Principate, and especially the Diocletian monarchy and the Byzantine polity which developed out of it; these, too, contained strong feudal and patrimonial admixtures; (c) the Roman Catholic Church, increasingly so since the end of the thirteenth century; (d) China, from the time of Shi Hwangti until the present, but with strong patrimonial and prebendal element; (e) in ever purer forms, the modern European states and, increasingly, all public bodies since the time of princely absolutism; (f) the large modern capitalist enterprise, proportional to its size and complexity.

To a very great extent or predominantly, cases (a) to (d) rested upon compensation of the officials in kind. They nevertheless displayed many of the traits and effects characteristic of bureaucracy. The historical model of all later bureaucracies—the New Kingdom in Egypt—is at the same time one of the most grandiose examples of an organized natural economy. This coincidence of bureaucracy and natural economy is understandable only in view of the quite unique conditions that existed in Egypt, for the reservations—they are quite considerable—which one must make in classifying these structures as bureaucracies are based precisely on the prevalence of a natural economy. A certain measure of a developed money economy is the normal precondition at least for the unchanged survival, if not for the establishment, of pure bureaucratic administrations.

According to historical experience, without a money economy the bureaucratic structure can hardly avoid undergoing substantial internal changes, or indeed transformation into another structure. The allocation of fixed income in kind from the magazines of the lord or from his current intake—which has been the rule in Egypt and China for millennia and played an important part in the later Roman monarchy as well as elsewhere—easily means a first step toward appropriation of the sources of taxation by the official and their exploitation as private property. Income in kind has protected the official against the often sharp fluctuations in the purchasing power of money. But whenever the lord's power subsides, payments in kind, which are based on taxes in kind, tend to become irregular. In this case, the official will have direct recourse to the tributaries of his bailiwick, whether or not he is authorized. The idea of protecting the official against such oscillations by mortgaging or transferring the levies and therewith the power to tax,

or by transferring the use of profitable lands of the lord to the official, is close at hand, and every central authority which is not tightly organized is tempted to take this course, either voluntarily or because the officials compel it to do so. The official may satisfy himself with the use of these resources up to the level of his salary claim and then hand over the surplus. But this solution contains strong temptations and therefore usually yields results unsatisfactory to the lord. Hence the alternative process involves fixing the official's monetary obligations. This often occurred in the early history of German officialdom, and it happened on the largest scale in all Eastern satrap administrations: the official hands over a stipulated amount and retains the surplus.

A. EXCURSUS ON TAX-FARMING

In such cases the official is economically in a position rather similar to that of the entrepreneurial tax-farmer. Indeed, office-farming, including even the leasing of office to the highest bidder, is regularly found. In the private economy, the transformation of the [Carolingian] manorial or *villicatio* structure into a system of tenancy relations is one of the most important among numerous examples. By tenancy arrangements the lord can transfer the trouble of transforming his income-in-kind into money-income to the office-farmer or to the official who must render a fixed sum. This seems to have been the case with some Oriental governors in Antiquity. And above all, the farming out of public tax collection in lieu of the lord's own management of tax-gathering served this purpose. One consequence is the possibility of the advance, so very important in the history of public finances, towards regular budgeting: A firm estimate of revenues, and correspondingly of expenditures, can take the place of the hand-to-mouth living from the immediate but unpredictable inflows which is so typical of all early stages of public finances. On the other hand, however, the control and full exploitation of the fiscal resources for the lord's own use is surrendered and perhaps, depending upon the measure of freedom left to the official or the office- or tax-farmer, the long-run yield capacity even endangered by ruthless exploitation, since a capitalist will not have the same long-run interest in preservation of the subjects' ability to pay as the political lord.

The lord seeks to safeguard himself against this loss of control by regulations. The mode of tax-farming or the transfer of taxes can thus vary widely; depending upon the distribution of power between the lord and the farmer, the latter's interest in the full exploitation of the

paying capacity of the subjects or the lord's interest in the conservation of this capacity may predominate. The nature of the tax-farming system in the Ptolemaic empire, for instance, was clearly determined by the balance of the joint or the opposing influence of these motives: the elimination of oscillations in the yields, the possibility of budgeting, the safeguarding of the subjects' capacity to pay by protecting them against uneconomical exploitation, and state control of the tax-farmer's yields for the sake of appropriating the maximum possible. As in Hellas and in Rome, the tax-farmer was still a private capitalist. The collection of the taxes, however, was bureaucratically executed and controlled by the Ptolemaic state. The farmer's profit consisted only in a share of the potential surplus over and above his fee which, in fact, constituted a minimum guarantee [to the state]; his risk consisted in the possibility of yields that were lower than this sum.

B. OFFICE PURCHASE, PREBENDAL AND FEUDAL ADMINISTRATION

The purely economic conception of the office as a private source of income for the official can also lead to the direct purchase of offices. This occurs when the lord finds himself in a position in which he requires not only a current income but money capital—for instance, for warfare or for debt payments. The purchase of office as a regular institution has existed especially in modern states—in the Papal State as well as in France and England, in the cases of sinecures as well as of more important offices (for example, officers' commissions) well into the nineteenth century. In individual cases, the economic meaning of such a purchase of office can be altered so that the purchasing sum is partly or wholly in the nature of bail deposited to assure faithful service, but this has not been the rule.

Every sort of assignment of usufructs, tributes and services claimed by the lord to the official for personal exploitation always means an abandonment of typical bureaucratic organization. The official in such positions has a property right to his office. This is the case to a still higher degree when official duty and compensation are interrelated in such a way that the official does not transfer to the lord any of the yields gained from the objects left to him, but handles these objects for his private ends and in turn renders to the lord services of a personal or a military, political, or ecclesiastical character.

We shall speak of *prebends* and of a *prebendal* organization of offices in all cases of life-long assignment to officials of rent payments deriving from material goods, or of the essentially *economic* usufruct of

land or other sources of rent, in compensation for the fulfillment of real or fictitious duties of office, for the economic support of which the goods in question have been *permanently* allocated by the lord.

The transition [from such prebendal organization of office] to salaried officialdom is quite fluid. Very often the economic endowment of priesthoods has been "prebendal," as in Antiquity and the Middle Ages, and even up to the modern period. But in almost all periods the same form has been found also in other areas. In Chinese sacerdotal law, the prebendal character of all offices forced the mourning official to resign his office, for during the ritual mourning period for the father or other household authorities abstention from the enjoyment of possessions was prescribed—and the office was considered purely a source for rent. (Originally this prescription was aimed at avoiding the ill-will of the deceased master of the house, to whom the possessions had belonged.)

When not only economic but also lordly [political] rights are bestowed [upon the official] to exercise on his own, and when this is associated with the stipulation of *personal* services to the lord to be rendered in return, a further step away from salaried bureaucracy has been taken. The nature of the prerogatives conferred can vary; for instance, in the case of a political official they may tend more toward seigneurial or more toward office authority. In both instances, but most definitely in the latter case, the specific nature of bureaucratic organization is completely destroyed and we enter into the realm of feudal organization of domination.

All assignments of services and usufructs in kind as endowments for officials tend to loosen the bureaucratic mechanism, and especially to weaken hierarchic subordination, which is most strictly developed in the discipline of modern officialdom. A precision similar to that of the contractually employed official of the modern Occident can only be attained—under very energetic leadership—where the subjection of the officials to the lord is also personally absolute, i.e., where slaves or employees treated like slaves are used for administration.

C. EXCURSUS ON THE SUPERIORITY OF STATUS INCENTIVES OVER PHYSICAL COERCION

In the natural economies of the ancient world, the Egyptian officials were slaves of the Pharaoh, if not legally, then in fact. The Roman latifundia owners preferred to commission slaves with the direct management of money matters, because of the possibility of subjecting them

to torture. In China, similar results have been sought by the prodigious use of the bamboo as a disciplinary instrument. The chances, however, for such direct means of coercion to function with *steadiness* are extremely unfavorable. According to experience, the relative optimum for the success and maintenance of a rigorous mechanization of the bureaucratic apparatus is offered by an assured salary connected with the opportunity of a career that is not dependent upon mere accident and arbitrariness. Taut discipline and control which at the same time have consideration for the official's sense of honor, and the development of prestige sentiments of the status group as well as the possibility of public criticism, also work in the same direction. With all this, the bureaucratic apparatus functions more assuredly than does legal enslavement of the functionaries. A strong status sentiment among officials not only is compatible with the official's readiness to subordinate himself to his superior without any will of his own, but—as in the case with the officer—status sentiments are the compensatory consequence of such subordination, serving to maintain the official's self-respect. The purely impersonal character of the office, with its separation of the private sphere from that of the official activities, facilitates the official's integration into the given functional conditions of the disciplined mechanism.

D. SUMMARY

Even though the full development of a money economy is thus not an indispensable precondition for bureaucratization, bureaucracy as a permanent structure is knit to the one presupposition of the availability of continuous revenues to maintain it. Where such income cannot be derived from private profits, as it is in the bureaucratic organization of modern enterprises, or from land rents, as in the manor, a stable system of *taxation* is the precondition for the permanent existence of bureaucratic administration. For well-known general reasons only a fully developed money economy offers a secure basis for such a taxation system. Hence the degree of administrative bureaucratization has in urban communities with fully developed money economies not infrequently been relatively greater than in the contemporaneous and much larger territorial states. As soon, however, as these states have been able to develop orderly systems of taxation, bureaucracy has there developed far more comprehensively than in the city states where, whenever their size remained confined to moderate limits, the tendency for a plutocratic and collegial administration by notables has corresponded most adequately to the requirements. For the basis of bureaucratization has always been

a certain development of administrative tasks, both quantitative and qualitative.

4. *The Quantitative Development of Administrative Tasks*

The first such basis of bureaucratization has been the quantitative extension of administrative tasks. In politics, the big state and the mass party are the classic field of bureaucratization.

EXCURSUS ON THE DEGREE OF BUREAUCRATIZATION IN HISTORICAL EMPIRE FORMATIONS

Our statement is not meant to imply that every historically known and genuine formation of big states has brought about a bureaucratic administration. For one, the secular survival of an existing great state or the homogeneity of a culture borne by it has not always been tied to a bureaucratic structure. Both of these linkages, however, occur to a great extent in the Chinese empire, to give an example. The numerous large African kingdoms, and similar formations, have had an ephemeral existence primarily because they have lacked an apparatus of officials. The Carolingian empire disintegrated when its administrative organization fell apart, which, however, was predominantly patrimonial rather than bureaucratic. On the other hand, the empire of the Caliphs and its predecessors on Asiatic soil have lasted for considerable periods of time, and their administrative organization was essentially patrimonial and prebendal. The same is true of the [German medieval] Holy Roman Empire, in spite of the almost complete absence of bureaucracy. All these realms have represented a cultural unity of at least approximately the same strength as is usually created by bureaucratic polities. By contrast, the ancient Roman Empire disintegrated internally in spite of increasing bureaucratization, or rather precisely during its introduction, because the mode of allocation of public burdens, which was associated with it, favored a natural economy. But it should be noted that from the point of view of their purely *political* unity and its degree of intensity, the cohesiveness of the first-named formations was essentially unstable and nominal, of the nature of a conglomerate, with a steadily diminishing capacity for political action. Their relatively great *cultural* unity flowed in part from ecclesiastic structures that were strongly unified and, in the Occidental Middle

Ages, increasingly bureaucratic in character; the cultural unity also resulted from the far-going homogeneity of their social structures, which in turn was the after-effect and transformation of their former political unity. Both are phenomena of the traditional stereotyping of culture which favors survival of unstable equilibria. Both factors proved so strong a foundation that even grandiose expansionary attempts, such as the Crusades, could be undertaken in spite of the lack of political unity; they were, one might say, performed as "private undertakings." The failure of the Crusades and their often irrational political course, however, is associated with the absence of a unified state power to back them up. And there is no doubt that the nuclei of intensive, "modern" state formation in the Middle Ages developed concomitantly with bureaucratic structures, and that in the end the bureaucratically most advanced states shattered the conglomerates which rested essentially upon unstable equilibria.

The disintegration of the ancient Roman Empire was partly conditioned by the very bureaucratization of its army and official apparatus. This bureaucratization could be realized only by putting into effect at the same time a method of distribution of public burdens which was bound to lead to an increase in the relative importance of the natural economy. Individual factors of this sort always enter the picture. Furthermore, we cannot assume a direct relationship between bureaucratization and the intensity of the state's external (expansionary) and internal (cultural) influence. Certainly a direct proportionality between the degree of bureaucratization and the state's expansionary force can only be stated as the "normal," but not as the inevitable rule. For two of the most expansive political formations, the Roman empire and the British world empire, rested upon bureaucratic foundations only to the smallest extent during their most expansive periods. The Norman state in England introduced a taut organization on the basis of the feudal hierarchy. It is true that to a large extent it received its unity and its push through the bureaucratization of the royal exchequer which, in comparison to other political structures of the feudal period, was extremely advanced. The fact that later on the English state did not participate in the Continental development towards bureaucratization, but remained an administration of notables, can be attributed—just like parallels in the republican administration of Rome—to the relative absence of a continental geography, as well as to some unique preconditions which at the present time are disappearing. The dispensability of the large standing armies, which a continental state with equally expansive tendencies requires for its land frontiers, is among these special preconditions. In Rome, bureaucratization advanced with the transition from a coastal to

a continental empire. For the rest, the strictly military character of the magistrates' powers—a characteristic of the Roman polity unknown to any other people—made up for the lack of a bureaucratic apparatus with its technical efficiency, its precision and unity of administrative functions, especially outside the city limits. The continuity of administration was safeguarded by the unique position of the Senate. In Rome, as in England, one presupposition for this dispensability of bureaucracy, which should not be forgotten, was that the state authorities increasingly "minimized" the scope of their functions at home, restricting them to what was absolutely demanded for direct "reasons of state."

In the continental states, however, power at the beginning of the modern period as a rule accumulated in the hands of those princes who most relentlessly took the course of administrative bureaucratization. It is obvious that technically the large modern state is absolutely dependent upon a bureaucratic basis. The larger the state, and the more it is a great power, the more unconditionally is this the case.

The United States still bears the character of a polity which, at least in the technical sense, is not fully bureaucratized. But the greater the zones of friction with the outside and the more urgent the needs for administrative unity at home become, the more this character is inevitably and gradually giving way formally to the bureaucratic structure. Moreover, the partly unbureaucratic form of the state structure of the United States is materially balanced by the more strictly bureaucratic structures of those formations which, in truth, dominate politically, namely, the parties under the leadership of "professionals" or experts in organization and election tactics. The increasingly bureaucratic organization of all genuine mass parties offers the most striking example of the role of sheer quantity as a leverage for the bureaucratization of a social structure; in Germany, above all the Social Democratic party, and abroad both of the American parties are prime examples.

5. *Qualitative Changes of Administrative Tasks: The Impact of Cultural, Economic and Technological Developments*

Bureaucratization is stimulated more strongly, however, by intensive and qualitative expansion of the administrative tasks than by their extensive and quantitative increase. But the direction bureaucratization takes, and the reasons that occasion it, can vary widely. In Egypt, the oldest country of bureaucratic state administration, it was the technical necessity of a

public regulation of the water economy for the whole country and from the top which created the apparatus of scribes and officials; very early it found its second realm of operation in the extraordinary, militarily organized construction activities. In most cases, as mentioned before, the bureaucratic tendency has been promoted by needs arising from the creation of standing armies, determined by power politics, and from the related development of public finances. But in the modern state, the increasing demands for administration also rest on the increasing complexity of civilization.

Great power expansions, especially overseas, have, of course, been managed by states ruled by notables (Rome, England, Venice). Yet the "intensity" of the administration, that is, the assumption of as many tasks as possible by the state apparatus for continuous management and discharge in its own establishment was only slightly developed in the great states ruled by notables, especially in Rome and England, by comparison with the bureaucratic polities; this will become evident in the appropriate context. To be sure, the *structure* of state power has influenced culture very strongly both in England and in Rome. But it has done so to a very small extent in the form of management and control by the state. This holds from justice to education. The growing demands on culture, in turn, are determined, though to a varying extent, by the growing wealth of the most influential strata in the state. To this extent increasing bureaucratization is a function of the increasing possession of consumption goods, and of an increasingly sophisticated technique of fashioning external life—a technique which corresponds to the opportunities provided by such wealth. This reacts upon the standard of living and makes for an increasing subjective indispensability of public, interlocal, and thus bureaucratic, provision for the most varied wants which previously were either unknown or were satisfied locally or by the private economy.

Among purely political factors, the increasing demand of a society accustomed to absolute pacification for order and protection ("police") in all fields exerts an especially persevering influence in the direction of bureaucratization. A direct road leads from mere modifications of the blood feud, sacerdotally or by means of arbitration, to the present position of the policeman as the "representative of God on earth." The former means still placed the guarantees for the individual's rights and security squarely upon the members of his sib who were obligated to assist him with oath and vengeance. Other factors operating in the direction of bureaucratization are the manifold tasks of social welfare policies which are either saddled upon the modern state by interest groups or which the state usurps for reasons of power or for ideological

motives. Of course, these tasks are to a large extent economically determined.

Among essentially technical factors, the specifically modern means of communication enter the picture as pacemakers of bureaucratization. In part, public roads and water-ways, railroads, the telegraph, etc., can only be administered publicly; in part, such administration is technically expedient. In this respect, the contemporary means of communication frequently play a role similar to that of the canals of Mesopotamia and the regulation of the Nile in the ancient Orient. A certain degree of development of the means of communication in turn is one of the most important prerequisites for the possibility of bureaucratic administration, though it alone is not decisive. Certainly in Egypt bureaucratic centralization could, against the backdrop of an almost purely "natural" economy, never have reached the degree of perfection which it did without the natural route of the Nile. In order to promote bureaucratic centralization in modern Persia, the telegraph officials were officially commissioned with reporting to the Shah, over the heads of the local authorities, all occurrences in the provinces; in addition, everyone received the right to remonstrate directly by telegraph. The modern Occidental state can be administered the way it actually is only because the state controls the telegraph network and has the mails and railroads at its disposal. (These means of communication, in turn, are intimately connected with the development of an inter-local traffic of mass goods, which therefore is one of the causal factors in the formation of the modern state. As we have already seen, this does not hold unconditionally for the past.)

6. *The Technical Superiority of Bureaucratic Organization over Administration by Notables*

The decisive reason for the advance of bureaucratic organization has always been its purely *technical* superiority over any other form of organization. The fully developed bureaucratic apparatus compares with other organizations exactly as does the machine with the non-mechanical modes of production. Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs—these are raised to the optimum point in the strictly bureaucratic administration, and especially in its monocratic form. As compared with all collegiate, honorific, and avocational forms of administration, trained bureaucracy is superior on all

these points. And as far as complicated tasks are concerned, paid bureaucratic work is not only more precise but, in the last analysis, it is often cheaper than even formally unremunerated honorific service.

Honorific arrangements make administrative work a subsidiary activity: an avocation and, for this reason alone, honorific service normally functions more slowly. Being less bound to schemata and more formless, it is less precise and less unified than bureaucratic administration, also because it is less dependent upon superiors. Because the establishment and exploitation of the apparatus of subordinate officials and clerical services are almost unavoidably less economical, honorific service is less continuous than bureaucratic and frequently quite expensive. This is especially the case if one thinks not only of the money costs to the public treasury—costs which bureaucratic administration, in comparison with administration by notables, usually increases—but also of the frequent economic losses of the governed caused by delays and lack of precision. Permanent administration by notables is normally feasible only where official business can be satisfactorily transacted as an avocation. With the qualitative increase of tasks the administration has to face, administration by notables reaches its limits—today even in England. Work organized by collegiate bodies, on the other hand, causes friction and delay and requires compromises between colliding interests and views. The administration, therefore, runs less precisely and is more independent of superiors; hence, it is less unified and slower. All advances of the Prussian administrative organization, for example, have been and will in the future be advances of the bureaucratic, and especially of the monocratic, principle.

Today, it is primarily the capitalist market economy which demands that the official business of public administration be discharged precisely, unambiguously, continuously, and with as much speed as possible. Normally, the very large modern capitalist enterprises are themselves unequalled models of strict bureaucratic organization. Business management throughout rests on increasing precision, steadiness, and, above all, speed of operations. This, in turn, is determined by the peculiar nature of the modern means of communication, including, among other things, the news service of the press. The extraordinary increase in the speed by which public announcements, as well as economic and political facts, are transmitted exerts a steady and sharp pressure in the direction of speeding up the tempo of administrative reaction towards various situations. The optimum of such reaction time is normally attained only by a strictly bureaucratic organization. (The fact that the bureaucratic apparatus also can, and indeed does, create

certain definite impediments for the discharge of business in a manner best adapted to the individuality of each case does not belong into the present context.)

Bureaucratization offers above all the optimum possibility for carrying through the principle of specializing administrative functions according to purely objective considerations. Individual performances are allocated to functionaries who have specialized training and who, by constant practice increase their expertise. "Objective" discharge of business primarily means a discharge of business according to *calculable rules* and "without regard for persons."

"Without regard for persons," however, is also the watchword of the market and, in general, of all pursuits of naked economic interests. Consistent bureaucratic domination means the leveling of "status honor." Hence, if the principle of the free market is not at the same time restricted, it means the universal domination of the "class situation." That this consequence of bureaucratic domination has not set in everywhere proportional to the extent of bureaucratization is due to the differences between possible principles by which polities may supply their requirements. However, the second element mentioned, calculable rules, is the most important one for modern bureaucracy. The peculiarity of modern culture, and specifically of its technical and economic basis, demands this very "calculability" of results. When fully developed, bureaucracy also stands, in a specific sense, under the principle of *sine ira ac studio*. Bureaucracy develops the more perfectly, the more it is "dehumanized," the more completely it succeeds in eliminating from official business love, hatred, and all purely personal, irrational, and emotional elements which escape calculation. This is appraised as its special virtue by capitalism.

The more complicated and specialized modern culture becomes, the more its external supporting apparatus demands the personally detached and strictly objective *expert*, in lieu of the lord of older social structures who was moved by personal sympathy and favor, by grace and gratitude. Bureaucracy offers the attitudes demanded by the external apparatus of modern culture in the most favorable combination. In particular, only bureaucracy has established the foundation for the administration of a rational law conceptually systematized on the basis of "statutes," such as the later Roman Empire first created with a high degree of technical perfection. During the Middle Ages, the reception of this [Roman] law coincided with the bureaucratization of legal administration: The advance of the rationally trained expert displaced the old trial procedure which was bound to tradition or to irrational presuppositions.

A. EXCURSUS ON KADI JUSTICE, COMMON LAW AND ROMAN LAW

The "rational" interpretation of law on the basis of strictly formal concepts can be juxtaposed to a kind of adjudication that is primarily bound to hallowed traditions. Individual cases which cannot be unambiguously decided by tradition it either settles by concrete revelation (oracle, prophetic dicta, or ordeal—that is, by charismatic justice) or—and only the following two cases interest us here—by a) informal judgments rendered in terms of concrete ethical or other practical valuations ("*Kadi*-justice," as R. Schmidt[2] has fittingly called it); or, b) formal judgments rendered, not by subsumption under rational concepts, but by drawing on "analogies" and by depending upon and interpreting concrete "precedents." This is "empirical justice."

Kadi-justice knows no rational "rules of decision" (*Urteilsgründe*) whatever, nor does empirical justice of the pure type give any reasons which in our sense could be called rational. The concrete valuational character of *Kadi*-justice can advance to a prophetic break with all tradition. Empirical justice, on the other hand, can be sublimated and rationalized into a "technique." Since non-bureaucratic forms of domination display a peculiar co-existence of strict traditionalism and of arbitrariness and lordly discretion, combinations and transitional forms between these two principles are very frequent. Even today in England, as Mendelssohn has demonstrated,[3] a broad substratum of justice is actually *Kadi*-justice to an extent that is hardly conceivable on the Continent. The justice of German juries, which excludes a statement of the reasons for their verdict, often functions in practice in the same way. In general, one has to beware of believing that "democratic" principles of justice are identical with "rational" adjudication (in the sense of formal rationality). Indeed, the contrary holds. The English and American adjudication of the highest courts is still to a great extent empirical, and specifically: an adjudication by precedents. In England, the reason for the failure of all efforts at a rational codification of law, as well as the failure to "receive" the Roman law [at the end of the Middle Ages, when this occurred elsewhere in Europe], was due to the successful resistance against such rationalization offered by the great and centrally organized lawyers' guilds, a monopolistic stratum of notables from whose midst the judges of the high courts of the realm were recruited. They retained in their hands juristic training as an apprenticeship transmitting an empirical and highly developed technology, and they successfully fought all moves toward rational law emanating especially from the ecclesiastical courts and, for a time, also from the universities, which threatened their social and material position.

The fight of the common law advocates against the Roman and

ecclesiastical law, and against the power of the church in general, was to a considerable degree economically conditioned, namely by the lawyer's interest in fees; this is distinctly evidenced by the way in which the kings intervened in this struggle. But the power position of the lawyers, who emerged victoriously from this struggle, was conditioned by political centralization. In Germany, primarily for political reasons, a socially powerful status group of notables was lacking. There was no status group which, like the English lawyers, could have been the carrier of the administration of a national law, which could have raised national law to the level of a technology based on apprenticeship, and which could have offered resistance to the intrusion of the technically superior training of the Roman-law jurists. It is not that Roman law was in its substantive provisions better adjusted to the needs of emerging capitalism; this did not decide its victory on the Continent. In fact, all legal institutions specific to modern capitalism are alien to Roman law and are medieval in origin. What was decisive was the rational form of Roman law and, above all, the technical necessity to place the trial procedure in the hands of rationally trained experts, which meant men trained in the universities in Roman law. This necessity arose from the increasing complexity of legal cases and the demands of an increasingly rationalized economy for a rational procedure of evidence rather than the ascertainment of the truth by concrete revelation or sacerdotal guarantee which everywhere was the primeval means of proof. Of course, this situation was strongly influenced by structural changes in the economy. But this factor was efficacious everywhere, including England where the royal power introduced the rational procedure of evidence primarily for the sake of the merchants. The predominant reasons for the differences in the development of substantive law in England and Germany do not rest upon this *economic* factor. As is already obvious, these differences have sprung from the autonomous development of the respective structures of *domination*: In England, centralized justice and rule by notables; in Germany, absence of political centralization in spite of bureaucratization. England, which in modern times was the first and most highly developed capitalist country, thereby retained a less rational and less bureaucratic judicature. Capitalism in England, however, could quite easily come to terms with this because the nature of the court constitution and of the trial procedure up to the modern period amounted in effect to a far-going denial of justice to the economically weak groups. This fact, in association with the high time and money expenses of the system of real estate transfers—itself a function of the economic interests of the lawyer class—exerted a profound influence upon the agrarian structure of England in favor of the accumulation and immobilization of landed wealth.

During the time of the republic, Roman law itself presented a unique mixture of rational and empirical elements, and even of elements of *Kadi*-justice. The appointment of the jury courts as such and the praetorian *actiones in factum* [*conceptae*],[4] which at first undoubtedly were formulated "from case to case," contained elements of *Kadi*-justice. The [early republican] so-called "*cautelae*-jurisprudence"[5] and all that developed from it, including even a part of the practice of *responsae* of the classical jurists [in the imperial period],[6] bore an "empirical" character. The decisive turn of legal thought toward a rational approach was first prepared by the technical nature of the trial instructions based on the *formulae* of the praetorian edict, which were geared to legal concepts. (Today, under the dominance of the principle of fact pleading, the presentation of the facts is decisive, no matter from what legal point of view they may make the complaint seem justified. The compulsion unambiguously and formally to work out the scope of concepts is now lacking; but such a compulsion was produced by the technical culture of Roman law at its very height.) Technical factors of trial procedure thus played their part in the development of rational law, factors which resulted only indirectly from the structure of the state. But the rationalization of Roman law into a closed system of concepts to be scientifically handled was brought to perfection only during the period when the polity itself underwent bureaucratization. This rational and systematic quality sets off Roman law sharply from all law produced by the Orient and by Hellenic culture.

The rabbinic responses of the *Talmud* are a typical example of empirical justice that is not rational but "rationalist," and at the same time strictly *fettered* by tradition. Pure *Kadi*-justice is represented in every prophetic dictum that follows the pattern: "It is written . . . but I say unto you." The more strongly the religious nature of the *Kadi*'s (or some similar judge's) position is emphasized, the more arbitrary—that is, the less rule-bound—will the judgment of the individual case be within that sphere where it is not fettered by sacred tradition. For a generation after the occupation of Tunisia by the French, for instance, a very tangible handicap for capitalism remained in that the ecclesiastic court (the *Chara*) decided over land holdings "at discretion," as the Europeans put it. We shall deal in another context with the sociological foundation of these older types of justice in the structure of domination.

B. BUREAUCRATIC OBJECTIVITY, RAISON D'ÉTAT AND POPULAR WILL

It is perfectly true that "matter-of-factness" and "expertness" are not necessarily identical with the rule of general and abstract norms. Indeed,

this does not even hold in the case of the modern administration of justice. The idea of a "law without gaps" is, of course, under vigorous attack. The conception of the modern judge as an automaton into which legal documents and fees are stuffed at the top in order that it may spill forth the verdict at the bottom along with the reasons, read mechanically from codified paragraphs—this conception is angrily rejected, perhaps because a certain approximation to this type would precisely be implied by a consistent bureaucratization of justice. Thus even in the field of law-finding there are areas in which the bureaucratic judge is directly held to "individualizing" procedures by the legislator.

For the field of administrative activity proper, that is, for all state activities that fall outside the field of law creation and court procedure, one has become accustomed to claims for the freedom and the paramountcy of individual circumstances. General norms are held to play primarily a negative role, as barriers to the official's positive and "creative" activity which should never be regulated. The bearing of this thesis may be disregarded here. Decisive is that this "freely" creative administration (and possibly judicature) would not constitute a realm of *free*, arbitrary action and discretion, of *personally* motivated favor and valuation, such as we shall find to be the case among pre-bureaucratic forms. The rule and the rational pursuit of "objective" purposes, as well as devotion to these, would always constitute the norm of conduct. Precisely those views which most strongly glorify the "creative" discretion of the official accept, as the ultimate and highest lodestar for his behavior in public administration, the specifically modern and strictly "objective" idea of *raison d'état*. Of course, the sure instincts of the bureaucracy for the conditions of maintaining its *own* power in the home state (and through it, in opposition to other states) are inseparably fused with this canonization of the abstract and "objective" idea of "reasons of state." Most of the time, only the power interests of the bureaucracy give a concretely exploitable content to this by no means unambiguous ideal; in dubious cases, it is always these interests which tip the balance. We cannot discuss this further here. The only decisive point for us is that in principle a system of rationally debatable "reasons" stands behind every act of bureaucratic administration, namely, either subsumption under norms, or a weighing of ends and means.

In this context, too, the attitude of all "democratic" currents, in the sense of currents that would minimize "domination," is necessarily ambiguous. "Equality before the law" and the demand for legal guarantees against arbitrariness demand a formal and rational "objectivity" of administration, as opposed to the personal discretion flowing from the

"grace" of the old patrimonial domination. If, however, an "ethos"—not to speak of other impulses—takes hold of the masses on some individual question, its postulates of *substantive* justice, oriented toward some concrete instance and person, will unavoidably collide with the formalism and the rule-bound and cool "matter-of-factness" of bureaucratic administration. Emotions must in that case reject what reason demands.

The propertyless masses especially are not served by the formal "equality before the law" and the "calculable" adjudication and administration demanded by bourgeois interests. Naturally, in their eyes justice and administration should serve to equalize their economic and social life-opportunities in the face of the propertied classes. Justice and administration can fulfill this function only if they assume a character that is informal because "ethical" with respect to substantive content (*Kadi*-justice). Not only any sort of "popular justice"—which usually does not ask for reasons and norms—but also any intensive influence on the administration by so-called "public opinion"—that is, concerted action born of irrational "sentiments" and usually staged or directed by party bosses or the press—thwarts the rational course of justice just as strongly, and under certain circumstances far more so, as the "star chamber" proceedings (*Kabinettsjustiz*) of absolute rulers used to be able to do.

7. *The Concentration of the Means of Administration*

The bureaucratic structure goes hand in hand with the concentration of the material means of management in the hands of the master. This concentration occurs, for instance, in a well-known and typical fashion in the development of big capitalist enterprises, which find their essential characteristics in this process. A corresponding process occurs in public organizations.

A. THE BUREAUCRATIZATION OF THE ARMY BY THE STATE AND BY PRIVATE CAPITALISM

The bureaucratically led army of the Pharaohs, the army of the later period of the Roman republic and of the Principate, and, above all, the army of the modern military state are characterized by the fact that their equipment and provisions are supplied from the magazines of the lord. This is in contrast to the levies of agricultural tribes, the armed

citizenry of ancient cities, the militias of early medieval cities, and all feudal armies; for these, the self-equipment and the self-provisioning of those obliged to fight was normal. War in our time is a war of machines, and this makes centralized provisioning technically necessary, just as the dominance of the machine in industry promotes the concentration of the means of production and management. In the main, however, the bureaucratic armies of the past, equipped and provisioned by the lord, came into being when social and economic development had diminished, absolutely or relatively, the stratum of citizens who were economically able to equip themselves, so that their number was no longer sufficient for putting the required armies in the field. A relative decline of these strata sufficed: relative, that is, with respect to the scope of the power claim of the polity. Only the bureaucratic army structure allows for the development of the professional standing armies which are necessary for the constant pacification of large territories as well as for warfare against distant enemies, especially enemies overseas. Further, military discipline and technical military training can normally be fully developed, at least to its modern high level, only in the bureaucratic army.

Historically, the bureaucratization of the army has everywhere occurred along with the shifting of army service from the shoulders of the propertied to those of the propertyless. Until this transfer occurs, military service is an honorific privilege of propertied men. Such a transfer was made to the native-born unpropertied, for instance, in the armies of the Roman generals of the late Republic and of the Empire, as well as in modern armies up to the nineteenth century. The burden of service has also been transferred to impecunious strangers, as in the mercenary armies of all ages. This process typically goes hand in hand with the general increase in material and intellectual culture. In addition, with increasing population density, and hence growing intensity and strain of economic work, the acquisitive strata become increasingly unavailable for purposes of war. Leaving aside periods of strong ideological fervor, the propertied strata with sophisticated and especially with urban culture as a rule are little fitted and also little inclined to do the coarse war work of the common soldier. Other circumstances being equal, the propertied strata of the countryside tend to be better qualified and more strongly inclined to become professional officers. This difference between the urban and the rural propertied is equalized only where the increasing possibility of mechanized warfare requires the leaders to qualify as "technicians."

The bureaucratization of organized warfare may be carried through in the form of private capitalist enterprises, just like any other business. Indeed, the procurement of armies and their administration by private

capitalists has been the rule in mercenary armies, especially those of the Occident up to the turn of the eighteenth century. In Brandenburg during the Thirty Years' War, the soldier was still the predominant owner of the material implements of his business. He owned his weapons, horses, and clothing, although the state, in the role, as it were, of the merchant of the putting-out system, did already purvey them. Later on, in the Prussian standing army, the chief of the company owned the material means of warfare, and only since the peace of Tilsit [in 1807] has the concentration of the means of warfare in the hands of the state definitely come about. Only with this concentration was the introduction of uniforms generally carried through. Previously, the introduction of uniforms had been left largely to the discretion of the regimental chief, with the exception of certain units upon whom the king had "bestowed" uniforms (first, in 1620, on the royal *Garde du Corps*, then repeatedly under Frederick II).

Such terms as "regiment" and "battalion" usually had quite different meanings in the eighteenth century as against today. Only the "battalion" was a tactical battle unit (as today both are), while the "regiment" was an economic management unit created by the entrepreneurial position of the colonel. Semiofficial sea-war ventures (like the Genoese *maone*) and army procurement belong to private capitalism's first giant enterprises with a largely bureaucratic character. Their "nationalization" in this respect has its modern parallel in the nationalization of the railroads, which have been controlled by the state from their beginnings.

B. THE CONCENTRATION OF RESOURCES IN OTHER SPHERES, INCLUDING THE UNIVERSITY

In this same way as with army organizations, the bureaucratization of administration in other spheres goes hand in hand with the concentration of resources. The ancient administrations through satraps and viceroys, just like those through office farmers, office buyers and, most of all, through feudal vassals, all decentralize the means of operation: Local requirements, including the cost of the army and of the lower officialdom, are as a rule paid first from the local revenues, and only the surplus reaches the central treasury. The enfeoffed official meets expenses entirely out of his own pocket. The bureaucratic state, by contrast, puts its entire administrative expense on the budget and provides the lower authorities with the current means of expenditure, the use of which the state regulates and controls. This has the same meaning for

the economy of public administration as for the large centralized capitalist enterprise.

In the field of scientific research and instruction, the bureaucratization of the inevitable research institutes of the universities is also a function of the increasing demand for material means of operation. Liebig's laboratory at Giessen University was the first example of big enterprise in this field. Through the concentration of such means in the hands of the privileged head of the institute the mass of researchers and instructors are separated from their "means of production," in the same way as the workers are separated from theirs by the capitalist enterprises.

8. *The Leveling of Social Differences*

In spite of its indubitable technical superiority, bureaucracy has everywhere been a relatively late development. A number of obstacles have contributed to this, and only under certain social and political conditions have they definitely receded into the background.

A. ADMINISTRATIVE DEMOCRATIZATION

Bureaucratic organization has usually come into power on the basis of a leveling of economic and social differences. This leveling has been at least relative, and has concerned the significance of social and economic differences for the assumption of administrative functions.

Bureaucracy inevitably accompanies modern *mass democracy*, in contrast to the democratic self-government of small homogeneous units. This results from its characteristic principle: the abstract regularity of the exercise of authority, which is a result of the demand for "equality before the law" in the personal and functional sense—hence, of the horror of "privilege," and the principled rejection of doing business "from case to case." Such regularity also follows from the social preconditions of its origin. Any non-bureaucratic administration of a large social structure rests in some way upon the fact that existing social, material, or honorific preferences and ranks are connected with administrative functions and duties. This usually means that an economic or a social exploitation of position, which every sort of administrative activity provides to its bearers, is the compensation for the assumption of administrative functions.

Bureaucratization and democratization within the administration of

the state therefore signify an increase of the cash expenditures of the public treasury, in spite of the fact that bureaucratic administration is usually more "economical" in character than other forms. Until recent times—at least from the point of view of the treasury—the cheapest way of satisfying the need for administration was to leave almost the entire local administration and lower judicature to the landlords of Eastern Prussia. The same is true of the administration by justices of the peace in England. Mass democracy which makes a clean sweep of the feudal, patrimonial, and—at least in intent—the plutocratic privileges in administration unavoidably has to put paid professional labor in place of the historically inherited "avocational" administration by notables.

2. MASS PARTIES AND THE BUREAUCRATIC CONSEQUENCES OF DEMOCRATIZATION

This applies not only to the state. For it is no accident that in their own organizations the democratic mass parties have completely broken with traditional rule by notables based upon personal relationships and personal esteem. Such personal structures still persist among many old conservative as well as old liberal parties, but democratic mass parties are bureaucratically organized under the leadership of party officials, professional party and trade union secretaries, etc. In Germany, for instance, this has happened in the Social Democratic party and in the agrarian mass-movement; in England earliest in the caucus democracy of Gladstone and Chamberlain which spread from Birmingham in the 1870's. In the United States, both parties since Jackson's administration have developed bureaucratically. In France, however, attempts to organize disciplined political parties on the basis of an election system that would compel bureaucratic organization have repeatedly failed. The resistance of local circles of notables against the otherwise unavoidable bureaucratization of the parties, which would encompass the entire country and break their influence, could not be overcome. Every advance of simple election techniques based on numbers alone as, for instance, the system of proportional representation, means a strict and inter-local bureaucratic organization of the parties and therewith an increasing domination of party bureaucracy and discipline, as well as the elimination of the local circles of notables—at least this holds for large states.

The progress of bureaucratization within the state administration itself is a phenomenon paralleling the development of democracy, as is quite obvious in France, North America, and now in England. Of course, one must always remember that the term "democratization" can

be misleading. The *demos* itself, in the sense of a shapeless mass, never "governs" larger associations, but rather is governed. What changes is only the way in which the executive leaders are selected and the measure of influence which the *demos*, or better, which social circles from its midst are able to exert upon the content and the direction of administrative activities by means of "public opinion." "Democratization," in the sense here intended, does not necessarily mean an increasingly active share of the subjects in government. This may be a result of democratization, but it is not necessarily the case.

We must expressly recall at this point that the political concept of democracy, deduced from the "equal rights" of the governed, includes these further postulates: (1) prevention of the development of a closed status group of officials in the interest of a universal accessibility of office, and (2) minimization of the authority of officialdom in the interest of expanding the sphere of influence of "public opinion" as far as practicable. Hence, wherever possible, political democracy strives to shorten the term of office through election and recall, and to be relieved from a limitation to candidates with special expert qualifications. Thereby democracy inevitably comes into conflict with the bureaucratic tendencies which have been produced by its very fight against the notables. The loose term "democratization" cannot be used here, in so far as it is understood to mean the minimization of the civil servants' power in favor of the greatest possible "direct" rule of the *demos*, which in practice means the respective party leaders of the *demos*. The decisive aspect here—indeed it is rather exclusively so—is the *leveling of the governed* in face of the governing and bureaucratically articulated group, which in its turn may occupy a quite autocratic position, both in fact and in form.

C. EXCURSUS: HISTORICAL EXAMPLES OF "PASSIVE DEMOCRATIZATION"

In Russia, the destruction of the position of the old seigneurial nobility through the regulation of the *mestnichestvo* (rank order) system and the consequent permeation of the old nobility by an office nobility [under Peter the Great] were characteristic transitional phenomena in the development of bureaucracy. In China, the estimation of rank and the qualification for office according to the number of examinations passed have similar significance, although with an—at least in theory—even more pronounced rigour. In France the Revolution and, more decisively, Bonapartism have made the bureaucracy all-powerful. In the Catholic church, first the feudal and then all independent local intermediary powers were eliminated. This was begun by Gregory VII and

continued through the Council of Trent and the Vatican Council, and it was completed by the edicts of Pius X. The transformation of these local powers into pure functionaries of the central authority was connected with the constant increase in the factual significance of the formally quite dependent *Kapläne* [auxiliary clergymen supervising lay organizations], a process which above all was based on the political party organization of Catholicism. Hence this process meant an advance of bureaucracy and at the same time of "passive" democratization, as it were, that is, the leveling of the governed. In the same way, the substitution of the bureaucratic army for the self-equipped army of notables is everywhere a process of "passive" democratization, in the sense in which this applies to every establishment of an absolute military monarchy in the place of a feudal state or of a republic of notables. The same holds, in principle, even for the development of the state in Egypt in spite of all the peculiarities involved. Under the Roman Principate the bureaucratization of the provincial administration in the field of tax collection, for instance, went hand in hand with the elimination of the plutocracy of a capitalist class, which, under the Republic, had been all-powerful; thus, ancient capitalism itself came to an end.

D. ECONOMIC AND POLITICAL MOTIVES BEHIND PASSIVE DEMOCRATIZATION

It is obvious that almost always economic conditions of some sort play their part in such "democratizing" developments. Very frequently we find at the base of the development an economically determined origin of new classes, whether plutocratic, petty-bourgeois, or proletarian in character. Such classes may call on the aid of, or they may call to life or recall to life, a political power of legitimate or of caesarist stamp in order to attain economic or social advantages through its political assistance. On the other hand, there are equally possible—and historically documented—cases in which the initiative came "from on high" and was of a purely political nature, drawing advantages from political constellations, especially in foreign affairs. Here such leadership exploited economic and social antagonisms as well as class interests merely as a means for its own purposes, throwing the antagonistic classes out of their almost always unstable equilibrium and calling their latent interest conflicts into battle. It seems hardly possible to give a general statement of this.

The extent and direction of the course along which economic influences have moved, as well as the manner in which political power relations exert influence, vary widely. In Hellenic Antiquity, the transition

to disciplined hoplite combat formations, and later in Athens the increasing importance of the navy, laid the foundation for the conquest of political power by the strata on whose shoulders the military burden rested at each given time. In Rome, however, the same development shook the rule of the office nobility only seemingly and temporarily. The modern army, finally, although it has everywhere been a means of breaking the power of the notables, has in itself in no way served as a lever of active, but rather remained an instrument of merely passive democratization. It should be noted, however, that a contributing factor in these contrasts has been the fact that the modern army rests upon bureaucratic procurement, whereas the ancient citizen army rested economically upon self-equipment.

The advance of the bureaucratic structure rests upon "technical" superiority. In consequence—as always in the area of "techniques"—we find that the advance proceeded most slowly wherever older structural forms were in their own way technically highly developed and functionally particularly well adapted to the requirements at hand. This was the case, for instance, in the administration of notables in England, and hence England was the slowest of all countries to succumb to bureaucratization or, indeed, is still only partly in the process of doing so. This is the same general phenomenon as when areas which have highly developed gas illumination works or steam railroads, with large fixed capital, offer stronger obstacles to electrification than completely new areas which are opened up for electrification.

9. *The Objective and Subjective Bases of Bureaucratic Perpetuity*

Once fully established, bureaucracy is among those social structures which are the hardest to destroy. Bureaucracy is *the* means of transforming social action into rationally organized action. Therefore, as an instrument of rationally organizing authority relations, bureaucracy was and is a power instrument of the first order for one who controls the bureaucratic apparatus. Under otherwise equal conditions, rationally organized and directed action (*Gesellschaftshandeln*) is superior to every kind of collective behavior (*Massenhandeln*) and also social action (*Gemeinschaftshandeln*) opposing it. Where administration has been completely bureaucratized, the resulting system of domination is practically indestructible.

The individual bureaucrat cannot squirm out of the apparatus into

which he has been harnessed. In contrast to the "notable" performing administrative tasks as a honorific duty or as a subsidiary occupation (avocation), the professional bureaucrat is chained to his activity in his entire economic and ideological existence. In the great majority of cases he is only a small cog in a ceaselessly moving mechanism which prescribes to him an essentially fixed route of march. The official is entrusted with specialized tasks, and normally the mechanism cannot be put into motion or arrested by him, but only from the very top. The individual bureaucrat is, above all, forged to the common interest of all the functionaries in the perpetuation of the apparatus and the persistence of its rationally organized domination.

The ruled, for their part, cannot dispense with or replace the bureaucratic apparatus once it exists, for it rests upon expert training, a functional specialization of work, and an attitude set on habitual virtuosity in the mastery of single yet methodically integrated functions. If the apparatus stops working, or if its work is interrupted by force, chaos results, which it is difficult to master by improvised replacements from among the governed. This holds for public administration as well as for private economic management. Increasingly the material fate of the masses depends upon the continuous and correct functioning of the ever more bureaucratic organizations of private capitalism, and the idea of eliminating them becomes more and more utopian.

Increasingly, all order in public and private organizations is dependent on the system of files and the discipline of officialdom, that means, its habit of painstaking obedience within its wonted sphere of action. The latter is the more decisive element, however important in practice the files are. The naive idea of Bakuninism of destroying the basis of "acquired rights" together with "domination" by destroying the public documents overlooks that the settled orientation of *man* for observing the accustomed rules and regulations will survive independently of the documents. Every reorganization of defeated or scattered army units, as well as every restoration of an administrative order destroyed by revolts, panics, or other catastrophes, is effected by an appeal to this conditioned orientation, bred both in the officials and in the subjects, of obedient adjustment to such [social and political] orders. If the appeal is successful it brings, as it were, the disturbed mechanism to "snap into gear" again.

The objective indispensability of the once-existing apparatus, in connection with its peculiarly "impersonal" character, means that the mechanism—in contrast to the feudal order based upon personal loyalty—is easily made to work for anybody who knows how to gain control over it. A rationally ordered officialdom continues to function smoothly

after the enemy has occupied the territory; he merely needs to change the top officials. It continues to operate because it is to the vital interest of everyone concerned, including above all the enemy. After Bismarck had, during the long course of his years in power, brought his ministerial colleagues into unconditional bureaucratic dependence by eliminating all independent statesmen, he saw to his surprise that upon his resignation they continued to administer their offices unconcernedly and undismayedly, as if it had not been the ingenious lord and very creator of these tools who had left, but merely some individual figure in the bureaucratic machine which had been exchanged for some other figure. In spite of all the changes of masters in France since the time of the First Empire, the power apparatus remained essentially the same.

Such an apparatus makes "revolution," in the sense of the forceful creation of entirely new formations of authority, more and more impossible—technically, because of its control over the modern means of communication (telegraph etc.), and also because of its increasingly rationalized inner structure. The place of "revolutions" is under this process taken by *coups d'état*, as again France demonstrates in the classical manner since all successful transformations there have been of this nature.

10. *The Indeterminate Economic Consequences of Bureaucratization*

It is clear that the bureaucratic organization of a social structure, and especially of a political one, can and regularly does have far-reaching economic consequences. But what sort of consequences? Of course, in any individual case it depends upon the distribution of economic and social power, and especially upon the sphere that is occupied by the emerging bureaucratic mechanism. The consequences of bureaucracy depend therefore upon the direction which the powers using the apparatus give to it. Very frequently a crypto-plutocratic distribution of power has been the result.

In England, but especially in the United States, party donors regularly stand behind the bureaucratic party organizations. They have financed these parties and have been able to influence them to a large extent. The breweries in England, and in Germany the so-called "heavy industry" and the Hansa League[1] with their election funds are well enough known in this respect. In political and especially in state formations, too, bureaucratization and social leveling with the associated

breaking up of the opposing local and feudal privileges have in modern times frequently benefitted the interests of capitalism or have been carried out in direct alliance with capitalist interests; witness the great historical alliance of the absolute princes with capitalist interests. In general, a legal leveling and destruction of firmly established local structures ruled by notables has usually benefitted the scope of capitalist activity. But, on the other hand, there is also an effect of bureaucratization that meets the petty-bourgeois interest in a safe traditional "living," or even a state-socialist effect that strangulates opportunities for private profit. This has undoubtedly been active in several cases of historically far-reaching importance, particularly during Antiquity; it is perhaps also to be expected in future developments in our world.

The very different effects of political organizations which were, at least in principle, quite similar in Egypt under the Pharaohs, in Hellenistic, and in Roman times, show the very different economic consequences of bureaucratization which are possible, depending upon the direction of other factors present. The mere fact of bureaucratic organization does not unambiguously tell us about the concrete direction of its *economic* effects, which are always in some manner present. At least it does not tell us as much as can be told about its relatively leveling *social* effect. Even in this respect one has to remember that bureaucracy as such is a precision instrument which can put itself at the disposal of quite varied interests, purely political as well as purely economic ones, or any other sort. Therefore, the measure of its parallelism with democratization must not be exaggerated, however typical it may be. Under certain conditions, strata of feudal lords have also put this instrument into their service. There is also the possibility—and often it has become a fact, as for instance in the Roman Principate and in some forms of absolutist state structures—that bureaucratization of the administration is deliberately connected with the formation of status groups, or is entangled with it by the force of the existing groupings of social power. The explicit reservation of offices for certain status groups is very frequent, and empirical reservations are even more frequent.

11. *The Power Position of the Bureaucracy*

A. THE POLITICAL IRRELEVANCE OF FUNCTIONAL INDISPENSABILITY

The democratization of society in its totality, and in the *modern* sense of the term, whether actual or perhaps merely formal, is an especially favorable basis of bureaucratization, but by no means the only

possible one. After all, bureaucracy has merely the [limited] striving to level those powers that stand in its way in those concrete areas that, in the individual case, it seeks to occupy. We must remember the fact which we have encountered several times and which we shall have to discuss repeatedly: that "democracy" as such is opposed to the "rule" of bureaucracy, in spite and perhaps because of its unavoidable yet unintended promotion of bureaucratization. Under certain conditions, democracy creates palpable breaks in the bureauratic pattern and impediments to bureaucratic organization. Hence, one must in every individual historical case analyze in which of the special directions bureaucratization has there developed.

For this reason, it must also remain an open question whether the *power* of bureaucracy is increasing in the modern states in which it is spreading. The fact that bureaucratic organization is technically the most highly developed power instrument in the hands of its controller does not determine the weight that bureaucracy as such is capable of procuring for its own opinions in a particular social structure. The ever-increasing "indispensability" of the officialdom, swollen to the millions, is no more decisive on this point than is the economic indispensability of the proletarians for the strength of the social and political power position of that class (a view which some representatives of the proletarian movement hold).[8] If "indispensability" were decisive, the equally "indispensable" slaves ought to have held this position of power in any economy where slave labor prevailed and consequently freemen, as is the rule, shunned work as degrading. Whether the power of bureaucracy as such increases cannot be decided *a priori* from such reasons. The drawing in of economic interest groups or other non-official experts, or the drawing in of lay representatives, the establishment of local, interlocal, or central parliamentary or other representative bodies, or of occupational associations—these *seem* to run directly against the bureaucratic tendency. How far this appearance is the truth must be discussed in another chapter, rather than in the framework of this purely formal and typological (*kasuistisch*) discussion. In general, only the following can be said here:

The power position of a fully developed bureaucracy is always great, under normal conditions overtowering. The political "master" always finds himself, vis-à-vis the trained official, in the position of a dilettante facing the expert. This holds whether the "master," whom the bureaucracy serves, is the "people" equipped with the weapons of legislative initiative, referendum, and the right to remove officials; or a parliament elected on a more aristocratic or more democratic basis and equipped with the right or the *de facto* power to vote a lack of confidence; or an

aristocratic collegiate body, legally or actually based on self-recruitment; or a popularly elected president or an "absolute" or "constitutional" hereditary monarch.

B. ADMINISTRATIVE SECRECY

This superiority of the professional insider every bureaucracy seeks further to increase through the means of *keeping secret* its knowledge and intentions. Bureaucratic administration always tends to exclude the public, to hide its knowledge and action from criticism as well as it can. Prussian church authorities now threaten to use disciplinary measures against pastors who make reprimands or other admonitory measures in any way accessible to third parties, charging that in doing so they become "guilty" of facilitating a possible criticism of the church authorities. The treasury officials of the Persian Shah have made a secret science of their budgetary art and even use a secret script. The official statistics of Prussia, in general, make public only what cannot do any harm to the intentions of the power-wielding bureaucracy. This tendency toward secrecy is in certain administrative fields a consequence of their objective nature: namely, wherever power interests of the given structure of domination *toward the outside* are at stake, whether this be the case of economic competitors of a private enterprise or that of potentially hostile foreign polities in the public field. If it is to be successful, the management of diplomacy can be publicly supervised only to a very limited extent. The military administration must insist on the concealment of its most important measures with the increasing significance of purely technical aspects. Political parties do not proceed differently, in spite of all the ostensible publicity of the party conventions and "Catholic Congresses" (*Katholikentage*).[9] With the increasing bureaucratization of party organizations, this secrecy will prevail even more. Foreign trade policy, in Germany for instance, brings about a concealment of production statistics. Every fighting posture of a social structure toward the outside tends in itself to have the effect of buttressing the position of the group in power.

However, the pure power interests of bureaucracy exert their effects far beyond these areas of functionally motivated secrecy. The concept of the "office secret" is the specific invention of bureaucracy, and few things it defends so fanatically as this attitude which, outside of the specific areas mentioned, cannot be justified with purely functional arguments. In facing a parliament, the bureaucracy fights, out of a sure power instinct, every one of that institution's attempts to gain through its own means (as, e.g., through the so-called "right of parlia-

mentary investigation")[10] expert knowledge from the interested parties. Bureaucracy naturally prefers a poorly informed, and hence powerless, parliament—at least insofar as this ignorance is compatible with the bureaucracy's own interests.

C. THE RULER'S DEPENDENCE ON THE BUREAUCRACY

The absolute monarch, too, is powerless in face of the superior knowledge of the bureaucratic expert—in a certain sense more so than any other political head. All the irate decrees of Frederick the Great concerning the "abolition of serfdom" were derailed in the course of their realization because the official mechanism simply ignored them as the occasional ideas of a dilettante. A constitutional king, whenever he is in agreement with a socially important part of the governed, very frequently exerts a greater influence upon the course of administration than does the absolute monarch since he can control the experts better because of the at least relatively public character of criticism, whereas the absolute monarch is dependent for information solely upon the bureaucracy. The Russian Tsar of the *ancien régime* [before the appointment of a Prime Minister in 1905] was rarely able to put across permanently anything that displeased his bureaucracy and violated its power interests. His ministries, which were subordinated directly to him as the autocrat, represented, as Leroy-Beaulieu very correctly observed, a conglomerate of satrapies which fought among each other with all the means of personal intrigue and bombarded each other with voluminous "Memoranda," in the face of which the monarch as a dilettante was quite helpless.[11]

The concentration of the power of the central bureaucracy in a single pair of hands is inevitable with every transition to constitutional government. Officialdom is placed under a monocratic head, the prime minister, through whose hands everything has to go before it gets to the monarch. This puts the latter to a large extent under the tutelage of the chief of the bureaucracy. Wilhelm II, in his well-known conflict with Bismarck, fought against this principle, but had to withdraw his attack very soon.[12] Under the rule of expert knowledge, the influence of the monarch can attain steadiness only through continuous communication with the bureaucratic chiefs which is methodically planned and directed by the central head of the bureaucracy. At the same time, constitutionalism binds the bureaucracy and the ruler into a community of interests against the power-seeking of the party chiefs in the parliamentary bodies. But *against* the bureaucracy the ruler remains powerless for this very reason, unless he finds support in parliament. The

desertion of the "Great of the Reich," here the Prussian ministers and top Reich officials, brought a monarch into approximately the same situation in November 1918 as did the parallel event under the conditions of the feudal state in 1076.[13] This, however, is an exception, for the power position of a monarch is on the whole far stronger vis-à-vis bureaucratic officials than it was in any feudal or in a "stereotyped" patrimonial state. This is because of the constant presence of aspirants for promotion with whom the monarch can easily replace inconvenient and independent officials. Other circumstances being equal, only economically independent officials, that is, officials who belong to the propertied strata, can permit themselves to risk the loss of their offices. Today as always, the recruitment of officials from among propertyless strata increases the power of the rulers. Only officials who belong to a socially influential stratum which the monarch believes to have to take into account as support of his person, like the so-called *Kanalrebellen* in Prussia, can permanently and completely paralyze the substance of his will.[14]

Only the expert knowledge of private economic interest groups in the field of "business" is superior to the expert knowledge of the bureaucracy. This is so because the exact knowledge of facts in their field is of direct significance for economic survival. Errors in official statistics do not have direct economic consequences for the responsible official, but miscalculations in a capitalist enterprise are paid for by losses, perhaps by its existence. Moreover, the "secret," as a means of power, is more safely hidden in the books of an enterprise than it is in the files of public authorities. For this reason alone authorities are held within narrow boundaries when they seek to influence economic life in the capitalist epoch, and very frequently their measures take an unforeseen and unintended course or are made illusory by the superior expert knowledge of the interested groups.

12. Excursus *on Collegiate Bodies and Interest Groups*

Since the specialized knowledge of the expert became more and more the foundation for the power of the officeholder, an early concern of the ruler was how to exploit the special knowledge of experts without having to abdicate in their favor. With the qualitative extension of administrative tasks and therewith the indispensability of expert knowledge, it typically happens that the lord no longer is satisfied by occasional consultation with proven confidants or even with an assembly of such men called together intermittently and in difficult situations.

He begins to surround himself with *collegiate* bodies which deliberate and resolve in continuous session (*Conseil d'État*, Privy Council, *Generaldirektorium*, Cabinet, *Divan*, *Tsungli Yamen*, *Wai-wu pu*, etc.). The *Räte von Haus aus* are a characteristic transitional phenomenon in this development.

The position of such collegiate bodies naturally varies according to whether they themselves become the highest administrative authority, or whether a central and monocratic authority, or several such authorities, stand at their side. In addition, a great deal depends upon their procedure. When the type is fully developed, such bodies meet—either actually or as a fiction—with the lord in the chair, and all important matters are resolved, after elucidation by the formal position papers of the responsible experts and the reasoned *vota* of other members, by a decision which the lord will sanction or reject by an edict. This kind of collegiate body thus is the typical form in which the ruler, who increasingly turns into a "dilettante," at the same time exploits expert knowledge and—what frequently remains unnoticed—seeks to fend off the threatening dominance of the experts. He keeps one expert in check by others, and by such cumbersome procedures seeks personally to gain a comprehensive picture as well as the certainty that nobody prompts him into arbitrary decisions. Often the ruler expects to assure himself a maximum of personal influence less from personally presiding over the collegiate bodies than from having written memoranda submitted to him. Frederick William I of Prussia, whose actual influence on the administration was very significant, almost never attended the collegiately organized sessions of the cabinet ministers. He rendered his decisions on written presentations by means of marginal comments or edicts which were sent to the ministers from the "cabinet," via the *Feldjäger*, after consultation with the "cabinet"-servants personally attached to the king. The Cabinet, in Russia as well as in Prussia and in other states, thus developed into a personal fortress in which the ruler sought refuge, so to speak, from expert knowledge and the impersonal and functional routinization of administration. The hatred of the bureaucratic departments turned against the Cabinet, just as did the distrust of the subjects in case of failure.

By the collegiate principle the ruler furthermore tries to fashion a sort of synthesis of *specialized experts* into a collective unit. His success in doing this cannot be ascertained in general. The phenomenon itself, however, is common to very different forms of state, from the patrimonial and feudal to the early bureaucratic, and it is especially typical for early princely absolutism. The collegiate principle has proved itself to be one of the strongest educative means for "matter-of-factness"

in administration. It also made it possible to counsel with socially influential private persons and thus to combine in some measure the authority of notables and the practical knowledge of private enterprisers with the specialized expertness of professional bureaucrats. The collegiate bodies were one of the first institutions to allow the development of the modern concept of "public authorities," in the sense of enduring structures independent of the person.

As long as an expert knowledge of administrative affairs was the exclusive product of a long *empirical* practice, and administrative norms were not regulations but elements of tradition, the council of *elders*—often with priests, "elder statesmen," and notables participating—was the adequate form for collegiate authorities, which in the beginning merely gave counsel to the ruler. But since such bodies, in contrast to the changing rulers, were perennial formations, they often usurped actual power. The Roman Senate and the Venetian Council, as well as the Athenian Areopagus until its downfall and replacement by the rule of the *demagogos*, acted in this manner. We must, of course, sharply distinguish such authorities from the corporate bodies under discussion here.

In spite of manifold transitions, collegiate bodies, as a type, emerge on the basis of the rational specialization of functions and the rule of expert knowledge. On the other hand, they must be distinguished from advisory bodies selected from among private and *interested* circles, which are frequently found in the modern state and whose nucleus is not formed of officials or of former officials. These collegiate bodies must also be distinguished sociologically from the collegiate supervisory "board of directors" (*Aufsichtsrat*) found in the bureaucratic structures of the modern private economy (joint stock corporation). This distinction must be made in spite of the fact that such corporate bodies not infrequently complete themselves by drawing in notables from among disinterested circles for the sake of their expert knowledge or in order to exploit them for representation and advertising. Normally [in Germany] such bodies do not consociate experts for their special knowledge, but rather the representatives of the paramount economic interests, especially of the banks financing the enterprise—and such men by no means hold merely advisory positions. They have at least a controlling voice, and very often they occupy an actually dominant position. Such bodies are to be compared (not without some distortion) to the assemblies of the great independent holders of feudal fiefs and offices and other socially powerful interest groups of patrimonial or feudal polities. Occasionally, however, these have been the precursors of the "councils" which emerged in consequence of an increased intensity of adminis-

tration, and even more frequently they have been precursors of corporations of such privileged status groups.

With great regularity the bureaucratic collegiate principle was transferred from the central authority to the most varied lower authorities. Within locally closed, and especially within urban units, collegiate administration is the original form of the rule of notables, as we indicated before [XI:3:D]. Originally it worked through elected, later on, usually, or at least in part, through co-opted councilors, colleges of magistrates, *decuriones* and *scabini*. Such bodies are a normal element of organized "self-government," that is, the management of administrative affairs by local interest groups under the control of the bureaucratic authorities of the state. The above-mentioned examples of the Venetian Council and even more so of the Roman Senate represent transfers of the rule of notables, normally rooted in local political associations, to great overseas empires. In the bureaucratic state, collegiate administration disappears again once progress in the means of communication and the increasing technical demands upon the administration necessitate quick and unambiguous decisions and the other motives for full bureaucratization and monocracy, which we discussed above, push themselves dominantly to the fore. Collegiate administration disappears when, from the point of view of the ruler's interests, a strictly unified administrative leadership appears to be more important than thoroughness in the preparation of administrative decisions. This is the case as soon as parliamentary institutions develop and—usually at the same time—as criticism from the outside and publicity increase.

Under these modern conditions the thoroughly rationalized system of specialized ministers and [territorial] prefects, as in France, offers significant opportunities for pushing the old forms everywhere into the background, probably supplemented by the interest groups, normally in the form of advisory bodies recruited from among the economically and socially most influential strata. This practice, which we have mentioned above, is becoming increasingly frequent and gradually may well be ordered more formally.

This latter development, which seeks to put the concrete experience of the interest groups into the service of a rational administration by trained specialized officials, will certainly be important in the future and further increase the power of bureaucracy. It is well known how Bismarck sought to make use of the plan for a "National Economic Council" as a weapon against the Reichstag, accusing the opposing majority—to whom he would have never granted the right to parliamentary investigation as practiced in England—of trying to prevent officialdom, in the interests of parliamentary power, from becoming

"too knowing." What position the organized interest groups may in this manner obtain within the administration in the future cannot be discussed in the present context.

Only with the bureaucratization of the state and of law in general can one see a definite possibility of a sharp conceptual separation of an "objective" legal order from the "subjective" rights of the individual which it guarantees, as well as that of the further distinction between "public" law, which regulates the relationships of the public agencies among each other and with the subjects, and "private" law which regulates the relationships of the governed individuals among themselves. These distinctions presuppose the conceptual separation of the "state," as an abstract bearer of sovereign prerogatives and the creator of legal norms, from all personal authority of individuals. These conceptual distinctions are necessarily remote from the nature of pre-bureaucratic, especially from patrimonial and feudal, structures of authority. They were first conceived and realized in urban communities; for as soon as their officeholders were appointed by periodic *elections*, the individual power-holder, even if he was in the highest position, was obviously no longer identical with the man who possessed authority "in his own right." Yet it was left to the complete depersonalization of administrative management by bureaucracy and the rational systematization of law to realize the separation of the public and the private sphere fully and in principle.

13. *Bureaucracy and Education*

A. EDUCATIONAL SPECIALIZATION, DEGREE HUNTING AND STATUS SEEKING

We cannot here analyze the far-reaching and general cultural effects that the advance of the rational bureaucratic structure of domination develops quite independently of the areas in which it takes hold. Naturally, bureaucracy promotes a "rationalist" way of life, but the concept of rationalism allows for widely differing contents. Quite generally, one can only say that the bureaucratization of all domination very strongly furthers the development of "rational matter-of-factness" and the personality type of the professional expert. This has far-reaching ramifications, but only one important element of the process can be briefly indicated here: its effect upon the nature of education and personal culture (*Erziehung und Bildung*).

Educational institutions on the European continent, especially the institutions of higher learning—the universities, as well as technical academies, business colleges, gymnasia, and other secondary schools—, are dominated and influenced by the need for the kind of "education" which is bred by the system of specialized examinations or tests of expertise (*Fachprüfungswesen*) increasingly indispensable for modern bureaucracies.

The "examination for expertise" in the modern sense was and is found also outside the strictly bureaucratic structures: today, for instance, in the so-called "free" professions of medicine and law, and in the guild-organized trades. Nor is it an indispensable accompaniment of bureaucratization: the French, English and American bureaucracies have for a long time done without such examinations either entirely or to a large extent, using in-service training and performance in the party organizations as a substitute.

"Democracy" takes an ambivalent attitude also towards the system of examinations for expertise, as it does towards all the phenomena of the bureaucratization which, nevertheless, it promotes. On the one hand, the system of examinations means, or at least appears to mean, selection of the qualified from all social strata in place of the rule by notables. But on the other, democracy fears that examinations and patents of education will create a privileged "caste," and for that reason opposes such a system.

Finally, the examination for expertise is found already in prebureaucratic or semibureaucratic epochs. Indeed, its earliest regular historical locus is in *prebendally* organized structures of domination. The expectation of prebends, first of church prebends—as in the Islamic Orient and in the Occidental Middle Ages—and then, as was especially the case in China, also of secular prebends, is the typical prize for which people study and are examined. These examinations, however, have only in part the character of tests for specialized "expertise."

Only the modern development of full bureaucratization brings the system of rational examinations for expertise irresistibly to the fore. The American Civil-Service Reform movement gradually imports expert training and specialized examinations into the United States; the examination system also advances into all other countries from its main (European) breeding ground, Germany. The increasing bureaucratization of administration enhances the importance of the specialized examination in England. In China, the attempt to replace the old semipatrimonial bureaucracy by a modern bureaucracy brought the expert examination; it took the place of the former and quite differently structured system of examinations. The bureaucratization of capitalism, with

its demand for expertly trained technicians, clerks, etc., carries such examinations all over the world.

This development is, above all, greatly furthered by the social prestige of the "patent of education" acquired through such specialized examinations, the more so since this prestige can again be turned to economic advantage. The role played in former days by the "proof of ancestry," as prerequisite for equality of birth, access to noble prebends and endowments and, wherever the nobility retained social power, for the qualification to state offices, is nowadays taken by the patent of education. The elaboration of the diplomas from universities, business and engineering colleges, and the universal clamor for the creation of further educational certificates in all fields serve the formation of a privileged stratum in bureaus and in offices. Such certificates support their holders' claims for connubium with the notables (in business offices, too, they raise hope for preferment with the boss's daughter), claims to be admitted into the circles that adhere to "codes of honor," claims for a "status-appropriate" salary instead of a wage according to performance, claims for assured advancement and old-age insurance, and, above all, claims to the monopolization of socially and economically advantageous positions. If we hear from all sides demands for the introduction of regulated curricula culminating in specialized examinations, the reason behind this is, of course, not a suddenly awakened "thirst for education," but rather the desire to limit the supply of candidates for these positions and to monopolize them for the holders of educational patents. For such monopolization, the "examination" is today the universal instrument—hence its irresistible advance. As the curriculum required for the acquisition of the patent of education requires considerable expenses and a long period of gestation, this striving implies a repression of talent (of the "charisma") in favor of property, for the intellectual costs of the educational patent are always low and decrease, rather than increase, with increasing volume. The old requirement of a knightly style of life, the prerequisite for capacity to hold a fief, is nowadays in Germany replaced by the necessity of participating in its surviving remnants, the duelling fraternities of the universities which grant the patents of education; in the Anglo-Saxon countries, the athletic and social clubs fulfill the same function.

On the other hand, bureaucracy strives everywhere for the creation of a "right to the office" by the establishment of regular disciplinary procedures and by the elimination of the completely arbitrary disposition of the superior over the subordinate official. The bureaucracy seeks to secure the official's position, his orderly advancement, and his provision for old age. In this, it is supported by the "democratic" sentiment

of the governed which demands that domination be minimized; those who hold this attitude believe themselves able to discern a weakening of authority itself in every weakening of the lord's arbitrary disposition over the officials. To this extent bureaucracy, both in business offices and in public service, promotes the rise of a specific status group, just as did the quite different officeholders of the past. We have already pointed out that these status characteristics are usually also exploited for, and by their nature contribute to, the technical usefulness of bureaucracy in fulfilling its specific tasks.

It is precisely against this unavoidable status character of bureaucracy that "democracy" reacts in its striving to put the election of officials for short terms in place of the appointment of officials and to substitute the recall of officials by referendum for a regulated disciplinary procedure, thus seeking to replace the arbitrary disposition of the hierarchically superordinate "master" by the equally arbitrary disposition of the governed or rather, of the party bosses dominating them.

B. EXCURSUS ON THE "CULTIVATED MAN"

Social prestige based upon the advantage of schooling and education as such is by no means specific to bureaucracy. On the contrary. But educational prestige in other structures of domination rests upon substantially different foundations with respect to content. Expressed in slogans, the "cultivated man," rather than the "specialist," was the end sought by education and the basis of social esteem in the feudal, theocratic, and patrimonial structures of domination, in the English administration by notables, in the old Chinese patrimonial bureaucracy, as well as under the rule of demagogues in the Greek states during the so-called Democracy. The term "cultivated man" is used here in a completely value-neutral sense; it is understood to mean solely that a quality of life conduct which *was held to be* "cultivated" was the goal of education, rather than a specialized training in some expertise. Such education may have been aimed at a knightly or at an ascetic type, at a literary type (as in China) or at a gymnastic-humanist type (as in Hellas), or at a conventional "gentleman" type of the Anglo-Saxon variety. A personality "cultivated" in this sense formed the educational ideal stamped by the structure of domination and the conditions of membership in the ruling stratum of the society in question. The qualification of this ruling stratum rested upon the possession of a "plus" of such *cultural quality* (in the quite variable and value-neutral sense of the term as used here), rather than upon a "plus" of expert knowledge. Military, theological and legal expertise was, of course,

intensely cultivated at the same time. But the point of gravity in the Hellenic, in the medieval, as well as in the Chinese educational curriculum was formed by elements entirely different from those which were "useful" in a technical sense.

Behind all the present discussions about the basic questions of the educational system there lurks decisively the struggle of the "specialist" type of man against the older type of the "cultivated man," a struggle conditioned by the irresistibly expanding bureaucratization of all public and private relations of authority and by the ever-increasing importance of experts and specialised knowledge. This struggle affects the most intimate aspects of personal culture.

14. *Conclusion*

During its advance, bureaucratic organization has had to overcome not only those essentially negative obstacles, several times previously mentioned, that stood in the way of the required leveling process. In addition, administrative structures based on different principles did and still do cross paths with bureaucratic organization. Some of these have already been mentioned in passing. Not all of the types existing in the real world can be discussed here—this would lead us much too far afield; we can analyze only some of the most important *structural principles* in much simplified schematic exposition. We shall proceed in the main, although not exclusively, by asking the following questions:

1. How far are these administrative structures in their developmental chances subject to economic, political or any other external determinants, or to an "autonomous" logic inherent in their technical structure? 2. What, if any, are the economic effects which these administrative structures exert? In doing this, one must keep one's eye on the fluidity and the overlapping of all these organizational principles. Their "pure" types, after all, are to be considered merely border cases which are of special and indispensable analytical value, and bracket historical reality which almost always appears in mixed forms.

The bureaucratic structure is everywhere a late product of historical development. The further back we trace our steps, the more typical is the absence of bureaucracy and of officialdom in general. Since bureaucracy has a "rational" character, with rules, means-ends calculus, and matter-of-factness predominating, its rise and expansion has everywhere had "revolutionary" results, in a special sense still to be discussed, as had the advance of *rationalism* in general. The march of bureaucracy accordingly destroyed structures of domination which were not rational

in this sense of the term. Hence we may ask: What were these structures?

NOTES

Unless otherwise indicated, all notes and emendations are by Roth and Wittich.

1. The Grand Duchy of Baden was one of the mainstays of liberalism in Imperial Germany. After 1900 liberals and Social Democrats began to cooperate. The "Great Coalition" of National Liberals, Progressives and Social Democrats was directed against the powerful Catholic Center party and conservative Protestant groups, which tried to gain control over the legislature. Since both Catholic priests and Protestant ministers were civil servants, they were opposed to anything which might alter their status.

2. Richard Schmidt, a contemporary (born 1862) and one-time colleague of Weber at Freiburg University, who extensively investigated the development of trial procedures and was interested in the problem of the "calculability" of judicial decisions. The term is used in his "Die deutsche Zivilprozessreform und ihr Verhältnis zu den ausländischen Gesetzgebungen," *Zeitschrift für Politik*, I (1908), 266; see also his *Allgemeine Staatslehre* (3 vols.; Leipzig 1901–1903).

3. Albrecht Mendelssohn-Bartholdy, *Das Imperium des Richters*, Strassburg 1908. (W)

4. Trial instruction issued by the praetor to the (lay) judge permitting a suit based not on a provision of the civil law (*ius*), but on the facts of the case as stated in the *actio*. Such cases obtained justiciable standing only by virtue of the praetor's acceptance of the *formula;* he thus played an innovatory role somewhat similar to that of the English equity courts. The stereotyped *formulae* were published in the magistrate's edict. Cf. Gerhard Dulckeit, *Römische Rechtsgeschichte* (2d. ed., Munich 1957), 144.

5. *Kautelar-Jurisprudenz.* This term is in German generally used to designate the early stage of Roman secular jurisprudence, which was exercised primarily in the drafting of contracts (*cautiones*) and in the formulation of contractual provisions (*cautelae*). Cf. ch. VIII:*iv*:3 and elsewhere in the "Sociology of Law"; Dulckeit, *op. cit.*, 146ff.

6. I.e., the law interpretations of the great jurisconsults, which were binding on the judges and in fact created a large part of the classical Roman law.

7. After the breakup of Chancellor Bülow's Liberal-Conservative coalition in 1909 (cf. Part Two, ch. II, n. 7), the *Hansabund* was established in the following year as a rallying center for all forces of industrial society—from big business to labor—against the East Elbian aristocracy, whose conservative Reichstag representatives had refused the introduction of inheritance taxes for armament purposes. Indicative of the rigidity of Imperial Germany's political alignments was the fact that labor organizations refused to join the association and the greater part of big business deserted it within a year, preferring its old alliance with the big agrarian interests. A leading figure of the association was Gustav Stresemann, later for six years foreign minister of the Weimar Republic. Cf. J. Riesser, *Der Hansabund* (Jena: Diederichs, 1912).

8. This is directed, among others, at Robert Michels, to whom Weber wrote in November 1906:

> "Indispensability in the economic process means nothing, absolutely nothing for the power position and power chances of a class. At a time when no "cit-

izen" worked, the slaves were ten times, nay a thousand times as necessary as is the proletariat today. What does that matter? The medieval peasant, the Negro of the American South, they were all absolutely "indispensable." . . . The phrase contains a dangerous illusion. . . . Political democratization is the only thing which can perhaps be achieved in the foreseeable future, and that would be no mean achievement. . . . I cannot prevent you from believing in more, but I cannot force myself to do so."

Quoted in Wolfgang Mommsen, *Max Weber und die deutsche Politik, 1890–1920* (Tübingen: Mohr, 1959), 97 and 121.

9. *Katholikentag*: An annual conference established in 1858, under the direction of a central committee, to discuss ecclesiastical, political and social welfare issues and to represent German Catholicism before the public which was then largely Protestant. Discontinued during the Nazi period, the Congress has been meeting biannually since 1950.

10. *Enquêterecht*. Weber assigned great significance to this right of parliamentary investigation, which the Reichstag was substantially lacking. Cf. below, Appendix II:*iii*.

11. See Anatole Leroy-Beaulieu, *The Empire of the Tsars and the Russians* (New York: Putnam, 1894), vol. II, pp. 69–86. Weber seems to have used the German translation by L. Pezold (3 vols., 1884–1890).

12. Weber refers here to *monarchic* constitutionalism, the form of government that Bismarck gave to Imperial Germany: the prime minister remained responsible to the king, not to parliament, and the army also remained under the king's control. In practice, this arrangement gave extraordinary power first to Bismarck, then to the Prussian and Imperial bureaucracy, both vis-à-vis the monarch and the parliament. Weber attacked this system in a sensational series of articles in the midst of the First World War; see Appendix II, "Parliament and Government in a Reconstructed Germany." A brilliant comparative analysis of monarchic constitutionalism was written by the historian who came closest to Weber's sociological (but not his political) approach: Otto Hintze, "Das monarchische Prinzip und die konstitutionelle Verfassung," *Preussische Jahrbücher*, vol. 144, 1911, 381–412; reprinted in Hintze's collected writings, ed. by Gerhard Oestreich: *Staat und Verfassung* (Göttingen: Vandenhoeck and Ruprecht, 1962), 359–89.

13. This passage is an addition to the older manuscript; however, it is not clear how many changes Weber actually made. Weber wrote the passage not only after the downfall of William II and the monarchic bureaucracy, but after he had attacked them in the *Frankfurter Zeitung* in 1917 (see Appendix II). Hence, whereas Weber draws in "Parliament and Government in a Reconstructed Germany" on the earlier part of the chapter, he also seems to draw on that essay in the present section.

In referring to 1076, Weber compares the downfall of William II with the desertion of Henry IV by most of his great nobles in the face of the emperor's spectacular excommunication by Gregory VII; Henry's dramatic submission at Canossa helped him to recoup his political fortunes and began Gregory's decline. The incident was one of the high points in the conflict between papacy and empire, which determined much of the course of European history with all its eventual consequences for rationalism, capitalism and democracy. (See Weber's analysis of caesaropapism and hierocracy in ch. XV). Weber's comparison can also be seen in the context of Bismarck's famous dictum at the height of his conflict with the Catholic church that "we will not go to Canossa" (1872). A few years later, Bismarck did go, and in 1919 Weber went with the German peace delegation to another Canossa: Versailles.

14. When in 1899 the German Reichstag discussed a bill for the construction of the Mittelland Kanal the conservative Junker party fought the project. Among the conservative members of the parliamentary party were a number of Junker officials who stood up to the Kaiser when he ordered them to vote for the bill. The disobedient officials were dubbed *Kanalrebellen* and temporarily suspended from office. Cf. Chancellor Bülow's *Denkwürdigkeiten* (Berlin 1930), vol. I, pp. 293ff.; H. Horn, "Der Kampf um die Mittelland-Kanal Vorlage aus dem Jahre 1899," in K. E. Born (ed.), *Moderne deutsche Wirtschaftsgeschichte* (Cologne 1966). (G/M)

CHAPTER XII

PATRIARCHALISM AND PATRIMONIALISM[1]

1. *The Nature and Origin of Patriarchal Domination*

Among the prebureaucratic types of domination the most important one by far is patriarchal domination. Essentially it is based not on the official's commitment to an impersonal purpose and not on obedience to abstract norms, but on a strictly personal loyalty. The roots of patriarchal domination grow out of the master's authority over his household. Such personal authority has in common with *impersonally* oriented bureaucratic domination stability and an "everyday character." Moreover, both ultimately find their inner support in the subjects' compliance with norms. But under bureaucratic domination these norms are established rationally, appeal to the sense of abstract legality, and presuppose technical training; under patriarchal domination the norms derive from tradition: the belief in the inviolability of that which has existed from time out of mind.

The meaning of the norms is fundamentally different under the two forms of domination. Under bureaucratic domination the enacted norm establishes that the person in power has legitimate authority to issue a specific ruling. Under patriarchal domination the legitimacy of the master's orders is guaranteed by personal subjection, and only the fact and the limits of his power of control are derived from "norms," yet these norms are not enacted but sanctified by tradition. The fact that this concrete master is indeed their ruler is always uppermost in the minds of his subjects. The master wields his power without restraint, at his own discretion and, above all, unencumbered by rules,

insofar as it is not limited by tradition or by competing powers. By contrast, the order of a bureaucratic official goes in principle only as far as his special "competence" permits, and this in turn is established by a rule. The objective basis of bureaucratic power is its technical indispensability founded on specialized professional knowledge. In the case of domestic authority the belief in authority is based on personal relations that are perceived as natural. This belief is rooted in filial piety, in the close and permanent living together of all dependents of the household which results in an external and spiritual "community of fate." The woman is dependent because of the normal superiority of the physical and intellectual energies of the male, and the child because of his objective helplessness, the grown-up because of habituation, the persistent influence of education and the effect of firmly rooted memories from childhood and adolescence, and the servant because from childhood on the facts of life have taught him that he lacks protection outside the master's power sphere and that he must submit to him to gain that protection. Paternal power and filial piety are not primarily based on an actual blood relationship, no matter how normal this relationship may be for them. Rather, primitive patriarchalism continues to view household authority as the power of disposition over property even after the (by no means primitive) recognition that procreation and birth are connected. The children of all women subject to the authority of a master are considered "his" children if he so wishes, just as the offspring of his animals are his property. This holds whether the woman is a wife or a slave, and regardless of the facts of paternity. The purchase and selling of children is still a common phenomenon in developed cultures, in addition to the renting (into the *mancipium*) and mortgaging of children and of women. Indeed, such transactions are the original form of adjusting manpower and labor demand among different households. As late as in Babylonian times freemen entered into a "work contract" by selling themselves into slavery for a limited time. However, the purchase of children also serves other, especially religious purposes, such as securing the continuity of sacrifices offered to the dead; it is a precursor of "adoption."

The household became more differentiated as soon as slavery developed into a regular institution and the blood relationship became more factual: now the children as free subjects (*liberi*) were distinguished from the slaves. Of course, this distinction did not significantly limit the master's discretion, for he alone chose his children. Under Roman law even in historical times the master could designate by testament a slave as his heir (*liber et heres esto*) and sell his own child

into slavery. But apart from this possibility the slave differed from the master's child because he could not become head of a household. Most of the time, however, this power of disposition was denied to the master or at least curtailed. Moreover, wherever sacred and politically inspired limitations were imposed—the latter at first for military reasons—they primarily or exclusively concerned the children; however, it took a long time before these limitations were firmly established.

Everywhere the objective basis of solidarity is the permanent sharing of lodging, food, drink and everyday utensils—in pre-Mohammedan Arabia as well as according to the terminology of some Hellenic laws of historic times, and generally according to most persistently patriarchal systems of law. It depended upon very different arrangements and was determined by diverse economic, political and religious conditions whether household authority was vested in a woman, or in the eldest son or in the economically most competent one (a possibility in the Russian extended family). In the same way it depended upon diverse factors whether patriarchal power was limited through heteronomous enactment, and if so in what fashion, or whether there were no limitations in principle, as in Rome and China. If there were such heteronomous barriers, they could have the sanction of criminal and civil law, as is nowadays the rule, or merely of sacred law, as in Rome, or merely the sanction of custom, as was originally the case in all places. The arbitrary violation of custom evoked the subjects' dissatisfaction and disapprobation. This too was an effective protection, for everything within this structure of domination is ultimately determined by the power of tradition, that is, the belief in the inviolability of what has always been (*des "ewig Gestrigen"*). The Talmudic maxim, "Man should never change a custom" derives its practical significance not only from the inherent power of custom which is rooted in fixed attitudes, but originally also from the fear of undefined magical evils which might befall an innovator or an approving group who violate the interests of the spirits. As the idea of god develops, this belief is replaced by one which holds that the gods have posited the traditional as norm, to be protected as something sacred.

The two basic elements of patriarchal authority then are piety toward tradition and toward the master. The power of the former also constrained the master and hence benefited the subjects who had no formal rights; for example, the slaves were more protected under the tradition-bound Oriental patriarchalism than they were on the Carthaginian-Roman plantations where they were the object of an unhampered rational exploitation.

2. *Domination by Honoratiores and Pure Patriarchalism*

Patriarchal domination is not the only authority that relies on the sanctity of tradition. Another, the *domination by honoratiores,* is an important form of normally traditional authority; we have dealt with it occasionally and we will deal with it again. It exists wherever social honor ("prestige") within a group has become the basis of domination —and by no means does this happen in every case of social honor. Domination by *honoratiores* differs from patriarchal domination because it lacks the specific personal loyalty—filial and servants' piety—that is motivated by membership in a household or a manorial, "servile" (*leibherrlich*) or patrimonial group. The specific authority of the notable—especially of one distinguished among his neighbors through property, education or style of life—derives from "honor." This typological distinction should be made even though the boundaries are not rigid. In itself the authority of *honoratiores* differs greatly in basis, quality and impact. We will pursue this at more suitable occasions [sec. 16 and 17 below]. At present we are concerned with patriarchal domination as the formally most consistent authority structure that is sanctified by tradition.

In its pure form patriarchal domination has no legal limits. It is transferred without qualification to the new master at the time of the old master's death or downfall. The new master also acquires the sexual disposition of his predecessor's women—possibly of his own father's. Simultaneous holders of patriarchal power have at times existed, but this is naturally rare. Sometimes patriarchal power has been split; for example, the independent authority of a matron may be found next to the normally superordinated authority—a condition that has always been connected with the oldest typical division of labor, the division between the sexes. The female chiefs among the *sachems* of American Indians, and occasional subchiefs, such as the *lukokesha* in the realm of *Mwata Yamvo,* who wielded independent authority in their own area, usually owed their existence to woman's function as the oldest agent of the basic economy, that is, the continuous provision of food through land cultivation and food processing; or they owe it to the complete separation from the household of all men capable of bearing arms, a separation which occurs in certain kinds of military organization.

When we dealt previously with the household we observed the following: Its original sexual and economic communism was increasingly curtailed; its internal closure increased steadily, the rational "enterprise" emerged from the capitalist market-oriented household, the principle of accounting and of fixed shares gained more and more im-

portance, and women, children and slaves acquired personal and financial rights of their own. By definition these developments amounted to as many limitations of unrestrained patriarchal power. As the polar opposite of the capitalist enterprise we found the communal form of household differentiation: the *oikos*. Our present purpose is to examine that form of domination which developed on the basis of the oikos and therefore of differentiated patriarchal power: ***patrimonial domination.***

3. *Patrimonial Domination*

At first it is only a decentralization of the household when the lord settles dependents (including young men regarded as family members) on plots within his extended land-holdings, with a house and family of their own, and provides them with animals (therefore: ***peculium***) and equipment. But this simple development of an *oikos* leads inevitably to an attenuation of full patriarchal power. Since there are originally no consociations in the form of binding contracts between masters and dependents—in all civilized countries it is even today legally impossible to contractually modify the legal content of paternal authority—, the psychological and formal relations between master and subject are here too regulated merely in accordance with the master's interest and the distribution of power.

The dependency relationship itself continues to be based on loyalty and fidelity. However, such a relationship, even if it constitutes at first a purely one-sided domination, always evolves the subjects' claim to reciprocity, and this claim "naturally" acquires social recognition as custom. Whereas the physical whip assures the exertion of the slaves lodged in barracks and the wage whip and threat of joblessness guarantees the effort of the "free" worker, whereas the marketable slave must be readily replaceable in order to be profitable and the replacement of the "free" worker costs nothing as long as there are others willing to work, the master who decentralizes his household is largely dependent upon his subjects' compliance and always upon their capacity to deliver rent in kind. Hence, the master too "owes" something to the subject, not legally but according to custom and in his own self-interest: first of all external protection and help in case of need, then "humane" treatment and particularly a "customary" limitation of economic exploitation. Under a form of domination which is not directed toward monetary acquisition but toward the satisfaction of the master's wants out of his own resources, exploitation may be reduced without violating

his interests; this is possible because his demand is only quantitatively different from that of his subjects, given the absence of a qualitative expansion of needs which is in principle limitless. Indeed, such a restraint is positively advantageous to the master, because not only his security but also his maintenance is strongly dependent upon the basic attitudes and the morale of his subjects.

Custom prescribes that the subject support the master with all available means. In extraordinary cases this obligation is economically unlimited, for example in the case of freeing the master from debt, providing a dowry for his daughters or ransoming him from captivity. Personally unlimited is the subject's obligation to render service in a feud or in war. He serves as page, coachman, carrier of arms, camp-follower—as in the knightly armies of the Middle Ages—or as private fully equipped warrior of his master. The last kind of service was apparently also rendered by the Roman clients who held a *precarium*, which was revokable at any time and in its function probably similar to a service fief. It was rendered by the *coloni* as early as the Civil Wars, and of course by the retainers of manorial lords and of cloisters in the Middle Ages. In the same fashion the armies of the Pharaoh and the Oriental kings and great landlords were to a significant extent recruited patrimonially from their *coloni* and equipped and maintained by the master's household. Occasionally, especially in the navy, we find levies of slaves; in the ancient Orient they carried the lord's tag of ownership. For the rest, the retainer renders compulsory labor (*Fronden*) and services, honorary gifts, regularly and irregularly levied taxes, formally according to the master's need and discretion, in fact according to established custom. The master remains, of course, free to expropriate him at will, and custom too takes it originally for granted that the master can freely dispose of persons and possessions left behind at the retainer's death. Patrimonial domination is thus a special case of patriarchal domination—domestic authority decentralized through assignment of land and sometimes of equipment to sons of the house or other dependents.

Mere habituation is the first factor that stereotypes the patrimonial relationship and in fact limits the master's discretion. From there the sanctifying power of tradition evolves. Everywhere the purely factual resistance against everything unwonted is powerful; in addition, the master is restrained from introducing innovations by the possible disapproval of his environment and by his own fear of religious powers which everywhere protect tradition and dependency relationships. Furthermore, the master is considerably influenced by the well-founded apprehension that his own, especially his economic, interests would be

badly hurt by any shock to traditional loyalty produced by groundless and "unjust" interference with the traditional distribution of duties and rights. Here, too, the master's omnipotence toward the individual dependent is paralleled by his powerlessness in face of the group. Thus arose almost everywhere a legally unstable, but in fact very stable order which diminished the area of the master's discretion in favor of traditional prescription. The master may want to formalize this traditional order as a manorial and service *reglement* in the manner of the modern factory regulations, with the difference that the latter are rational constructs for rational purposes, whereas the former derives its obligatory power from its very recourse to tradition rather than to future purpose. It is obvious that the regulations decreed by the master do not commit him legally. But if he is very much dependent upon the good will of those from whom he derives revenues, either because of the extensive size of his property that is assigned to dependents or because of its fragmented location or because of continuous political and military preoccupations, a law of sodalities may emerge and tie the master in fact very strongly to his own decrees. For every such order turns a mere interest group into a privileged group (*Rechtsgenossen*)—whether or not in the strictly legal sense—, increases the members' knowledge of the common nature of their interests and thus the inclination and ability to look after them; eventually the subjects confront the master, at first only occasionally, then regularly, as a closed unit. This was just as much the consequence of the *leges*—ordinances, not laws—which were issued for the Imperial domains, especially in Hadrian's times, as of the medieval manorial ordinances (*Hofrechte*). If there is a consistent development, the customal of the manorial court, in which the manorial dependents participate, becomes the source of authoritative interpretation of the legal order. From here dates a kind of "constitution"—only that a modern constitution exists for the sake of continuous legislation and of the power distribution between bureaucracy [and legislative bodies] in connection with the rational regulation of social relations, whereas the customals serve the interpretation of tradition. Not only this development, which rarely reached its logical conclusion, but already the earlier stages of the process in which tradition stereotyped patrimonial relations resulted in a considerable disintegration of pure patriarchalism. A strongly tradition-bound structure of domination arises, the *manor* (*seigneurie*), joining lord and manorial dependent with ties that cannot be dissolved unilaterally. At this point we cannot pursue the vicissitudes of this institution, which has fundamental importance and which is found all over the world.

4. *The Patrimonial State*

Patrimonial conditions have had an extraordinary impact as the basis of *political* structures. As we shall see, Egypt almost appears as a single tremendous *oikos* ruled patrimonially by the pharaoh. The Egyptian administration always retained characteristics of the *oikos* economy, and the Romans treated the country essentially like a huge Imperial domain. The Inca state and in particular the Jesuit state in Paraguay were based on forced labor (*fronhofartige Gebilde*). It is true that the political realm of a prince comprises not only his manors but also political dependencies; however, the actual political power of the Oriental sultans, the medieval princes and the Far Eastern rulers centered in these great patrimonial domains. In these latter cases the political realm as a whole is approximately identical with a huge princely manor.

A vivid picture of the administration of these domains is provided by the *reglements* of the Carolingian period and also by the extant ordinances of the Roman Imperial domains. On a vast scale the Near Eastern and Hellenistic states contained areas the inhabitants of which were manorial and personal dependents of the monarch and which were administered in manorial fashion from his household.

We shall speak of a *patrimonial state* when the prince organizes his political power over extrapatrimonial areas and political subjects—which is not discretionary and not enforced by physical coercion—just like the exercise of his patriarchal power. The majority of all great continental empires had a fairly strong patrimonial character until and even after the beginning of modern times.

Originally patrimonial administration was adapted to the satisfaction of purely personal, primarily private household needs of the master. The establishment of a "political" domination, that is, of *one* master's domination over *other masters* who are not subject to his patriarchal power implies an affiliation of authority relations which differ only in degree and content, not in structure. The substance of the political power depends upon the most diverse conditions. The two powers which we consider specifically political: military and judicial authority, are exercised without any restraint by the master as components of his patrimonial power. By contrast, the judicial "power" of the chief over those who are not members of his household has conferred only the position of an arbitrator in all periods of peasant communities. The lack of autocratic authority which can employ physical force constitutes the most distinct difference between "merely" political domination and domestic authority. But as his power increases, the holder of judiciary

authority tends to consolidate his position through the usurpation of contempt powers (*Banngewalten*), until it is practically identical with the basically unlimited judicial power of the patriarch. A special military authority over those who are not household dependents or—in the case of clan feuds—clan members is known in early history only in the form of occasional consociations for staging or repelling a raid, and then normally in the form of subordination under a leader who arises or is elected *ad hoc*; we will deal later with the structure of his authority. However, if the military authority of a political patrimonial ruler persists it turns into a levying power toward his political subjects which differs only in degree from the patrimonial subjects' duty to render military service.

In the patrimonial state the most fundamental obligation of the subjects is the material maintenance of the ruler, just as is the case in a patrimonial household; again the difference is only one of degree. At first, this provisioning takes the form of honorary gifts and of support in special cases, in accordance with the spirit of intermittent political action. However, with the increasing continuity and rationalization of political authority these obligations become more and more comprehensive and ever more similar to patrimonial ones, so that in the Middle Ages it is often very difficult to tell apart obligations originating in political and patrimonial power. In all ancient, Asian and medieval large-scale states which were dependent upon a natural economy the ruler is typically maintained in such a manner that the demands for food, clothing, armor and other wants are apportioned in kind among the various parts of his realm; the court is provisioned by the subjects wherever it resides at any given time. A communal economy (*Gemeinwirtschaft*) which relies on payment and delivery in kind is the primary form of satisfying the needs of patrimonial political structures. However, there were economic variations: the Persian royal household was a heavy burden for the city in which the king resided, but the Hellenistic royal household which was based on money economy was a source of income for the city. With the development of trade and of money economy the patrimonial ruler may satisfy his economic needs no longer through his *oikos* but through profit-oriented monopolism. This happened on a vast scale in Egypt, where even the pharaoh of the early period of natural economy carried on trade for his own account; in the Ptolemaic period and even more so under Roman rule a great many diverse monopolies and countless taxes replaced the old liturgical methods. Fc in the course of financial rationalization patrimonialism moves imperceptibly toward a rational bureaucratic administration, which resorts to systematic taxation. Whereas the old mark of "liberty"

is the voluntary material support of the ruler and the absence of any patrimonial obligation to surrender fixed tributes, a very powerful lord will tend to force even the "free" subjects to meet the costs of his feuds and of his appropriate upkeep through means of liturgy or taxation. The only difference between the two categories of subjects consists then regularly in the more narrow definition of these tributes and in certain legal guarantees for the "free," that means, the merely political subject.

5. *Power Resources: Patrimonial and Non-Patrimonial Armies*

The tributes which the prince can extract from political subjects depend upon his power over them and thus upon his prestige and the effectiveness of his apparatus; however, the tributes remain largely circumscribed by tradition. The prince may dare to demand unwonted and new tributes only under favorable conditions---especially when he is supported by troops who are at his disposal independently of the subjects' good will.

These troops may consist, 1) of patrimonial slaves, retainers living on allowances, or *coloni*. Pharaohs and Mesopotamian kings, as well as powerful private lords in Antiquity (for example, the Roman nobility) and in the Middle Ages (the *seniores*), employed their *coloni* as personal troops; in the Orient serfs branded with the lord's property mark were also used. However, at least the agrarian *coloni* were ill-suited as a continuously available force, since they had to maintain themselves and the lord and hence were normally indispensable; furthermore, excessive demands—transcending tradition—could shake their loyalty, which had a merely traditional basis. Therefore, the patrimonial prince regularly sought to base his power over political subjects on troops specifically raised for this purpose, whose interests were completely solidary with his own.

This military force may be made up, 2) of *slaves* who are completely separated from agricultural production. Indeed, after the final dissolution in 833 of the Arabian, tribally organized theocratic levy, whose "booty-happy" religious zeal had been the bearer of the great conquests, the Caliphate and most Oriental products of its disintegration relied for centuries on armies of purchased slaves. The Abbasids bought and militarily trained Turkish slaves who, as tribal aliens, appeared wholly tied to the ruler's domination; thus the dynasty became independent of the national levy and its loose peacetime discipline and created a

disciplined army. It is uncertain when the purchased Negro slave troops of the great families in the Hejaz came into being, especially those of the various families fighting one another for control over Mecca. However, it seems certain that in Mecca these Negro soldiers, in contrast to mercenaries as well as military freedmen, really served their intended purpose as the private armies of their master and his family; those other military groups occasionally played the role of the praetorian guard, changed their master and opted among various pretenders. The number of Negro troops depended upon the competing families' incomes, which in turn depended directly upon the size of their landed property and indirectly upon their share in the exploitation of the pilgrims, a source of revenue which was monopolized by and apportioned among the families residing in Mecca. The use of Turkish slaves by the Abbasids and of purchased slave soldiers in Egypt, the Mamelukes, turned out very differently. Their officers succeeded in gaining control over the nominal rulers; even though the troops, especially in Egypt, officially remained slave troops and were replenished hereditarily and through purchase, they were in fact and eventually in law beneficeholders; they finally received the whole land in lieu of their pay, first as mortgagees and then as owners; their *emirs* controlled the whole administration until the Mamelukes were annihilated in Muhammed Ali's blood bath [in 1811]. The slave army presupposed considerable liquid capital on the part of the ruler for the initial purchase; furthermore, its good will was dependent on pay and therefore upon the ruler's money revenues. However, the feudalization of the economy was facilitated when the Seljuk troops and the Mamelukes were assigned the tax yield of land and subjects; eventually land was transferred to them as service holdings, and they became landowners. The extraordinary legal insecurity of the taxpaying population vis-à-vis the arbitrariness of the troops to whom their tax capacity was mortgaged could paralyze commerce and hence the money economy; indeed, since the period of the Seljuks [ca. 1050–1150] the Oriental market economy declined or stagnated.

3) The Ottoman rulers, who until the 14th century were supported in essence only by the Anatolian levies, resorted for the first time in 1330 to the famous *conscription of boys* (*devshirme*), since the discipline of the levies and also of the rulers' Turkmenian mercenaries was insufficient for the great European conquests; from conquered peoples who were tribal or religious aliens (Bulgarians, Bedouins, Albanians, Greeks) boys were recruited for the newly formed professional army of Janissaries (*yenicheri* means "new troops"). Boys aged ten to fifteen were conscripted every five years; at first 1,000 were recruited, later in-

creasingly more; finally their establishment numbered 135,000. The boys were drilled for about five years, received religious instruction (without directly being forced to embrace the Islamic religion), and were then incorporated into the army. According to the original regulation, they were supposed to remain celibate, to live an ascetic life in barracks under the patronate of the *bektashi* order, the founder of which was their patron saint, and to refrain from commercial activities; they were subject only to the jurisdiction of their own officers and had other significant privileges, officers were promoted according to seniority, there was an old-age pension and a daily allowance during a campaign, for which they were obliged to furnish their own weapons. During peacetime they were dependent upon certain jointly administered revenues. The extensive privileges made the positions desirable, and Turks, too, attempted to have their children accepted. The Janissaries, on the other hand, attempted to monopolize the positions for their own families. As a result, admission was first limited to relatives and then to children of Janissaries, and the *devshirme* was practically stopped at the end of the 17th century; the last conscription order, which was not executed, was issued in 1703. The Janissaries were the most important force for the great European expansion from the conquest of Constantinople to the siege of Vienna, but they were a corps so prone to reckless violence and often so dangerous to the sultan himself that in 1825 a Moslem army was conscripted, based on a *fetwa* of the *Sheikh-ül-Islam* according to which the faithful were to undergo military training, and the revolting Janissaries were annihilated in a tremendous blood bath [in 1826].

4) The use of *mercenaries*. The use of such troops was not necessarily dependent upon monetary compensation. In early Antiquity we find mercenaries who are primarily paid in kind. But the real incentive was always that part of the pay rendered in precious metals. The prince therefore had to have monetary revenues for the mercenaries, just as he had to have a treasure for the slave armies in order to afford their acquisition. He raised revenues either by trading or by producing for the market, or by levying monetary tributes upon the subjects, supported as he was by the mercenaries whom he paid with these tributes. In both cases, but especially in the latter, a money economy had to exist. In fact, in the Oriental states, and since the beginning of modern times also in the Occident, we observe a characteristic phenomenon: the opportunities for the military monarchy of a despot backed by mercenaries increase significantly with the advance of money economy. In the Orient the military monarchy has since remained the typical national form of domination, and in the Occident the *signori* of the Italian cities, just as formerly the ancient tyrants and largely also the "legitimate" monarchs

based their power upon mercenary troops. Naturally, the hired soldiers were most closely tied through solidary interests to the prince's domination whenever they were completely alien (*stammfremd*) to the subjects and thus could neither seek nor find close ties with them. Indeed, the patrimonial rulers quite regularly preferred to recruit aliens for their bodyguards, from the Cretans and Philistines of David to the Swiss guards of the Bourbons. Almost every radical "despotism" had such a base.

5) The patrimonial ruler may also rely on persons who have been *granted landlots*, just like manorial peasants, but instead of economic services they need render only military ones, and for the rest they enjoy privileges of an economic or other kind. The monarch's troops in the ancient Orient were partly recruited in this fashion, especially the so-called "warrior caste" of Egypt, the Mesopotamian fief-warriors, the Hellenistic cleruchs and more recently the Cossacks. This means of creating a personal military force was, of course, also used by other patrimonial rulers who were not princes, as we will see when we will deal with the "plebeian" variants of feudalism [ch. XIII:1]. These troops too, were particularly reliable if they came from alien tribes and thus were completely tied to the ruler's domination. Therefore land was often granted especially to persons alien to the country. However, different tribal membership is by no means an indispensable prerequisite.

For 6) the solidarity of interests that developed between the ruler and his professional warriors—his "soldiers" [literally, "hired men"] was at any rate sufficiently strong without tribal heterogeneity, and could be significantly increased through the mode of selecting the troops—as in the case of Janissaries—or through a privileged legal position vis-à-vis the subjects. Wherever the patrimonial ruler did not recruit his army from tribal aliens or pariah castes but from subjects—and hence through *conscription*—he adhered to fairly generally determined social criteria. Nearly always the strata which hold the social and economic power in their hands were exempted from recruitment for the "standing army" or they were given the welcome opportunity of buying themselves off. To this extent the patrimonial ruler regularly based his military power upon the propertyless or at least nonprivileged masses, and especially the rural masses. Thus he disarmed his potential competitors for domination. By contrast, any army of *honoratiores*, whether it be the citizens army of an urban commonwealth or the army of a tribal association of freemen, regularly turns the duty and the honor of carrying arms into a privilege of a dominant stratum. The selection from the ranks of the negatively privileged, especially from the economically underprivileged, strata was facilitated by an economic circumstance and a related military-technical development: On the one hand, economic indispensability became more

prominent with the increasing intensity and rationalization of economic acquisition and on the other military activities became a permanent "profession" with the growing importance of military training. Under certain economic and social preconditions both phenomena could promote the development of a status group of *honoratiores* who were trained warriors. The feudal army of the Middle Ages just as the Spartan army of *hoplites* are examples. Both armies were founded on the economic indispensability of the peasants and a military technology which suited the military training of a dominant stratum. But the army of the patrimonial prince is based upon the fact that the propertied strata, too, were or became economically indispensable, as for example the trading and craft bourgeoisie of ancient and medieval cities; this fact, together with military technology and the political needs of the ruler for a standing army, required the conscription of "soldiers" for permanent service, not just for occasional campaigns. Hence the development of patrimonialism and of the military monarchy is not only a consequence of purely political circumstances: of territorial expansion and of the resulting need for the permanent protection of the frontiers—as in the Roman empire —but also very often a consequence of economic changes: of the increasing rationalization of the economy, in connection therefore with an occupational specialization and a differentiation between "military" and "civilian" subjects, as it occurred equally in late Antiquity and in the modern patrimonial state. The patrimonial ruler customarily draws the economically and socially privileged strata over to his side by exclusively reserving for them the leading positions in the standing army, which is organized into a body of disciplined and trained permanent units; these positions now offer also a specific "profession" with social and economic opportunities in the manner of bureaucratic officialdom. Instead of being honoratiores who are also warriors they are now drawn into a professional officers career and provided with status privileges.

Finally, there is a decisive economic condition for the degree to which the royal army is "patrimonial," that means, a purely personal army of the prince and hence at his disposal also *against* his own political subjects (*Stammesgenossen*): the army is equipped and maintained out of supplies and revenues belonging to the ruler. The more this condition prevails, the more unconditionally is the army in the ruler's hands, since it is in this case incapable of any action without the ruler and completely dependent upon him and his non-military officials; of course, manifold intermediate forms between such a pure patrimonial army and military organizations based upon self-equipment and self-provisioning have existed. For example, the granting of land constitutes, as we shall see, a form of devolving the burdens of equipment and maintenance

from the lord upon the soldiers themselves, but it also leads, under certain circumstances, to a significant weakening of his power of disposition.

However, scarcely anywhere does the political authority of the patrimonial prince rest exclusively upon the fear of his patrimonial military power. Wherever this fear was very real, it meant in effect that the ruler himself became so dependent on his army that, in the event of his death, of ill-fated wars and similar cases, the soldiers simply dispersed, went on strike, deposed and installed dynasties, or they had to be newly won through donations and promises of higher pay; of course, they also could be made to desert the ruler through the same means. In the Roman empire this phenomenon was the consequence of the militarism of the Severans, and under Oriental sultanism it was a regular feature. The result was the sudden collapse of a patrimonial regime and the equally sudden rise of a new one, and therefore, great political instability. To an extreme extent, this was the fate of the rulers in the classic locale of patrimonial armies, the Near East, which was also the classic location of "sultanism."

6. *Patrimonial Domination and Traditional Legitimacy*

As a rule, however, the political patrimonial ruler is linked with the ruled through a consensual community which also exists apart from his independent military force and which is rooted in the belief that the ruler's powers are legitimate insofar as they are *traditional*. Hence we will call "political subjects" those who are in this sense legitimately ruled by a patrimonial prince. They differ from the freemen of the judicial and military folk community (*Ding- und Heergenossen*) by being subject to taxes and service for political purposes; they differ from the personal retainers of the patrimonial lord by virtue of the right of mobility, which exists at least in principle and which they share with the free retainers who are only manorial, not personal dependents. Furthermore, the political subject differs from the personal retainer by owing traditional and therefore fixed services and taxes, just as the manorial retainers do. However, he differs from both in that he can freely dispose of his property and, in contrast to the free manorial retainer, also of his land, insofar as the prevailing order limits this at all; the political subject can bequeath his property according to custom and can marry without the lord's consent; in legal matters he does not address the manorial or house officials, but one of the various courts, if he does not resort to selfhelp by feuding. This he is entitled to do as long

as the feud is not outlawed by a general public peace edict (*Landfrieden*). For in principle he has the right and hence also the duty to bear arms.

However, the bearing of arms also obliges the political subject to follow the prince's call to arms. Despite the predominance first of feudal and later of mercenary armies, the English kings stressed to their political subjects the duty of owning their own arms and of equipping themselves, gradated according to their property. And in the case of the rebellious German peasants of the 16th century the traditional possession of arms was still important. However, this "militia" of merely political subjects was by right only available for traditional purposes, for the defense of the country (*Landwehr*) that is, but not for the various feuds of the patrimonial prince. Although the professional or patrimonial army of the prince was formally a hired army, it too could resemble in substance a levy of the militia, if it was indeed recruited from the subjects; the militia, on the other hand, could occasionally approximate the professional army. The battles in the Hundred Years' War were fought not only by knights but very prominently also by the English yeomanry, and a great many patrimonial forces were intermediate between a patrimonial army proper and a levy. The more such forces were levies and the less they were specifically patrimonial troops, the more limited was the prince in their use and the more tied by tradition was he with regard to his political power vis-à-vis the subjects; a levy would not have unconditionally supported his violation of tradition. Therefore it was historically important that the English militia was not a patrimonial army of the king, that it was based on the freemen's right to bear arms. To a large extent the militia was the military agent of the great revolution against the tax claims of the Stuarts, which violated tradition, and the negotiations of Charles I with the victorious parliament, which were hopeless on this score, ultimately concerned the control over the militia.

The subjects' tax and service obligations deriving from political domination were as a rule not only quantitatively more clearly circumscribed by tradition than those stemming from manorial and personal dependency, but were also legally distinguished from the latter. In England, for example, the property of the freemen rather than the retainer was charged with the *trinoda necessitas*: the responsibility for 1) the construction of fortifications, 2) road and bridge construction, and 3) the military burdens. In southern and western Germany as late as the 18th century the services owed to the judiciary lord were separated from duties deriving from personal dependence (*Leibherrschaft*); the former were the only remaining personal obligations after personal dependence proper had been transformed into a rent claim. Thus, the

obligations of freemen are everywhere bound by tradition. Taxes levied in violation of tradition and by virtue of special decrees, to which the subjects yielded with or without a particular agreement with the ruler, often continued to denote by their names (*Ungeld* or *malatolta*) their irregular origin. However, patrimonial domination inherently tends to force the extrapatrimonial political subjects just as unconditionally under the ruler's authority as the patrimonial subjects and to regard all powers as personal property, corresponding to the master's patriarchal power and property. On the whole, the extent of the ruler's success depended upon the power constellation and, apart from his own military power, especially upon the mode and the impact of certain religious influences, as we will show later. Marginal cases in this respect were the New Kingdom in Egypt and the Ptolemaic empire, where the distinction between royal *coloni* and free landowners, royal domains and other lands practically disappeared.

7. *The Patrimonial Satisfaction of Public Wants. Liturgy and Collective Responsibility. Compulsory Associations.*

The patrimonial satisfaction of public wants has its distinctive features as well as features which also occur in other forms of domination. The *liturgical* meeting of the ruler's political and economic needs is most highly developed in the patrimonial state. This mode of meeting demands has different forms and effects. We are here interested in those consociations of the subjects which derive from liturgical methods. For the ruler liturgical methods mean that he secures the fulfillment of obligations through the creation of heteronomous and often heterocephalous associations held accountable for them. Just as the kinship group is answerable for crimes of its members, so these associations are liable for the obligations of all members. Among the Anglo-Saxons, for example, kinship groups were in fact the oldest units which the ruler held accountable. They guaranteed to him the obedience of their members. Similarly the villagers became collectively liable for the individual inhabitant's political and economic obligations. We saw earlier that this could result in the hereditary attachment of the peasants to the village; the individual's right to a share of the land could in this way turn into a duty to participate in the production of a yield, in the interest of the contributions owed to the ruler.

The most radical liturgical arrangement is the transfer to other vo-

cational groups of this hereditary attachment: thus corporations, guilds and other vocational groups established, legalized or made compulsory by the ruler become liable for specific services or contributions of their members. In compensation and especially because of his own interest in preserving the subjects' economic capacity, the ruler customarily grants a monopoly on the respective economic pursuits and ties the individual and his heirs to the association, both with respect to their persons and their property. The obligations may consist of contributions specific to the respective trade, for example, the production and maintenance of war materials, but they may also comprise other duties, for example, ordinary military contributions or tax payments. Sometimes it has been assumed that even the Indian castes were at least in part of liturgical origin, but at present there is no sufficient basis for this opinion. It is also very doubtful to what extent the use of the early medieval guilds for military, political and other contributions and their official establishment (*Offizial*) was a really important factor in the very wide spreading of the guild system. In the Indian case the primary influence must definitely be ascribed to magic-religious and status differences as well as to racial ones; in that of the guilds voluntary association played the major role. But elsewhere the compulsory liturgical association has been common, and by no means only in patrimonial regime, although there it was often installed with the most radical thoroughness. For such regimes it is natural to view the subject as existing for the ruler and the satisfaction of his needs, and therefore also to consider the significance of his economic activities for corresponding liturgical capacities as his *raison d'être*. Accordingly, liturgical methods of meeting public needs prevailed especially in the Orient: in Egypt and in parts of the Hellenistic world, and again in the late Roman and the Byzantine empire. With less consistency these methods were also applied in the Occident and played a considerable role, for example, in English administrative history. Here liturgical bonds usually do not significantly fetter the person, but essentially affect his property, especially his landed property. However, they share with the Oriental liturgies the existence of a compulsory association guaranteeing collective liability for the obligations of the individuals, on the one hand, and a link, at least *de facto*, with a monopoly position on the other.

One example is the guarantee of public peace and order called in England the frankpledge: the compulsory collective liability of a group of neighbors for the law-abiding behavior and political compliance of every member. This institution is found in East Asia (China and Japan) as well as in England. For the sake of public order neighbors were organized and registered in groups of five in Japan and of ten in China

and made collectively liable. The beginnings of such an organization existed in England already before the Norman period, which greatly relied on such arrangements. Compulsory associations whose members were collectively liable to criminal persecution were made responsible for the appearance of an accused in court, for giving information about guilt or innocence in criminal cases involving a neighbor—a function from which the institution of the jury developed—, for the appearance in court of "jurors," for providing the militia, for the military *trinoda necessitas* and later for the most diverse public burdens; these associations were at least in part established specifically for these purposes, and landed property in particular was made liable [for the obligations imposed]. The associations were penalized by the king *pro falso iudicio* as well as for other violations of the public duties for which they were collectively liable. In turn, they held their members accountable personally and with their property, and the political burdens were therefore quite regularly conceived to be linked to the most "real" kind of property, the individual's land. For these reasons the liturgical compulsory organizations later became the source of the English municipal associations and therefore of self-government, mainly in a twofold fashion: 1) The internal apportionment of the obligations demanded by the ruler became their autonomous affair; 2) certain of their public duties which could be fulfilled only by propertied members were delegated to the latter and, by virtue of the resulting influence, became status rights of the propertied who proceeded to monopolize them. An example is the office of the justice of the peace.

For the rest, every political obligation within patrimonial administration had an inherent tendency to turn into an impersonal fixed obligation to render contributions resting on concrete objects of wealth, especially on land and also on production shops and sales points. This was bound to happen when the liturgical collective duties did not hereditarily bind the individual at the same time that the "chargeable" objects remained or became alienable. For in this case the ruler had generally no choice but to depend for the fulfillment of his demands upon that which remained always visible and within his reach: "visible profitable property," as it was called in England, and that was primarily real estate. The ruler would have required a very extensive coercive apparatus in order to get hold, in each instance, of the persons who were under liability, and this difficulty exactly was the reason for the system of compulsory associations upon which this task devolved. However, these associations, too, faced the same difficulty if they were not aided by the coercive apparatus of the ruler.

Thus a liturgical meeting of public needs could develop into two

very different structures: In one marginal case it could lead to local administration by largely independent *honoratiores;* this administration was connected with a system of specific obligations whose extent and manner were traditionally determined and which rested on specific property objects. On the other extreme a personal patrimonial dependence of all subjects could develop which tied the individual hereditarily to the land, the vocation, the guild and the compulsory association and which exposed the subjects to very arbitrary demands; these demands were advanced within highly unstable limits merely set by the ruler's concern for the subjects' permanent capacity to fulfill their obligations. The more technically developed the ruler's own patrimonial position was, and especially his patrimonial military power on which he could rely also against his political subjects, the more easily the second type, total dependency, could prevail. The majority of these cases was naturally intermediate. We have already dealt with the significance of the ruler's military power, his patrimonial army. However, besides the army the coercive administrative apparatus available to the ruler was important for determining the size and quality of the enforceable demands. It was never possible or useful for the ruler, if he strove for an optimal personal power position, to turn all desired services into liturgies based on collective liability: he was always in need of a *body of officials.*

8. *Patrimonial Offices*

In the simplest case the prince's [illegible]mains comprise his own household, together with a complex of [illegible]orial dependencies to which the households of manorial peasants are attached. This already requires an organized administration and hence a suitable division of functions developing in proportion to its size; the latter is even more true of the attached political administration. In this fashion the *patrimonial offices* come into being. The crown offices which originated in the household administration are similar all over the world. Besides the house priest and sometimes the ruler's personal physician we find the supervisors of the various branches of the administration: the lord high steward for the food supplies and the kitchen; the butler or cupbearer for the wine cellar; the marshal (*connétable: comes stabuli*) for the stables; the *Fronvogt* for the peasants' compulsory services; the *intendant* for clothing and armor; the chamberlain for treasury and revenues; the seneschal for general administration. There were other supervisors for whatever branches resulted from the household's administrative needs. In a grotesque degree this differentiation was maintained at the Turkish court

up to this century. Any task transcending the immediate household operations was at first subsumed under that part of the household administration to which it was most closely related. For example, the command over the cavalry was given to the supervisor of the stables, the marshal. All officials are charged, in addition to their administrative tasks proper, with attendance on the person of the ruler and with representational duties; in contrast to a bureaucratic administration, there is no professional specialization, but just like bureaucratic officials, the patrimonial officials usually develop into a status group set off from the ruled. The *sordida munera* and *opera servilia* of the manorial or personal dependents are everywhere differentiated, in late Antiquity as well as during the Middle Ages, from those higher, courtly, administrative services and liturgies which devolve upon the *ministeriales* and which, at least in the service of great lords, later come to be considered worthy also of a free man.

The ruler recruits his officials in the beginning and foremost from those who are his subjects by virtue of personal dependence (slaves and serfs), for of their obedience he can be absolutely sure. A political administration, however, can rarely rely on them alone. The political rulers were nearly always compelled to recruit their officials also in an extrapatrimonial fashion, not only because of the subjects' resentment when they saw unfree men rise above everybody else in power and status, but also because of the direct administrative needs and the continuation of prepatrimonial forms of administration. On the other hand, free men derived such great advantages from serving a lord that they accepted the at first inevitable submission to the ruler's personal power. For wherever possible, the ruler insisted that officials of extrapatrimonial origin accept the same personal dependency as the officials recruited from unfree men. Throughout the Middle Ages the official had to become *familiaris* [a household dependent] of the prince in patrimonial states proper (for example, also in the patrimonial state of the Angevins in Southern Italy, as the most knowledgeable person of this matter confirmed to me).[2] The free men who became *ministeriales* in Germany surrendered their land to the lord and received it back from him as service land suitably enlarged. After the extensive debates on the origin of the *ministeriales* it no longer seems doubtful today that they came at first from unfree strata, but it also seems certain that their rise as a status group was due to the massive influx of free men adhering to a knightly style of life. Everywhere in the Occident, and especially in England, the *ministeriales* were absorbed as equals by the knightly stratum. In practice this meant that their position was largely stereotyped and that therefore the lord's claims were firmly limited; once this had

happened it stood to reason that the ruler could demand of them only services conventionally befitting a knightly status group and that in general he had to adhere to the proper status conventions in his relations with them.

The position of the *ministeriales* was further stereotyped when the ruler issued reglements and thus created a *Dienstrecht* (service law) which turned them into members of a legally autonomous group (*Rechtsgenossen*), as was the consequence of the medieval service laws. Subsequently the group members monopolized the offices, established fixed rules and especially the requirement of their consent for the inclusion of new members into the corporate group, delimited services and fees and formed in every respect a closed status group, with which the ruler had to come to terms. Thereafter the ruler could no longer deprive such an official of his service fief, unless a judicial verdict directed its forfeiture, and that means in the Occident a verdict of a court composed of *ministeriales*. Finally, the officials' power reaches its apex when they or some of them, for example the highest-ranking court officials, demand that the ruler select his policy-making officials only according to their proposals or mandatory recommendation. Such attempts were occasionally made. However, in nearly all cases in which the ruler's advisors successfully imposed their recommendation for the selection of his top officials, these advisors were not officials and especially not *ministeriales*, but the congregated council of his great vassals or of the country's *honoratiores;* in particular, they were representatives of the Estates. According to the classic Chinese tradition, the ideal emperor appoints as his prime minister the person recommended as the most competent one by the great nobles at court, but it is unclear whether these are autonomous *honoratiores* and vassals or officials; it is certain that of the English barons who raised the same demand repeatedly in the Middle Ages only a few were officials, and these did not raise it in their capacity as officials.

Wherever possible the ruler attempts to avoid such monopolization of offices by status groups and such stereotyping of the administrative services by appointing hereditary personal dependents or aliens who are completely dependent upon him. The more offices and official duties are stereotyped, the more natural is the lord's attempt to free himself from such monopolies when new administrative tasks arise and new offices have to be created; in fact, this attempt was made especially at such occasions, sometimes successfully. However, the ruler is always confronted with the indignant opposition of the native aspirants to office and sometimes also of the subjects. Insofar as this is a struggle of the local *honoratiores* for the monopoly of local offices, it will be treated

later. But wherever the ruler creates typical and lucrative offices, he must face attempts at monopolization by certain strata, and it is a question of power to what extent he can resist these powerful interests.

The monopolistic, legally autonomous sodality (*Rechtsgenossenschaft*) of the *ministeriales* and therefore also their sodalian association with the ruler was mainly a phenomenon of Occidental law. But traces of it can also be found elsewhere. In Japan, according to Rathgen, the *han* (i.e., "fence"), the community of the *daimyo* and his free *antrustiones* or *ministeriales* (samurai), was considered the holder of the seigneurial rights of which the lord could avail himself. However, the articulation of the sodality law was nowhere as consistent as in the Occident.

The typification and monopolistic appropriation of the powers of office by the incumbents as members of such a legally autonomous sodality created the *estate-type* of patrimonialism.

The monopoly of the *ministeriales* on the court offices is an example of court prebends; an example in the political field is the monopoly of the members of the English bar on the offices of the bench. Examples in the history of church administration are the monopolies of the *ulemas* on the positions of the *kadi*, *mufti* and *imâm* and the numerous monopolies of similar Occidental graduates in the ecclesiastical prebends. But whereas in the Occident the typification of the positions of the *ministeriales* gave to the individual a relatively secure sodality right to the office specifically granted to him, this was by and large far less true of the Orient. There the offices were indeed highly stereotyped, but the incumbent himself remained freely replaceable; as we shall see, this resulted from the absence of certain Occidental Estate features and from the military power position of the Oriental ruler which had a different political and economic basis.

9. *Patrimonial versus Bureaucratic Officialdom*

Patrimonial officialdom may develop bureaucratic features with increasing functional division and rationalization, especially with the expansion of clerical tasks and of authority levels through which official business must pass. But the genuinely patrimonial office differs sociologically from the bureaucratic one the more distinctly, the more purely each type has been articulated.

The patrimonial office lacks above all the bureaucratic separation of the "private" and the "official" sphere. For the political administration,

too, is treated as a purely personal affair of the ruler, and political power is considered part of his personal property, which can be exploited by means of contributions and fees. His exercise of power is therefore entirely discretionary, at least insofar as it is not more or less limited by the ubiquitous intervention of sacred traditions. With the exception of traditionally stereotyped functions, hence in all political matters proper, the ruler's personal discretion delimits the jurisdiction of his officials. Jurisdiction is at first completely fluid—if we want to use this specifically bureaucratic concept here at all. Of course, each office has some substantive purpose and task, but its boundaries are frequently indeterminate. Originally, however, other officials do not differ on this score from patrimonial officials. At first, only competing powers create stereotyped boundaries and something akin to "established jurisdictions." However, in the case of the patrimonial officials this derives from the treatment of the office as a *personal* right and not, as in the bureaucratic state, from *impersonal* interests—occupational specialization and the endeavor to provide legal guarantees for the ruled. Therefore this quasi-jurisdictional limitation of the powers of office results primarily from the competing economic interests of the various patrimonial officials. Insofar as sacred tradition does not prescribe certain official acts, they are discretionary, and hence the lord and his officials demand a compensation in each case, either arbitrarily or according to established rates. Thus the distribution of these sources of income provides a strong incentive for the gradual delimitation of administrative jurisdictions, which was at first almost non-existent in the *political* sphere of the patrimonial state. To protect their fees the English lawyers, for example, insisted upon the appointment of judges exclusively from their midst and upon admission to their own ranks exclusively of apprentices trained in law offices. In contrast to other countries, the university graduates trained in Roman law were thus excluded. This also prevented the reception of Roman law. For the sake of fees the secular courts fought with the ecclesiastic ones, the common-law courts with the chancellery courts, and the three great courts—Exchequer, Common Pleas, King's Bench —with one another and all other courts. Jurisdiction was determined most of the time by compromises among those interested in taking fees, not primarily and never solely by rational considerations. Since jurisdictions often overlapped the courts competed with one another for the favor of the clients by resorting to various incentives, in particular convenient procedural fictions, lower fees, etc.

However, this example refers to offices that were already perpetuated and typified, a condition which even in large and permanent political structures developed only gradually. In the beginning we find as a rule

the *ad hoc* official whose powers are defined by a concrete purpose and whose selection is based on personal trust, not on technical qualification. Wherever the administration of a large political realm is patrimonial, every attempt at identifying "jurisdictions" is lost in a maze of official titles whose meaning seems to change quite arbitrarily; witness Assyria even during the period of its greatest expansion. When the ruler's political operations are appended to his purely economic concerns, they appear as auxiliary resources which are used merely according to need and opportunity: The political administration is at first intermittent, entrusted to that person—most of the time a court official or table companion—who in the concrete case appears to be the most qualified and, above all, nearest to the ruler. For the personal discretion and the favor or disfavor of the ruler are decisive as a matter of principle and not just as a matter of fact, as of course it does happen everywhere. This also applies to the relation between the ruled and the officials. The latter are permitted to do whatever is compatible with the power of tradition and the ruler's interest in the preservation of the subjects' compliance and economic capacity to support him. Absent are the binding norms and regulations of the bureaucratic administration. Decisions are made *ad hoc* not only in areas of novel or significant problems, but throughout the realm of the ruler's powers, insofar as these are not curbed by well-established rights of individuals. Hence the exercise of the ruler's powers by the officials proceeds in two often unrelated areas: one in which it is limited by obligatory and sacred tradition or definite individual rights, and one in which the ruler's personal discretion prevails. This may create conflicts for the officials. A violation of the old customs may be an offense to perhaps dangerous forces, whereas disobedience to the ruler's orders is a criminal disregard of his powers of injunction (*Banngewalt*) and subjects the violator, in the terminology of English law, to the ruler's *misericordia:* his right to impose arbitrary sanctions. The conflict between tradition and the ruler's judicial rights (*Herrenbann*) is everywhere irreconcilable wherever they overlap. Long after the powers of political offices have been standardized within fixed territorial jurisdictions, as for the English sheriff of the Norman period, the ruler suspends, exempts and redresses in principle according to his own discretions.

In contrast to bureaucracy, therefore, the position of the patrimonial official derives from his purely personal submission to the ruler, and his position vis-à-vis the subjects is merely the external aspect of this relation. Even when the political official is not a personal household dependent, the ruler demands unconditional administrative compliance. For the patrimonial official's loyalty to his office (*Amtstreue*) is not an im-

personal commitment (*Dienstireue*) to impersonal tasks which define its extent and its content, it is rather a servant's loyalty based on a strictly personal relationship to the ruler and on an obligation of fealty which in principle permits no limitation. In the Germanic kingdoms the king threatens even free officials with disfavor, with blinding and death in the case of disobedience. However, in relation to other persons the official partakes in the ruler's dignity because and insofar as he is personally subject to the ruler's authority (*Herrengewalt*). In the Germanic kingdoms only the royal official has increased *Wergild*, irrespective of status, but not the free judge of the folk community (*Volksrichter*), and everywhere the servile official, although he is not a free man, easily rises above the free subjects. All patrimonial service regulations, which would be *reglements* according to our [bureaucratic] notions, are ultimately nothing but purely subjective rights and privileges of individuals deriving from the ruler's grant or favor; in fact, this can be said for the entire system of public norms of the patrimonial state in general. It lacks the objective norms of the bureaucratic state and its "matter-of-factness," which is oriented toward impersonal purposes. The office and the exercise of public authority serve the ruler and the official on which the office was bestowed, they do not serve impersonal purposes.

10. *The Maintenance of Patrimonial Officials. Benefices in Kind and Fees*

Originally the patrimonial officials are typically *maintained* at the ruler's table and from his supplies, as is every other household member. As a basic component of the household, commensality gained far-reaching symbolic significance and extended far beyond its boundaries, a development in which we are here not interested. At any rate, patrimonial officials, especially their highest ranks, retained for a long time the right to be fed at the lord's table when they were present at court, even if the ruler's table had long ceased to be important for their maintenance.

When the patrimonial official leaves this intimate community, the result is naturally a diminution of the ruler's direct control. The ruler could indeed make the official's economic compensation completely dependent upon his discretion and thus put the official in a precarious position, but this was not feasible in a relatively large apparatus and it was dangerous for the ruler to violate regulations once they had been established. The maintenance in the ruler's household was therefore succeeded very early by the granting of benefices or fiefs to patrimonial

officials who had their own household. We will deal first with the *benefice*. This important institution, which as a rule also implies a definite "right to the office" and thus its appropriation, has had the most diverse fates. At first, the benefice was, as in Egypt, Assyria and China, an allowance in kind from the depots and granaries of the ruler (king or god), as a rule *for life*. For example, when the commensality of the temple priests was dissolved in the ancient Orient an allowance in kind provided by the temple granary was introduced. Later these allowances became alienable and were negotiable even in fractions (for example, for single days of each month); thus they were something like forerunners, at the stage of natural economy, of modern government bonds. We shall call this type *benefices in kind* (*Deputatpfründe*).

The second type is the *fee benefice* (*Sportelpfründe*): the assignment of certain fees which the ruler or his representative can expect for official acts. This type of benefice removes the official even further from the ruler's household, because it is based on revenues of a relatively extrapatrimonial origin. Already in Antiquity this kind of benefice was subject to purely commercial transactions. A large part of those priestly positions, for example, which had the character of an "office" (and not of a free profession or, conversely, of a family's hereditary possession) were publicly sold in the ancient polis. It is not known to what extent the trading of benefices was practiced in Egypt and the ancient Orient. But in view of the prevailing interpretation of the office as a "living," such a development would have been natural in those areas.

Finally, the benefice could also take the form of a *landed benefice* assigning office or service land (*Amts- oder Dienstland*) for the incumbent's own use. This approximates the fief and gives the beneficeholder greater autonomy from the lord. The lord's officials and thegns by no means always welcomed the separation from his table community since this imposed upon them economic risks and the burden of a household. But their desire to found a family and to be independent predominated. On the lord's part it became necessary to unburden his own household, since with the growing number of table companions expenditures increased tremendously and beyond the point of control; at the same time the household remained exposed to the vicissitudes of income fluctuation. It was clear, however, that in the case of a secular official who had a family the separation immediately resulted in a drive for hereditary instead of merely lifelong appropriation of the benefice. Insofar as the fief is concerned, we will be treating this process in another context.

The appropriation of benefices took place especially in the early period of the modern patrimonial-bureaucratic state. This process oc-

curred everywhere, most strongly in the papal Curia, in France, to a lesser extent in England, because there a smaller number of officials was involved. At stake were primarily *fee benefices*, which were either bestowed upon intimates or favorites with the permission to hire a more or less proletarian deputy who did the real work, or they were given to interested persons on a fixed lease or for a lump sum. In this way the benefice became a patrimonial possession of the leaseholder or purchaser, and we can observe the most diverse arrangements, including hereditability and alienability. To begin with, the official may give up his benefice for a compensation paid by the interested person, while claiming the right vis-à-vis the ruler to propose the successor for the position which is his by virtue of purchase or rental. Alternatively, a body of officials, for example, the collegiate body of a court, may claim the right of making such proposals and then proceed in the common interest of the colleagues to set the conditions for transferring the benefice to an outsider. The lord, of course, wanted to participate in one way or another in the profits of such a transfer since he had granted the benefice, and originally never for life. Accordingly he, too, sought to establish guidelines for such transfers. The results greatly differed from case to case. For the Curia and the princes the trading of offices—that means, the capitalization of fee incomes through the massive creation of fee benefices in the form of sinecures—became a financial operation which was most important for the coverage of their extraordinary needs. In the Papal States the wealth of the *nepotes* derives to a significant extent from the exploitation of fee benefices.

In France the *de facto* hereditability and the trade of benefices began with the *parlements*—the highest court authorities—and subsequently encompassed all ranks of financial and administrative officialdom, including the *prévôts* and *baillis*. When an official resigned, he sold his benefice to a successor. The heirs of a deceased official claimed the same right (*survivance*), since the office had become a property object. After several abortive attempts at abolishing this practice, the royal treasury began to share in the deal, from 1567 on, by receiving a fixed fee from the successor (*droit de resignation*). In 1604 the whole practice was systematized in the form of the *paulette*, so called after its inventor Charles Paulet. The *survivance* was affirmed, but the Crown's *droit de resignation* was sharply reduced; in its stead the office-holder was obliged to pay to the Crown annually one and two thirds percent of the purchase price, and the revenues were in turn annually leased by the Crown (first to Paulet). The purchase price of the benefices went up as income opportunities improved, and this again meant higher gains for the leaseholder and the Crown. However, this office appropriation

made it virtually impossible to dismiss officials (especially the members of the *parlements*). For an official could be dismissed only if the Crown refunded the purchase price of the benefice, a step which it was hesitant to take. It was only on August 4, 1789 that the Revolution eradicated office appropriation, and even then it had to pay a compensation of more than one-third of a billion livres. If the king tried to impose his will upon the *parlements*, he could be thwarted in case of need by a general strike—mass resignation which would have forced him to pay back the total purchase value of all benefices; this happened repeatedly before the Revolution.

Appropriated benefices were one of the mainstays of the *noblesse de robe*, that important status group in France which formed the leadership of the *tiers état* against the king and the landowning or court aristocracy.—

By and large the Christian clergy in the Middle Ages was maintained through endowment with land or fee benefices. Originally the church had been supported by the offerings of the community—ever since it had become necessary to make economic provisions for the maintenance of the religious services by forming a "profession"; and this in turn had made the professional clergy completely dependent on the bishops, who disposed of the offerings. This was the normal state of affairs in the old church of the cities, which were then the bearers of Christianity. If we disregard some other peculiarities, the church was a patriarchally modified bureaucracy. But in the Occident the urban character of religion eventually disappeared and Christianity spread into the countryside, which was still deep in the natural economy. Some of the bishops gave up their urban residence, especially in the North. Many of the churches were secularly owned (*Eigenkirchen*), either by the peasant community or the manorial lord, and the clergymen frequently became the latter's dependents. Even if the secular builders and patrons used the more considerate form of endowing the church with fixed rents or with glebe, they would claim the right of appointing and even of removing the priest; this naturally resulted in a fundamental weakening of the bishop's authority and also in a significant decrease of the clergy's religious interests. As early as during the Frankish kingdom the bishops attempted, most of the time unsuccessfully, to prevent the predominance of benefices by establishing communal living at least for the clergy of the chapter. Time and again the monastic reform movement had to fight against the displacement of monastic communism by a phenomenon typical of the Eastern church: The transformation of the monks into benefice-holders, who often lived outside the monastery, and of the monasteries themselves into "social security" agencies for the nobility.

The bishops could not prevent the prebendalization of clerical positions. The bishoprics of the North, especially those in which the bishop maintained his urban residence, were very large and required subdivision; this contrasts with the South where each of the numerous cities had its own bishop. Since many churches and their revenue sources were privately controlled, the bishop could not treat them as his free office property, even if otherwise the canonical conditions were gradually introduced. The benefice was created simultaneously with the parish; only sometimes was it conferred by the bishop. In the European mission territories the benefices and the corresponding property were provided by powerful secular founders who wanted to retain control over most landed property. The same can be said of the position of the bishops, even in face of the claim to supremacy of the papal power; they were at first appointed almost at will by the secular rulers who were both accepting and regulating the church, and as trusted advisers they were endowed with political rights. Thus the development of the church hierarchy veered toward decentralization, and at the same time also toward appropriation of patronage by the secular rulers, whose prebendal house priests or feudal vassals the church officials tended to become.

By no means only feudal princes were eager to have the learned and literate clergy, cut off from family ties, as cheap and qualified manpower in whose hands the hereditary appropriation of offices need not be feared. The Venetian overseas administration, for instance, lay in the hands of churches and monasteries up to the conflict about lay investiture. This conflict marked an important phase in the establishment of the urban bureaucracy, since the subsequent separation of church and state abolished the clerics' oath of allegiance to the doge as well as the electoral initiative, supervision, affirmation and investiture on his part. Up to that time the churches and monasteries directly leased and administered the colonies or were the *de facto* center of a settlement in their role as domestic arbitrators and diplomatic representatives of Venetian interests.

The German imperial administration of the Salic emperors and their political power were rooted primarily in the disposition over church property and especially in the obedience of the bishops. The familiar reaction of the Gregorian epoch was directed against the utilization of the clerical benefice for secular ends. The success of this reaction was considerable, but within very narrow limits. The popes increasingly seized control over the disposition of vacant benefices, a development which reached its peak at the beginning of the 14th century.

The benefice became one of the issues in the cultural conflict *Kulturkampf)* between church and secular power of the 14th and 15th

century. For throughout the Middle Ages the clerical benefice was the basic resource serving the purpose of "high culture" (*Geisteskultur*). Especially in the later Middle Ages, up to the Reformation and Counter-Reformation, the benefice developed into the material foundation of that class which was then the bearer of "high culture." By endowing the universities with the disposal over benefices the popes made possible the rise of that medieval stratum of intellectuals which, apart from the monks, had the most significant share in the preservation and development of scientific work; the same end was served by the multitude of benefices which they bestowed upon personal favorites, among whom were many scholars, relieving them of official duties. At the same time, however, by flatly ignoring national differences in their bestowal of benefices, the popes provoked that violent nationalist resistance of the intellectuals, especially of the Northern countries against Rome, which became such an important feature of the conciliar movement.

Moreover, kings and barons continued in spite of the canonical injunctions to seize control over the clerical benefices. On a very large scale this was done by the English kings since the 13th century, primarily for the purpose of securing cheap and reliable manpower. The employment of clerics also freed them from dependence upon the *ministeriales* whose services were linked to hereditarily appropriated service land and had become stereotyped and useless for a rational central administration. A celibate cleric was cheaper than an official who had to support a family, and he would not be tempted to strive for the hereditary appropriation of his benefice. By virtue of his power over the church, which had a very concrete meaning in this instance, the king provided the clerics with pensions (*collatio*) from church property. Clerics came to replace the older type of official on such a large scale that even today we are reminded of it by the name for office personnel: clerks. The great barons were powerful enough to secure control over a large number of benefices or to force the king into disposing of them according to their wishes. The trading in benefices (*brocage*) became very extensive. Hence the ever-changing coalitions of the participants, Curia, king and barons, in the struggle over benefices during the period of the conciliar movement. At one time king and parliament opposed the pope in order to monopolize the benefices for domestic owners and candidates, at another king and pope joined forces to their mutual advantage at the expense of the native interests. The prebendal nature of the clerical offices as such was not changed by the pope. Not even the Tridentine reform could change the prebendal character of the mass of clerical positions, especially of the regular parochial clergy who maintained a limited, but effective "right to the office." The secularizations of modern

times fixed this prebendal character even more when the economic maintenance of the church and its officials was transferred to the state budget. Only the modern struggles between secular states and the church, and especially the separation of church and state, provided the [Catholic] hierarchy with the opportunity to abolish the "right to the office" all over the world after supplanting the prebendal system with one in which the clerical officials are *ad nutum* [at will] removable; this most important shift in the church constitution has occurred almost unnoticed.

The trading in benefices is essentially limited to the fee benefice and thus a product of the advancing money economy. An increase in the importance of cash fees and a growing tendency to invest wealth in the sources of fee incomes presuppose the formation of monetary wealth. Other epochs did not experience an expansion in the trading in benefices of the kind and volume observable in late medieval and especially early modern history, from the 16th to the 18th century. But similar developments were widespread. We have already mentioned quite significant beginnings in Antiquity. In China the office benefice was not appropriated because of the peculiar organization of offices, which we will discuss later, and therefore it never became legally marketable. However, in China too an office could most of the time be obtained only with the aid of money—in the form of a bribe. Although we cannot say this of legalized trading in benefices, the benefice itself is a universal phenomenon. The obtainment of a benefice is the goal of education and the purpose of the academic or other degrees in China and in the Orient, just as in the Occident. This is very clearly brought out by the fact that the characteristic punishment for political deviation in China is the suspension of examinations in a province and thus the temporary exclusion of its intellectuals from office benefices. The tendency toward the appropriation of benefices is also universal, although results vary. Especially the self-interest of the qualified aspirants is often an effective counterweight to appropriation. The benefice of the Islamic *ulemas*, that means, of the status group of examined aspirants for the offices of the *kadi* (judge), *mufti* (ecclesiastic jurists responding through *fetwa*) and *imâm* (priest), was often granted for only a short time (one to one and a half years), in order to facilitate its circulation among the aspirants and in order not to impair the *esprit de corps* in favor of desires for appropriation on the part of the individual.

In addition to his continuous normal income: allowances in kind, sometimes landrent and fees, the patrimonial official receives irregular gifts from his lord in the case of special merit or the latter's good mood. Their source is the lord's thesaurus, hoard, treasure: stocks of precious

metals, jewelry and arms, and sometimes his stud. Precious metals are particularly important. Since the good will of the officials depended on the possibility that their merits would be rewarded, the possession of a treasure was everywhere the indispensable basis of patrimonial domination. In the argot of scaldic poetry the king is called the "breaker of rings" (*Ringebrecher*). The seizure or loss of the hoard often decided wars between pretenders, for in a predominantly natural economy a treasure of precious metals has paramount importance. We will deal later with the economic relations which are determined by this fact.

11. *Decentralized and Typified Administration As a Consequence of Appropriation and Monopolization*

In a patrimonial state every prebendal decentralization of the administration, every jurisdictional delimitation caused by the distribution of sources of fee incomes among competitors, and even more so every appropriation of benefices signifies not rationalization but *typification*. In particular the appropriation of the benefice, which made the officials —as we have seen—often practically irremovable, can have the same effect as the modern legal guarantee of judicial "independence," although its meaning is completely different; its aim is the protection of the official's right to his office, while modern civil service law endeavors to insure the official's impartiality in the interest of the ruled through "independence," that means, through his irremovability unless he has been properly tried and convicted.

The officials who had legally or factually appropriated the benefices could very effectively curtail the ruler's governmental power; above all they could vitiate any attempt at rationalizing the administration through the introduction of a well-disciplined bureaucracy and preserve the traditionalist stereotyped separation of political powers. The French *parlements*, collegiate bodies of benefice-holders, in whose hands were the formal legalization and partly also the execution of royal orders, checked the king's power for centuries and blocked all innovations which would have been detrimental to their traditional rights. It is true that here, too, the patrimonial norm was accepted in principle: An official must not contradict his ruler. When the king personally appeared in the midst of these assemblies of office beneficiaries (*lit de justice*), he could formally insist on the legalization of any order, for in his presence every opposition had to cease, and he tried to achieve the same effect through direct written directives (*lettre de justice*). But by virtue of their property rights to the office, the *parlements*, through *remon-*

trance, often questioned immediately afterwards the validity of the decree which ran counter to tradition, and frequently vindicated their claim to be independent bearers of authority. The effectiveness of the appropriation of benefices which was at the roots of this situation was of course variable and depended upon the power distribution between benefice-holder and ruler, especially upon the availability to the latter of financial means for redeeming the appropriated rights of the benefice holders and for replacing them with a completely dependent bureaucracy. As late as 1771 Louis XV attempted through a *coup d'état* to destroy the preferred weapon of the benefice-holders in the *parlements*, the "general strike" in the form of a mass resignation, which was designed to enforce the king's retreat since he could not afford to remit the purchase price of the offices. In this case the officials' resignation was accepted, but the purchase price was not paid back, the officials were detained for disobedience, the parliaments were dissolved, new agencies were created in their place, and the appropriation of offices was abolished. But this attempt at establishing discretionary patrimonialism, under which the ruler could freely remove officials, failed. In 1774 Louis XVI retracted the decrees in view of the stormy opposition of the vested interests, the old conflicts between king and parliament were revived, and only the summoning of the Estates General in 1789 created a completely new situation which very soon obliterated the issue of the privileges of the two antagonistic forces: monarchy and administrative benefice-holders.

A special situation, which we will later casuistically analyze in greater detail, obtained for those officials through which the ruler directed the local districts, which were originally formed out of the ancient folk court districts (*Dingverbände*) and sometimes also out of individual great domains. Here, too, the frequent appropriation of benefices through purchase led to typification and the splitting off of autonomous powers from the ruler's authority; this happened especially in France. In addition, however, a decentralizing and stereotyping influence was exerted here by the necessity to pay heed to the general conditions under which an official could hold such an exposed position, far removed from the ruler's personal authority. A mere official who was completely—economically and socially—dependent upon the ruler's favor could gain personal authority only under very conducive conditions. In general at least, this was permanently possible only on the basis of a precisely functioning rational apparatus such as modern bureaucracy with its economic and technical preconditions, because in such a system specialized knowledge does itself create the necessary power. Under the general conditions of patrimonialism, however, and thus of

an administration which requires "experience" and at most concrete skills (such as writing), but not rational specialized knowledge, the position of the local official was determined by the weight of his own social prestige (*Autorität*) within his local district; everywhere this prestige was mainly based on a capacity to maintain the style of life appropriate to a status group of notables. Therefore, the property-owning, especially the land-owning stratum of the subjects can easily monopolize the local offices. We will soon deal with this in detail. Only a ruler with the specific gifts necessary to maintain a strongly autocratic government can impose the opposite principle: rule through property-less persons who are economically and socially completely dependent upon him. This can be done only in a continuous struggle with the local *honoratiores*, which pervades the history of the patrimonial state. The office-holding honoratiores, who form a cohesive interest group, usually gain the upper hand in the long run. Not only in the Merovingian kingdom, but all over the world officials time and again extracted from a lord who urgently needed their support the promise that he will keep them in office for life and their children after them.—

As the appropriation of offices progresses the ruler's power, especially his political power, disintegrates into a bundle of powers separately appropriated by various individuals by virtue of special privileges —rights which are most variously defined but which, once the definition has become established, cannot be altered by the ruler without arousing dangerous resistance from the vested interests. This structure is rigid, not adaptable to new tasks, not amenable to abstract regulation, and thus a characteristic contrast to bureaucracy with its spheres of jurisdiction, which have a purposively abstract organization and can be reorganized at any time if need be. In juxtaposition to this stands the completely discretionary power of the lord in areas in which this appropriation of offices has not occurred, permitting him to appoint his personal favorites especially to administrative tasks and power positions which are not pre-empted by appropriated powers. The patrimonial state as a whole may tend more toward the stereotyped or more toward the arbitrary pattern. The former can be more frequently found in the Occident, the latter to a large extent in the Orient, where the theocratic and patrimonial-military foundations of power, often usurped by new conquerors, counteracted quite effectively the otherwise natural process of decentralization and appropriation.

In the course of this typification the old court officials became purely representative dignitaries and benefice-holding sinecurists; this was especially true of the officials of the most powerful lords, who

chose no longer unfree men as court officials but nobles who naturally declined to handle routine tasks.

The more appropriation takes place, the less does the patrimonial state operate either according to the concept of jurisdiction or to that of the "agency" in the contemporary sense. The separation of official and private matters, of official and private property and powers was carried through more or less only in the arbitrary type of patrimonialism; the separation disappeared with increasing prebendalization and appropriation. It is true that the medieval church tried to prevent the free disposition over benefice revenues at least for the case of the prebendary's death, and that the secular power at times extended its *ius spolii* also to the private estate of a deceased clergyman, but in the case of full appropriation official and private property practically coincide.

In general the notion of an *objectively defined* official duty is unknown to the office that is based upon purely personal relations of subordination. Whatever traces of it there are disappear altogether with the treatment of the office as benefice or property. The exercise of power is primarily a personal right of the official: outside of the sacred boundaries of tradition he makes *ad hoc* decisions, just like the lord, according to his personal discretion. Hence a typical feature of the patrimonial state in the sphere of law-making is the juxtaposition of inviolable traditional prescription and completely arbitrary decision-making (*Kabinettsjustiz*), the latter serving as a substitute for a regime of rational rules. Instead of bureaucratic impartiality and of the ideal—based on the abstract validity of one objective law for all—of administrating without respect of persons, the opposite principle prevails. Practically everything depends explicitly upon the personal considerations: upon the attitude toward the concrete applicant and his concrete request and upon purely personal connections, favors, promises and privileges. Even the privileges and appropriations granted by the lord —including especially land grants, however "definitive" the grant— are very often revocable in the case of very vaguely defined "ingratitude"; their validity beyond the grantor's death is also uncertain because of the personal quality of all relationships. These grants are therefore submitted to the successor for confirmation. Depending upon the always unstable distribution of power between lord and officials, confirmation may be considered the ruler's obligation and thus pave the way from revocability to permanent appropriation as a well-deserved privilege, but it may also be an occasion for the successor to enlarge his own realm of discretion by cashiering such special rights; this last means has been repeatedly applied in modern times during the rise of the Occidental patrimonial-bureaucratic state.

Even where the rights of the officials in their relationship to the ruler and also the ruler's powers over them have been stereotyped by means of sodality rights (*Genossenrechte*) and office appropriation, their *de facto* exercise remains decisive for their relative strength; therefore every accidental weakness of the central authority lasting any length of time and perhaps due solely to personal factors will lead to a diminution of its power through the rise of new conventions detrimental to it. Hence, in such an administrative structure the ruler's purely *personal ability* to assert his will is to a very high degree decisive for the always unstable content of his nominal power. The Middle Ages have to this extent rightly been called the "age of individualities."—

12. *Defenses of the Patrimonial State Against Disintegration*

The ruler endeavors to safeguard the integrity of his domination in various ways and to protect it against the appropriation of offices by the officials and their heirs as well as against other means by which officials can gain independent powers. To begin with, he may regularly travel through his realm. In particular the German monarchs of the Middle Ages moved about almost constantly, and not merely because inadequate transportation compelled them to consume on the spot the supplies provided by the various domains. This motive was not necessarily dominant: The English and the French kings as well as their central agencies—and the latter is the important point—had a fixed residence quite early, even though, as the phrase *ubicumque fuerimus in Anglis* ["wherever we shall be in England"] indicates, *de iure* it became fixed only gradually; the same was true of the Persian kings. The decisive fact was that only their continually renewed personal presence maintained their authority over the subjects. As a rule, the ruler's personal traveling was supplemented or supplanted by the "missatic" system: the systematic circling through the land of officials with special powers—the Carolingian *missi dominici*, the English circuit-court judges—, who periodically held popular assemblies for purposes of adjudication and for handling complaints.

Furthermore, the ruler insisted upon various personal guarantees from officials appointed to outside positions where they were not under permanent observation. In the crudest form this amounted to a demand for hostages. More subtle means were the following: a) duty of regular attendance at court; for example, the Japanese daimyos had to reside

every other year at the court of the Shogun and to leave their families permanently there; b) compulsory court service for the sons of officials —the corps of pages; c) appointment of relatives or in-laws to important positions—a very dubious means, as we have pointed out; d) brief tenures in office; this was true originally of the Frankish courts and also of many Islamic benefices; e) exclusion of officials from districts in which they had landed property and relatives, as in China; f) the greatest possible use of celibates for certain important positions—this does not only explain the great importance of celibacy for the bureaucratization of the church, but above all also the use of clerics in the royal administration, especially in England; g) systematic surveillance of the officials through spies or official controllers, such as the Chinese "censors," who were usually recruited from personal dependents of the ruler or from impecunious benefice-holders; h) creation of a competing office in the same district, as for example that of the coroner which was set up against the sheriff. A universal means of assuring loyalty was the use of officials who did not come from socially privileged strata, or even were foreigners, and who therefore did not possess any social power and honor of their own but were entirely dependent for these on the lord. The interests of the ruler were the same: when Claudius intimidated the senatorial nobility with the threat to rule the empire, in disregard of the Augustean status regulations, solely with the assistance of his clientele of freedmen, when Septimius Severus and his successors appointed as officers common soldiers of their armies instead of Roman nobles, or when Oriental Grand Viziers as well as the numerous court favorites of modern history, especially the technically most successful agents and hence those most hated by the aristocracy, were so very frequently raised to their posts from complete obscurity.

Among the devices used to maintain the control of the ruler's central administration over the local officials the splitting up of spheres of jurisdiction became very important to the development of administrative law. This subdivision occurred either in the form that the finance administration alone was entrusted to special officials or that civilian and military officials were juxtaposed to one another in every administrative district, a solution also suggested by technical considerations. The military official then had to rely for procurement upon the civilian administration which was independent from him, and the latter in turn needed the military official's co-operation for maintaining its power. It seems that already the Pharaonic administration of the New Kingdom separated the magazine administration from the military command, and this too was probably a technical necessity. In the Hellenistic period, especially under the Ptolemies, the introduction and bureaucratization

of tax-farming made it possible for the ruler to retain financial control separate from the military command. During the Principate the Roman administration—excepting certain areas such as Egypt and some frontier provinces, where this was not done for political reasons—appointed an autonomous imperial *procurator* of finance who served as the second-highest provincial official next to the imperial commander or the senatorial governor, and it created separate career channels for the two administrations. The reorganization under Diocletian divided the whole imperial administration into civilian and military branches, from the *praefecti praetorio*—as imperial chancellors and the *magistri militum* as imperial commanders down to the *praesides*, on the one hand, and the *duces* on the other. In later periods of Oriental history, especially under the Islam, the separation of the office of the military commander (*emir*) from that of the tax collector and tax farmer (*'amil*) became a firm principle of all strong governments. It has been pointed out correctly that nearly every case of a permanent merger of these two jurisdictions, that means, the fusion of the military and economic power of an administrative district in the hands of one person, soon tended to encourage the administrator's disengagement from the central authority. The increasing militarization of the Islamic realm during the period of slave armies with its mounting demands upon the subjects' tax capacities; the recurrent financial collapse and the mortgaging or seizure of the tax administration by the troops, ended naturally either in the disintegration of the empire or in the rise of the benefice system.

Some historically important examples may illustrate the functioning of patrimonial administrations and especially the means with which the ruler attempts to preserve his power vis-à-vis the tendencies toward appropriation on the part of the officials.

13. *Ancient Egypt*

The first consistent patrimonial-bureaucratic administration known to us existed in ancient Egypt. It seems that originally it was solely staffed with royal clients—servants attached to the pharaoh's court. Later, however, officials also had to be recruited from the outside, from the ranks of the only class technically suited, the scribes, who thereby entered into patrimonial dependency. As early as the Old Kingdom the entire people was pressed into a hierarchy of clientage, within which a man without a master was considered a good prize and, if apprehended, simply assigned to the pharaoh's draft labor gangs; this development

was propelled by the overriding importance of systematic centralized river-regulation and of the construction projects during the long season in which the absence of agricultural work permitted drafting on an unprecedented scale. The state was based on compulsory labor: the pharaoh carried the scourge as one of his attributes, and the privileges of immunity from the third millenium, which Sethe[3] was the first to translate correctly, concern the exemption of temple retainers or officials from compulsory services. The pharaoh maintained his oikos through his own enterprises and trade monopolies, the home production of unfree craft labor, the agricultural output of the *coloni*, and contributions. There was a rudimentary market economy, market exchange in particular, with quasi-monetary means of exchange (*Uten*, metal staffs). In the main, however, the economic needs of the pharaoh were met, as the extant accounts show, from magazines and deliveries in kind, and for extraordinary construction and transportation services the pharaoh mobilized the subjects by the thousands, as the sources reveal.

The large private landed estates and nomarchies, the origin and significance of which are documented by the sources of the Old Kingdom, created an intermediate period of feudalism in the Middle Kingdom, but they disappeared after the period of foreign domination, as they had in Russia after the era of the Tatars. However, the temples acquired immunities as early as the Old Kingdom and were granted immense properties by the Ramessides. Thus, the priests and the [royal] officials became the only major privileged strata confronting the masses. The bulk of the population was made up of political and patrimonial subjects, who were not clearly distinguished from one another. Among those doubtlessly under patrimonial rule we find numerous designations for the servile and the unfree who apparently differed in their economic condition and social rank; we cannot yet tell them apart, and perhaps they were in fact not strictly differentiated. Insofar as the subjects were not drafted for compulsory services, their taxes seem to have been farmed out to the officials for a lump sum. The officials enforced the declaration of taxable property through whipping and similar methods; thus tax collection typically took the form of a sudden raid, flight and chase. There was apparently a difference between the patrimonial *coloni* of the pharaoh and the free political subjects, between the pharaoh's own land and the private property of the peasants, but this difference seems to have been mainly technical and perhaps had no stable meaning. For it appears that the royal household satisfied its economic needs increasingly in a liturgical fashion. The individual became permanently tied to his fiscal function and through it to the local administrative district to which he had been assigned or

belonged by birth, landed property or occupation; the details are not known. Occupational choice was *de facto* largely free, but we cannot say for sure that a hereditary vocational attachment was not enforced if the economic needs of the royal household seemed to warrant it. There were no castes in the specific sense of the word. The political as well as the patrimonial subject could have a *de facto* freedom of mobility, but this became legally precarious as soon as the demands of the royal household required the subject to discharge his duties at the locality to which he belonged. The later Greek terminology denoted this location as the *idia*, the Roman terminology as the *origo* of the individual, and this legal conception played an important role toward the end of Antiquity. All landed property and every craft enterprise was considered to be subject to certain duties, in the form of services or deliveries; at the same time the possession of land and of an enterprise was viewed as the reward for fulfilling a function and thus tended to approximate the characteristics of a benefice. Benefices in kind or landed benefices were the compensation for specific office functions as well as for fulfilling military duties.

The army too was patrimonial, and this was decisive for the pharaoh's power position. At least during wartime the army was equipped and provisioned out of the royal magazines. The warriors, whose descendants were the *machimoi* of the Ptolemaic period, received landlots; apparently they were also used for police duties. In addition, there were mercenaries paid from the royal hoard, which the pharaoh's trade enterprises kept filled. The completely disarmed masses were easily held in check; resistance erupted only in the form of recalcitrance and strikes if food supplies were insufficient during compulsory labor projects. The geographic conditions, especially the comfortable river road and the objective necessity of uniform river regulation, preserved territorial unity up to the Cataracts with only a few interruptions. Career opportunities and the dependence upon the royal magazines were apparently sufficient to preclude an extensive appropriation of benefices, which is technically easier in any case where the benefices involve fees or land rather than allowances in kind, as they did predominantly in the present case. The numerous grants of immunity show by their wording—the repeated promises of inviolability and the threats of punishment against officials who will violate them—that on the basis of his patrimonial power the ruler could indeed treat these privileges as precarious, so that the beginnings of a polity of estates (*Ständestaat*) are here entirely lacking and patriarchalism remained fully intact. The fact that the benefices in kind were largely retained and that the private landed estates became rather insignificant in the New Kingdom contributed to the preserva-

tion of the patrimonial bureaucracy. The fully developed money economy of the Ptolemaic period did not weaken it, but rather acted as a strengthening factor by providing the means for rationalizing the administration. The liturgical methods, especially compulsory labor, yielded to a very comprehensive system of taxation, although the ruler never abandoned his right to draw on the labor services of his subjects and to tie them to their *idia;* indeed the older arrangements immediately regained practical importance when the money economy disintegrated in the third century A.D. The whole country appeared almost as one single domain of the royal oikos; only the temple households approximated it in significance. The Romans took this setup as the legal basis for their treatment of the country.

14. *The Chinese Empire*

The Chinese empire constituted an essentially different type. Here too the power of patrimonial officialdom was based on river regulation, especially canal construction—but primarily for transportation, at least in northern and central China—, and on tremendous military fortifications; again these projects were only possible through intensive use of compulsory labor and through the use of magazines for storing payments in kind, from which the officials drew their benefices and the army its equipment and provisions. In addition, the patrimonial bureaucracy benefitted from the even more complete absence of a landed nobility than was the case in Egypt. In historical times there were no liturgical ties which perhaps had existed in the past or whose introduction may once have been attempted, as might be inferred from certain traces in the tradition and some rudiments. At any rate, *de facto* freedom of mobility and of vocational choice—both were officially not really recognized—does not seem to have been permanently restricted in the historical past. In practice some impure vocations were hereditary. Otherwise there is not a trace of a caste system or of other status or hereditary privileges, apart from an unimportant titular ennoblement which was granted for several generations. In the main, patrimonial officialdom was confronted only by the sibs as autochthonous power, aside from merchant and craft guilds as they are found everywhere; the sibs, whose elders retained a very effective power position in the villages, were bound together within the narrower range of the family by ancestor worship and within the range of common surnames by exogamy.

Because of the tremendous expansion of the empire and the small number of officials relative to the size of the population, the Chinese

administration was neither intensive nor was it centralized under the average ruler. The directives of the central agencies were treated by the subordinate ones as discretionary rather than binding. Here as everywhere under such circumstances officialdom was obliged to take into account the resistance of traditionalism, whose bearers were the sib elders and the occupational guilds, and somehow to arrive at an accommodation with these powers so that it could function at all. But on the other hand, despite the tremendously tenacious power of these forces, the government apparently succeeded not only in creating a rather uniform officialdom, as far as its general character was concerned, but also prevented its transformation into a stratum of territorial lords or feudal barons whose power rests on local notability and who are therefore independent of the imperial administration. This was accomplished even though here too officials liked to use legally and illegally acquired wealth for investment in land and even though the Chinese ethic prescribed close bonds of loyalty between the candidate for office and his teachers and office-holders and their superiors. Especially the institution of patronage and the officials' close relation to their sib were bound to create a tendency toward hereditary office baronies with a permanent clientele. It seems that such incipient baronies emerged time and again; above all, tradition glorified feudalism as the historically original institution and the classic writings consider the *de facto* hereditability of offices as the normal state of affairs, as they do the right of the highest-ranking officials to be consulted before the appointment of colleagues. To vitiate the recurrent tendencies toward office appropriation and to arrest the formation of a fixed clientage and the rise of office monopolies on the part of local *honoratiores* the imperial patrimonial regime employed the usual measures: brief office tenures, exclusion from appointment in areas in which the official's sib is entrenched, and surveillance by spies (the so-called censors).

In addition, the imperial regime introduced something new: for the first time in history there appear official qualifying examinations and official certificates of conduct. Qualification for rank and office came to depend in theory exclusively, and largely in practice, upon the number of examinations successfully passed; confirmation in office and promotion or demotion were based upon the official's conduct reports, a resumé of which was periodically published until recently together with the enumeration of reasons, roughly in the manner of the quarterly grade reports of a German *Gymnasiast*. From a formal viewpoint this constitutes the most radical application of bureaucratic objectivity possible and therefore an equally radical break with typical patrimonial office-holding which rests on the ruler's personal discretion and favor.

It is true, of course, that benefices still could be bought and that personal patronage remained important, but feudalization, appropriation and the clientele attached to an office (*Amtsklientel*) were contained, negatively by the intensive competition and distrust which isolated the officials, and positively by the increasingly universal acceptance of the social prestige which the educational patents imparted. As a result, the status conventions of the officials took on those features of an educational aristocracy which have since characterized Chinese life so distinctly; these conventions were specifically bureaucratic, had a utilitarian orientation, were formed by classical education, and considered as highest virtues the dignity of gesture and the maintenance of "face."

Nevertheless, Chinese officialdom did not develop into a modern bureaucracy, for the functional differentiation of spheres of jurisdiction was carried through only to a very limited extent in view of the country's huge size. Technically, this low degree of differentiation was feasible because the whole administration of the pacified empire was a civilian administration; moreover, the relatively small army constituted a separate body and, as we shall see presently, measures other than the division of jurisdiction guaranteed the officials' compliance. But the positive reasons for refraining from jurisdictional differentiation were matters of principle. The specifically modern concept of the functional association (*Zweckverband*) and of specialized officialdom, a concept which was so important in the course of the gradual modernization of the English administration, would have run counter to everything characteristically Chinese and to all the status trends of Chinese officialdom. For the educational achievements, controlled by the examinations, did not impart professional qualifications but rather their exact opposite. The mastering of the calligraphic art, stylistic perfection, and convictions properly oriented to the classics were of paramount importance in passing the essay tests whose themes were sometimes reminiscent of the traditional patriotic and moral essay topics in our secondary schools. The examination really was a test of a person's cultural level and established whether he was a gentleman, not whether he was professionally trained. The Confucian maxim that a refined man was not a tool—the ethical ideal of universal personal self-perfection, so radically opposed to the Occidental notion of a specific vocation—stood in the way of professional schooling and specialized competencies, and time and again prevented their general application. This accounts for the specifically anti-bureaucratic and patrimonialist tendency of this administration, which in turn explains its "extensive" character and its technical backwardness.

But China was also that country which had oriented status privileges

most exclusively toward a conventional and officially patented literary education; to this extent it was formally t e most perfect representative of the modern, pacified and bureaucratized society whose monopolies of benefices, on the one hand, and specific status structure on the other rest everywhere on the prestige of patented education. It is true that the beginnings of a bureaucratic ethos and philosophy can be found in some Egyptian documents, but only in China was a bureaucratic philosophy, Confucianism, systematically elaborated and brought to t eoretical consistency. We have already dealt with its effect upon religion and economy. The unity of Chinese culture is essentially the unity of that status group which is the bearer of the bureaucratic classic-literary education and of Confucian ethic wit its ideal of gentility that we have previously discussed. T e utilitarian rationalism of this status ethic is firmly restricted by the acceptance of a traditional magical religiosity and of its ritual code as a component of the status convention, and in particular by the acceptance of the duty of filial piety toward ancestors and parents. Just as patrimonialism has its genesis in the piety of the children of the house toward the patriarch's authority, so Confucianism bases the subordination of the officials to the ruler, of the lower to the higher-ranking officials, and particularly of the subjects to the officials and the ruler, on the cardinal virtue of filial piety. The typically Central and East European patrimonial notion of the "father of the country" (*Landesvater*) is similar, as is the role which filial piety plays as the foundation of all political virtues in strictly patriarchal Lut eranism, but Confucianism elaborated this complex of ideas much more consistently. This development in Chinese patrimonialism was of course aided by t e lack of a landowning seigneurial stratum and thus of a group of local notables capable of exercising political authority. But beyond this, it was made possible by the far-reaching pacification of the empire since the completion of the Great Wall, which for many centuries diverted the invasion of the Huns to Europe, and ever since expansive drives had been aimed only at territories which could be held in subjection with a relatively small professional army. Toward the subjects the Confucian ethic developed a t eory of t e welfare state which was very similar to, but much more consistent than that of the patrimonialist theoreticians of the Occident in the age of enlightened absolutism and also that of t e theocratically and spiritually accentuated edicts of the Budd ist king Asoka. Yet the practice was different: despite some traces of mercantilism, t e patrimonial regime interfered only for compelling reasons with the numerous local feuds of the sibs and villages. Economic intervention was nearly always fiscally motivated; wherever this was not t e case, the attempt usually foundered on the

recalcitrance of the interested groups in view of the inevitable extensiveness of the administration. In normal times this seems to have led to a far-reaching restraint of the political authorities toward the economy, a restraint which very early found support in theoretical laissez-faire principles. Within the sibs the educational prestige of the examined candidate for office, to whom all sib members turned for advice and, if he held office, for patronage, overlapped with the traditional authority of the elders, whose decisions remained usually decisive in local matters.

15. *Decentralized Patrimonial Domination: Satrapies and Divisional Principalities*

Even under purely bureaucratic patrimonialism no administrative technique could prevent that, as a rule, the individual arts of the realm evaded the ruler's influence the more, the farther away they were from his residence. The nearest territories are directly administered by the ruler's patrimonial court officials and form his dynastic landholdings (*Hausmacht*). Adjacent to these are the outlying provinces, whose governors in turn administer them in patrimonial fashion. Because of the inadequate means of transportation, if for no other reason, the governors do not render all of the contributions to the ruler, but only the surplus remaining after the local demands have been met; as a rule, they pay only fixed tributes and with increasing distance they become more and more independent in their disposition over the military and tax capacities of their provinces. This is also a consequence of the need, in view of the lack of modern means of communications, for rapid decision-making by the officials in the case of enemy attacks on these marches; their governors were everywhere endowed with strong powers. It is for this reason that in Germany the strongest development toward a unified territorial state occurred in [the two former marches:] Brandenburg [-Prussia] and Austria. Finally, there are the very remote areas whose merely nominally dependent rulers could be forced to pay tributes only through continually renewed campaigns of extortion. The Assyrian kings undertook such campaigns just as did until very recently the rulers of many African kingdoms, who every year turned to another remote area of their presumed, generally unstable, and partly outright fictitious, realm. The dependency of the "governors" of most Oriental and Asian empires was in practice always unstable; their position is usually in between two types represented on the one hand by the Persian satraps, who could be arbitrarily removed, but who were re-

sponsible for fixed tributes and fixed military contingents, and on the other the Japanese daimyos, who were almost independent territorial rulers, although they could be transferred if they violated their obligations. In the great continental empires this kind of political conglomeration always constituted the most widespread type; its crucial features remained rather constant but its individual variations could naturally be quite considerable. Until modern times, the Chinese empire, too, despite the homogeneity of its officialdom, showed these features of a conglomeration of satrapies, in part merely nominally dependent, which were grouped around the directly administered central provinces. Just as did the Persian satrapies, the local authorities retained the revenues from their provinces and used them first of all to cover the costs of local administration; the central government received only its fixed tribute, which could legally be increased, but in fact only with great difficulties and against the passionate resistance of the provincial interests. The most important issue of contemporary administrative reform in China is probably the question of the extent to which the very palpable remnants of this condition should and can be abolished in favor of a rational organization of central and local powers, including the creation of a reliable central government capable of attracting [foreign] loans; this problem is of course closely linked with those connections between central and provincial finances and thus with those same conflicts of economic interest.

The mere obligation to pay tributes and to provide contingents is one marginal case of decentralization; another is the sub-kingdom. Since all powers, economic as well as political, are considered the ruler's personal property, hereditary division is a normal phenomenon. As a rule such a division is not understood as constituting completely independent powers: it is not a definitive division (*Totteilung*) in the sense of Germanic law, but at first mostly a mere apportionment of revenues and seigneurial rights for independent use within a realm the unity of which is at least fictitiously preserved. This purely patrimonial interpretation of the princely position resulted in the Merovingian Kingdom, for example, in a geographically most irrational manner of division: prosperous domains or other good revenue sources had to be divided in such a fashion as to equalize the incomes of the various divisional rulers. The manner and the degree of the unity which actually remains can vary considerably. Sometimes only an honorific precedence of one ruler over others is maintained. Kiev, to which the title of the Grand Prince was attached and which was the seat of the metropolitan, played the same role in the period of Russian divisional principalities as did Aix-la-Chapelle and Rome with regard to the imperial title after the

division of the Carolingian empire. Genghis Khan's empire was considered the joint property of his family and the title of the Great Khan was supposed to devolve upon the youngest son, even though in actuality it was bestowed by designation or election. In practice the divisional rulers free themselves everywhere from the subordination expected of them. Instead of preserving the unity of the realm, the very apportionment of important offices to members of the ruling family may precipitate disintegration or—as in the Wars of the Roses—clashes between pretenders. It depends upon various circumstances to what extent hereditary division will apply to appropriated office powers also, once the patrimonial offices have become heritable property. One important factor will certainly be the degree of disintegration or, conversely, of preservation of the office character of this property. If patrimonial officialdom is very powerful, one central official may represent the actual unity of the empire vis-à-vis the divisional rulers—as did the Carolingians when they held the office of the *maior domus;* the removal of such an official would facilitate the definite division. But it is natural that these highest patrimonial offices, once fully appropriated, in turn easily became subject to division, as again happened with the Carolingian "mayoralty of the palace" under the Merovingian kings. This principle of hereditary division was very dangerous for the stability of patrimonial structures; its elimination was accomplished in different degrees and for different motives.

Very generally speaking, political considerations were bound to oppose hereditary division in countries exposed to political pressures from the outside; moreover, in the interest of family preservation every monarch had an obvious interest in preventing hereditary division. But this motive of power politics did not always suffice. Motives of a partly ideological and partly technical-political nature were necessary to strengthen this trend. After the introduction of the bureaucratic order the Chinese monarch was vested with a dignity so supernatural as to make it conceptually indivisible. Furthermore, the status solidarity and the career interests of the bureaucracy militated against the technical divisibility of the political structure. In Japan the shogun and the daimyo remained formally "officials," and the peculiar vassalic character of the civilian and military administration (the *han* concept which we dealt with earlier) favored the preservation of the unity of political authority (*Herrenstellung*). The religious unity of the caliphate did not prevent the disintegration of the purely secular sultanate, a creation of the slave generals, into sub-empires. But the unity of the well-disciplined slave armies in turn favored the indivisibility of these sub-empires once they were established; partly for that reason hereditary division never

became customary in the Islamic Orient. It also did not exist in the ancient Orient; the imperative unity of a state-controlled irrigation economy was probably the major technical reason for preserving the principle of indivisibility, which, however, most likely had its historical origin in the initial character of kingship as the rulership of a town. For in contrast to rural territorial domination, the rulership of a town is technically not at all divisible, or only under great difficulties. At any rate, the absence of hereditary division in the Oriental patrimonial monarchies had religious and administrative and, in particular, technical and military reasons. A division like that effected by the successors of Alexander the Great occurred because several standing armies under separate commanders existed side by side, but not because of the division of inheritance in a ruling house.

Wherever the ruler's powers had an office character in the Occident, they tended to impede hereditary division, as in the case of the Roman emperorship. Only with the final disappearance of the office-character of the Roman *princeps*, replaced by the *dominus* of Diocletian's new order, did a tendency toward division emerge, but its basis was politico-military, not patrimonial, and soon found its limits in the unity of each of the two halves which long ago had become separated militarily with regard to recruitment. Thus the origin of the magistracy and the monarchy in the supreme command over the citizens' army remained effective until very late in Antiquity. Later, too, everything that was considered wholly an "office" remained indivisible; especially the emperorship, beside offices which had not become appropriated. Moreover, in the Occident as everywhere else all long-range power interests of the monarchs favored the limitation or the elimination of hereditary division. This was especially true of new kingdoms based on conquest. The Norman kingdoms in England and Southern Italy and the kingdoms of the Spanish *reconquista* remained indivisible, just as had been the first kingdoms of the Teutonic migrations. Elsewhere indivisibility was aided by two strongly contrasting developments. In the kingdoms of Germany and France this was the fact that they—the latter at least formally—became electoral monarchies. In the other patrimonial countries, however, it was the emergence of a specifically Occidental phenomenon: the bodies of territorial Estates (*ständische Territorialkörperschaften*). Because and insofar as each body of Estates—the predecessor of the modern state—was considered a unit, the power of the territorial ruler (*Landesherr*) was also viewed as indivisible. However, here we have already the beginnings of the modern "state." Within the patrimonial structures the independence of the local powers may vary widely, ranging from officials attached to the patrimonial household to

tributary princes and to divisional rulers who are dependent merely in name.

16. *Patrimonial Ruler versus Local Lords*

The continuous struggle of the central power with the various centrifugal local powers creates a specific problem for patrimonialism when the patrimonial ruler, with his personal power resources—his landed property, other sources of revenue and personally loyal officials and soldiers—, confronts not a mere mass of subjects differentiated only according to sibs and vocations, but when he stands as one landlord (*Grundherr*) above other ***landlords***, who as local *honoratiores* wield an autonomous authority of their own. In contrast to China and to Egypt since the New Kingdom, this happened in the ancient and medieval patrimonial "states" of the Near East and most prominently in the Occident since the Roman Empire. The patrimonial ruler cannot always dare to destroy these autonomous local patrimonial powers. Some Roman emperors, Nero, for example, went far in wiping out private large landowners, especially in Africa. However, if the ruler intends to eliminate the autonomous *honoratiores*, he must have an administrative organization of his own which can replace them with approximately the same authority over the local population. Otherwise a new stratum of *honoratiores* comes into being with similar pretensions—the new leaseholders or landowners who take the place of their native predecessors.

To some extent for the Near Eastern state, and as a rule for the Hellenistic and the Imperial Roman state, the specific means of creating a local administrative apparatus was the founding of a city. We also find a similar phenomenon in China, where as late as the last century the subjection of the Miaotse was identical with their urbanization. We shall later deal with the meanings which the foundation of cities had in these various cases; there were indeed great differences. At any rate, from this fact can be explained that, generally speaking, the economic limits in time and space of city foundation in the Roman empire also became the boundary lines for the traditional structure of ancient culture. Landed estates naturally gained the more political influence, the more the empire became an inland state.

In the late Roman state since Constantine, the power of the bishops became the safeguard of the empire's unity; the ecumenical councils became the imperial assemblies proper. We will show later why the church, universalized and politicized by the state, could not in the long run keep up this role sufficiently—exactly because its accentuated po-

litical character very soon "regionalized" it. In the patrimonial state of the early Middle Ages the church was chosen for a similar role, albeit in a different form, for example, in the kingdom of the Franks and, again differently, in the feudal states. In Germany, in particular, the king attempted, at first with the greatest success, to establish a countervailing power to the local and regional powers; in the bishops he created a clerical estate of political *honoratiores* to compete with the corresponding secular stratum. Since bishoprics were not hereditary and the bishops not locally recruited and interested, they appeared solidary with the king by virtue of their universalist interests. Furthermore, the seigneurial and political powers granted to them by the king remained even legally in his hands. Therefore, the pope challenged in particular the German king's basic power resources vis-à-vis the local authorities when he attempted to organize the church directly in a bureaucratic manner and thus to gain complete control over the church offices or at least to have these appointments made by the local clergy and parish according to the canonical rule. The latter alternative meant in essence control of the church offices by a local stratum of clerical *honoratiores*—the capitulars of the cathedral chapters—who were linked with the local secular *honoratiores* through familial and personal ties. For this reason the church easily secured the support of the secular notables in its struggle with the king.

As far as we know the matter, the unstable unity of the Persian empire for two centuries was made possible through disarmament and theocratic rule—as also in the cases of the Jews and of Egypt; moreover, strong national differences and the collisions of interest of local notables were exploited. At any rate, already in the Babylonian and Persian empire we find at least traces of those typical clashes between local notables and central powers which later became one of the most important determinants of western medieval development.

The local landlords demand first and foremost that the patrimonial ruler do not interfere with their own patrimonial power over their retainers or that he directly guarantee it. They demand especially immunity: exemption from interference on the part of the ruler's administrative officials on their own land. The following claims are advanced: only through the mediation of the landlord should the ruler contact retainers; the landlord should be held responsible for their criminal and fiscal liabilities, to him should be delegated the drafting of the army recruits and he should be the one to pay the ruler's tax claim on the retainers as well as to sub-allocate it among them. In addition, since the local lord desires to exploit for himself the retainers' economic capacity to render services and contributions, he will attempt to diminish as far

as possible, or at least to fix, their obligations toward the patrimonial ruler. Privileges of immunity which satisfy such claims in varying degrees can be found in Egypt as early as the third millennium where they were granted to temples and officials; in the Babylonian empire they were granted also to private landowners. If asserted with consistency, these pretensions lead to the exemption of the *latifundia* from the communal associations—villages communes and sometimes also cities—set up by the patrimonial ruler as the bearers of rights and duties. We find this condition as early as the Hellenistic empire and in Imperial Rome. At first the royal domains themselves were exempted from all communal associations. It could therefore happen that not only the monarchic officials but also the lease-holder of the royal domain exercised political in addition to patrimonial rights. The same was also true of the private *latifundia*, which became increasingly important in the Roman empire; besides the cities, their territories came to occupy a position similar to that of the East Elbian estate districts (*Gutsbezirke*), which date back to feudal times.[4] However, in the Occidental monarchies of the Middle Ages the claims of the local seigneurial powers proved much more effective than in Antiquity, since their rulers were not supported by the standing army, and the bureaucracy was not trained according to established traditions. Even in early modern history the monarchy could not avoid making compromises with the seigneurial lords, as long as it was not in a position to establish its own army and bureaucracy and to pay both from its own treasury. The monarchy of late Antiquity, especially of Byzantium, likewise had to make concessions to regional interests. Even military recruitment became increasingly regional from the fourth century on. The urban administration by *decuriones* and the manorial administration in the countryside put all purely local affairs into the hands of the local notables. But these strata were after all controlled by the late Roman and the Byzantine central power. This was completely lacking in the Occident. In contrast to the official principles of Chinese administration and also those which Occidental rulers repeatedly attempted to impose, the seigneurial lords succeeded very soon in their insistence that the ruler's local official be an owner of landed property in the district and thus that he be taken from the stratum of local land-owning notables. This was true of the English sheriffs and justices of the peace as well as of the Prussian *Landräte*. In Prussia their right of nomination for local state offices was preserved for the post of the *Landrat* into the 19th century. The nominating committees were controlled by the large landowners of a county. On a far greater scale the greatest of the medieval barons succeeded in usurping *de facto* the office patronage of large areas. Historical development tended every-

where to "mediatize" all subjects of the patrimonial ruler, to interpose the local honoratiores as the sole occupants of all political offices, to cut off the direct relationship between ruler and common subjects and to direct both exclusively to the local office incumbent for their respective claims—for taxes and military service, on the one hand, and for legal protection on the other. This was a trend toward the elimination of any control on the part of the ruler and toward the hereditary appropriation of the political office by a family, legally or in fact, or at least by a monopolistic group of local *honoratiores*.

The struggle between the patrimonial prince and the natural tendencies of the local patrimonial interests had the most diverse results. The prince had primarily a fiscal and military interest in the "mediatized" subjects: an interest in maintaining their number, that is, the number of small holdings sufficient to support one peasant family; in preventing their exploitation by the local patrimonial authorities beyond a point at which their capacity to satisfy his own demands would suffer; in retaining the power to tax them and call them up for military service directly without any mediation. On their part, the local patrimonial lords wanted to represent the peasants in all dealings with the prince. Apart from its implications for feudal law, which we will discuss later, the principle of *nulle terre sans seigneur* also had this practical significance in the sphere of administrative law: that for the princely administration a village community of peasants, as an association with powers of its own, was not to exist and that each peasant was to belong to a patrimonial association and to be represented by a patrimonial lord, so that the ruler would only be entitled to deal with the lords but not with their retainers. This latter policy was fully carried through only in exceptional cases, and then only temporarily. Whenever the prince could strengthen his position, his connections with all his subjects became more direct in one way or another. However, as a rule the prince found himself compelled to compromise with the local patrimonial authorities or other *honoratiores;* he was restrained by the possibility of an often dangerous resistance, by the lack of a military and bureaucratic apparatus capable of taking over the administration and, above all, by the power position of the local *honoratiores*. Purely financial reasons alone would have made it impossible for the prince to run the local administration without the help of the nobility in late medieval England and even more so in the East Elbian Prussia of the 18th century. For Prussia this situation probably explains the monopolization by the nobility of officers' posts and its preferential treatment in the civil service—especially the complete exemption from qualifications otherwise required, or at least a fairly extensive dispensation; another

result was the predominance, still existing today, of the estate owners (*Rittergutsbesitz*) in all rural local administrative bodies.

17. *The English Administration by Notables, the Gentry's Justices of the Peace, and the Evolution of the "Gentleman"*

If the prince wanted to prevent such an appropriation of the whole local state administration by the local patrimonial lords, he had no choice, as long as he did not have very considerable resources of his own, but to put the administration into the hands of some other group of *honoratiores*, whose number and power were significant enough to check the great patrimonial lords. In England this situation resulted in the emergence of the *justices of the peace*, an institution whose characteristic features were shaped during the great wars with France.[5] The patrimonial administration of the manorial lords and their judicial powers, but also the local offices—the sheriff—dominated by the feudal nobility could not cope with purely administrative tasks because economic developments dissolved the servility relationship. Furthermore, the Crown was interested in pushing aside the patrimonial and feudal authorities, a policy that was vigorously supported by the Commons. Here as elsewhere the novel administrative tasks primarily concerned the maintenance of public peace; economic change created a growing need for pacification. The usual explanation that war-time insecurity brought about these administrative changes is unconvincing, since the position of the justice of the peace became permanent. The public insecurity was felt more strongly because of the increasing market ties of the individual households. Characteristically enough, we also encounter unemployment and rising food prices, which resulted from the expansion of the money economy. Therefore, the first of the manifold tasks devolving upon the justices of the peace were public security and the policing of the trades and of consumption. The justices were recruited from private groups economically interested in their functions. The Crown attempted to win the gentry over to its side and to pit it against the greatest patrimonial lords, the barons, by appointing from each county local notables as *conservatores pacis* and by equipping these with increasingly complex police and criminal court powers. Appointments were made *de facto* and soon also *de iure* from among the landowners of the district who qualified by virtue of their groundrent and who maintained a knightly style of life; formally these appointments were revokable but in practice they were for life; the Crown retained the right to effect the appoint-

ments, and reserved to the royal courts the supervision of the incumbents' conduct. One of the justices of the peace, the Lord Lieutenant, became commander of the militia. Regular bureaucratic channels for appeal against the decisions of the justices of the peace did not exist, or at least only at the peak of the royal power claims, in the form of the Star Chamber, which for this very reason was destroyed by the gentry in the 17th century revolution. The only way to bring a concrete issue before the central agencies—a way which in practice was increasingly used—was a special order (the writ of *certiorari*), issuance of which was at first completely discretionary. The Crown managed to defeat many attempts at making the appointment of justices of the peace directly dependent upon election by the local *honoratiores;* it modified its control over appointments only by granting a right of nomination to certain advisors of the king. Thus, these high-ranking officials, especially the chancellor, were given a patronage power which was often used for pecuniary gain. However, in opposing this patronage as well as the legal claims of the crown, the solidarity of the gentry was strong enough to perpetuate its monopoly on the office of the justice of the peace, and during the reign of Elizabeth complaints were heard that the recommendation by incumbents was indeed decisive for new appointments.

Like all royal officials, the justice of the peace took fees and received daily allowances. But in view of the low income involved it became the status convention of the landowners to decline fees. As late as the 18th century, the property qualification of the justices of the peace was considerably raised. As a normal prerequisite a certain land value was required. The increasing leasing of property typical of England freed the time of the rural gentry for these official tasks. As far as the urban bourgeoisie was concerned, the participation of active businessmen was handicapped because of the very economic indispensability which everywhere excludes them from the circle of *honoratiores*. However, older persons who had retired from business frequently became justices of the peace; this was even more often true of that growing group of guild members who turned from entrepreneurs into rentiers after having amassed sufficient wealth. The characteristic fusion of the rural and urban rentier strata in the type of the *gentleman* was greatly facilitated by their common ties to the office of the justice of the peace. In these circles it became a status custom to have the sons appointed justices of the peace at an early age, after they had finished their humanist education. Henceforth the office was an unpaid position whose obligatory assumption was formally a liturgy for qualified aspirants, often to be discharged for only a short period. Many justices of the peace were inactive, but this trend was reversed in modern times. For them the office was

merely titular and a source of social honor. Social status and social power also explain why this position, requiring considerable work if actively held, remained at all times sufficiently sought after even for its active occupation. Eventually the professional jurists, who competed sharply for centuries, lost out. They were gradually driven from the office by its low income and the gentry's eventual renunciation of all fees. The individual lay justice of the peace took the advice of his personal lawyer, but on the whole he made his decisions with the help of the clerks according to tradition and largely also to considerations of substantive justice; this made the administration of the justices of the peace popular and accounts for its distinctive features. Here we have one of the very few cases in which professional officialdom was entirely displaced, in peaceful competition, by the honorary office in spite of the increase of administrative tasks. The decisive incentive for the gentry's interest in the office of the justice of the peace was not some specific "idealism," but the real and practically unrestrained influence which the office provided; formally it was limited solely by the rule that all important issues should be settled only collegiately, by at least two judges together, but substantively it was constrained by a strong sense of duty that derived from the status convention.

Administration by justices of the peace reduced all local administrative bodies outside the cities almost to insignificance. At the peak of this system of self-government, which was praised as a national palladium, the justices of the peace were practically the only officials who did effective administrative work in the counties, next to whom the old compulsory liturgical associations, the patrimonial manorial administration and every kind of royal patrimonial-bureaucratic regime had shrunk to insignificance. This was one of the most radical types of an administration solely by notables ever carried through in a big country, and the conduct of office corresponded to it. The administration of the justices of the peace was up to our own days very much in the nature of "*kadi* justice"—and the only administration significant for the masses since the royal courts in London were geographically and, because of the immense fees, economically just as far out of their reach as the *praetor* was for the Roman and the Tsar for the Russian peasants. Like all administration by *honoratiores*, its inevitable characteristics were administrative minimization and *ad hoc* activities, which thus did not amount to a continuous and systematic operation (*Betrieb*). To the extent that this administration was not limited to the keeping of rolls (as at first in the case of the *custos rotulorum*), it was mainly repressive and unsystematic, and as a rule reacted only to evidently gross violations or to the complaint of an injured party. This administration was technically

unsuited to deal continuously and intensively with positive administrative tasks or to pursue a consistent unified "welfare policy," because it was essentially a part-time occupation for gentlemen. It is true that at the quarter sessions of the justices of the peace at least one of them had to be legally trained. The quorum clause required that this person or these persons be listed by name in the commission; in this fashion the central administration retained influence on the composition of the active justices of the peace. But even this stipulation lost validity since the 18th century: everyone actively participating came to be included in the quorum.

The subject had to reckon with the possibility that the police and penal power of the justices might affect all spheres of his life: from visits to the pub, cardplaying or the choice of clothes proper to his station in life to the level of the corn prices and the adequacy of wages, and from indolence to heresy. An infinite number of statutes and ordinances, whose stipulations often had an accidental origin, depended for their enforcement solely upon the justices of the peace. But it was largely within their discretion whether and when, with what means and how thoroughly they intervened. The notion of systematic administrative activity in the service of definite goals was exceptional in these circles, and an attempt to impose a coherent system of "Christian welfare policies" was made only during the brief period of the Stuarts, especially under Laud's administration. As might be expected, this attempt eventually failed because of the very circles from whom the justices of the peace were recruited.

The "extensive" and intensive administration by the justices of the peace seems to be reminiscent of the Chinese administration which had some of the same external characteristics; the same appears true of the way in which the central authorities intervened: either concretely for individual cases and then often successfully, or in an abstract manner through very general directives which often had little more than suggestive value. But the difference is tremendous. It is true that here as there the decisive state of affairs is the same: The patrimonial-bureaucratic administration is confronted by local authorities with whom it must somehow reach an accommodation in order to carry on its operations. However, in China the educated administrative officials face the elders of the sibs and the guild associations, whereas in England the professionally trained judges face the educated *honoratiores* of the landowning gentry. The Chinese *honoratiores* are the educated who have been prepared for an administrative career through a classic-literary training; they are benefice-holders and aspirants to benefices, and therefore on the side of the patrimonial-bureaucratic power; by contrast, in England the core of the gentry was a free status group of large landowners, who

were merely empirically trained on the job to rule over retainers and workers and who came to be humanistically educated. Such a stratum did not exist in China, which represents the purest type of patrimonial bureaucracy that is unencumbered (as far as this is possible) by any counterweight and that has not yet been refined into modern specialized officialdom.

At its peak the English administration by the justices of the peace was a combination of patrimonialism of the estate type with a pure type of autonomous administration by *honoratiores*, and it tended much more toward the latter than toward the former. Originally this administrative system was formally based on liturgical obligation—for this is what the duty to take on the office involves. But in reality, due to the actual distribution of power, it was the voluntary co-operation not of subjects, but of free members of a political association—of "citizens," that is—on which the prince depended for the exercise of his authority. Primarily on that account this administration is quite different from the typical political hierarchy of a princely patrimonial household and of subordinate private patrimonial rulers with their own subjects; in fact, it developed exactly parallel to the disintegration of private dependency. Substantively the English squirearchy, which had created this system, was of course a stratum of notables of decidedly manorial character. Without specific feudal and manorial antecedents the peculiar "spirit" of the English gentry would never have come into being. The particular ideal of manliness of the Anglo-Saxon gentleman shows indelible traces of this origin. This trait comes to the fore mainly in the formal strictness of the conventions, in the vigorously developed pride and sense of dignity, and in the social importance of sports which in itself is conducive to the formation of a status group. However, already before the penetration of Puritanism this "spirit" was quite effectively transformed and rationalized by the increasing fusion of the squirearchy with specifically bourgeois, urban rentier and active business strata; as we will discuss later, it was influenced in a direction similar to the one which resulted from the fusion of nobility and *popolo grasso* in Italy. But the modern type of gentleman developed out of the older one only under the influence of Puritanism, which transcended the realm of its strict adherents; the squirearchic semifeudal features were gradually assimilated to the ascetic, moralistic and utilitarian ones, but as late as the 18th century they were opposed to one another.

In the face of the assault of capitalist forces the office of the justice of the peace was one of the most important means for preserving the influence of this peculiar type of gentility not only on the administrative practices and the high integrity of the officials, but also on the general social notions of honor and morality. Administration by unrecompensed

justices of the peace who were educated laymen was technically no longer feasible under the conditions of the modern city life. Slowly the number of paid urban justices of the peace increased; in the middle of the last century they numbered 1,300 out of 13,000, among whom 10,000 were merely titulars. The lack of any systematic administrative organization and the mixture of patriarchal and purely rational organization resulted from the fact that rational bureaucracy was introduced only in piecemeal fashion into the old administrative framework, as concrete individual needs arose. The old administration was politically important because of the intensive schooling of the propertied classes in the conduct of administrative affairs and the strong conventional dedication to and identification with the state. Economically relevant was especially the inevitable minimization of administrative activity which gave almost completely free reign to economic initiative despite its fairly strong conventional restraints on business ethics. Viewed as an instance of patrimonialism, administration through justices of the peace constituted an extreme marginal case.

In all other historically significant cases of a coexistence of patrimonial prince and landowning *honoratiores* the latter were patrimonial lords too. When at the beginning of modern history the patrimonial bureaucracy emerged, the two powers agreed explicitly or tacitly on this compromise: that the local patrimonial lords are guaranteed authority and economic control over their retainers insofar as this is compatible with the ruler's interest in taxation and military recruitment; that they completely control the local administration and the lower courts which have jurisdiction over their retainers; that they represent the latter vis-à-vis the prince and his officials; that all state offices or at least a large percentage of them, especially all or almost all officers' posts, are reserved for them; that they do not pay personal or real estate taxes, and that as "nobility" they enjoy extensive status privileges with regard to the courts competent to judge them, the type of punishment and of evidence. Their privileges stipulate most of the time that only they qualify for patrimonial lordship and hence can own estates with personally or patrimonially dependent peasants. In the England of the gentry administration only remnants of such status privileges of an independent nobility survived.

18. *Tsarist Patrimonialism*

The power position of the English gentry within the local administration resulted from the acceptance of a quasi-liturgical obligation entailing a very time-consuming and costly duty of holding an unpaid office.

Such obligations did no longer exist on the Continent in modern history. However, the Russian nobility was subjected to a kind of service liturgy from the period of Peter the Great to Catherine II. Peter the Great abolished the customary social ranks and legal rights of the Russian nobility in favor of two simple principles: 1) Social rank (*chin*) is obtained only through service in a patrimonial-bureaucratic (civilian or military) position, and depends upon a person's relative standing in an office-hierarchy of fourteen ranks. Since the existing nobility had no office monopoly and since no landed property qualification but—at least theoretially—an educational qualification was required, this seemed to approximate the Chinese conditions. 2) The aristocratic privileges lapsed after two generations if their holders did not take over an office. This, too, seems to be similar to the Chinese practice. However, the Russian aristocratic title entailed among other privileges the exclusive right of owning land settled with serfs. Hence "nobility" was tied to the prerogatives of seigneurial patrimonialism in a manner quite unknown in China. The forfeiture of aristocratic patents because of failure to take an office was abolished in the reign of Peter III and Catherine II. But the *chin* and the official table of ranks (*tabel' o rangakh*) continued to be the official basis of social prestige, and at least a temporary service in a state office remained a status convention for young noblemen. The patrimonial domination of the aristocratic landowner was almost universal in the realm of private landed property, in the sense of the principle "*nulle terre sans seigneur*," since apart from the "noble" landed property there were only the manors of the princely domains and appanages and of the clergy and monasteries; allodial property in other hands existed not at all or only in a few survivals (the *odnodvortsy*) or in the form of military fiefs (held by Cossacks). Thus the rural local administration, insofar as it was not a domain administration, was completely in the hands of the landowning nobility. However, political power proper and social prestige were—wholly in accordance with the Chinese pattern—dependent solely upon office holding or directly upon court connections; this was especially true of all opportunities for economic advancement deriving here as everywhere from the exercise of political power. Of course, it was an exaggeration when Paul I enlightened a foreign visitor that a nobleman was only he with whom he deigned to talk and only as long as he talked to him. However, the Crown could indeed risk a behavior toward the nobility, even toward the bearers of the most famous names and owners of the largest properties, which no Occidental ruler, no matter how great a potentate, could have permitted himself toward the lowliest of his legally unfree *ministeriales*.

The Tsar's power was rooted in the firm solidarity of interest with him on the part of the individual *chin*-holders who ran the administra-

tion and the army, which was based on compulsory recruitment. Equally important was the complete lack of a status-based solidarity of interest among the nobility. Just like the Chinese benefice-holders, the Russian nobles viewed one another as competitors for the *chin* and all the opportunities available through the ruler's favor. Therefore, the nobility was deeply split into coteries and entirely powerless in relation to the ruler; the modern reorganization of local administration created a partly new situation, yet the nobility attempted common resistance only rarely and then always unsuccessfully, even though Catherine II had expressly endowed it with the right of assembly and of collective petition. This complete lack of aristocractic status solidarity, which resulted from the competition for court favors, was not merely a consequence of the reorganization undertaken by Peter the Great, but had its origin in the older system of the *mestnichestvo*, which had determined the social ranking of the *honoratiores* since the Muscovite patrimonial state had been established. From the beginning social rank depended upon the dignity of the office granted by the Tsar, the universal landowner; its material compensation was the service fief—*pomest'e* (from *mesto*: position). The difference between the old *mestnichestvo* and the new order of Peter the Great was in the last analysis merely that [in the former] the service fief and the rank assigned to the first acquirer, or a later possessor by virtue of his administrative position, became hereditary for all his descendants, and hence that the rank order of the individual noble families had a relative stability. The young nobleman received his first office according to 1) the highest official rank in the office hierarchy achieved by any ancestor and 2) the number of generations elapsed between the highest position held by one of these ancestors and the beginning of his own services. Well-established status convention prescribed that no member of a higher-ranking family could accept an office which would make him subordinate to an official from a family of lower office rank; just as little could he ever accept a seat at table —even if he endangered his life when it was the Tsar's table—below an official who, according to the *mestnichestvo*, had a lower family rank, no matter how high the latter's personal official position was. The system limited the Tsar considerably in the selection of his highest-ranking administrative officials and army leaders; only under great difficulties could he ignore it and then at the risk of continuous protests and insubordination even on the battlefield. But the system also forced the nobility, the more so the higher the hereditary rank of a person was, to enter the court service and the patrimonial bureaucracy for the sake of preserving social status and career chances. Thus the nobility became almost completely a "court nobility" (*dvorianstvo*, from *dvōr*: court).

The importance of private landownership as a basis of social rank declined. The *votchinniki*, the holders of a *votchina*, an estate which had not originally been granted for services rendered but inherited from the ancestors as allodial property, were displaced by the *pomeshchiki*, whose name has today become the exclusive term for the "lord of the manor." Social rank was determined not by the ownership of a "noble" estate but by administrative rank, whether personally acquired or inherited. Tsarist patrimonialism shrewdly used this system which linked all social power with services for the ruler. The origins of this linkage are to be found in a combination of 1) the institution of the royal following, which will be analyzed later, and 2) sib solidarity which endeavored to appropriate for the whole sib the service rank, once it was acquired, and the opportunities connected with it. Peter the Great, when faced with this condition, tried to simplify matters by burning the lists of family rank (*razriadnaia perepis'*), which contained the claims of the noble families, and by putting in their place the *chin* scheme, which was almost completely based on the actual holding of office. This was an attempt to eliminate the sib honor without creating a status solidarity directed against the Tsar; up to that time the sib honor had hindered the development of status solidarity just as much as the Tsar's interests in the free selection of his officials. The policy was successful. The nobility remained deeply split, through ruthless competition insofar as it strove for the social rank of the *chin*, and through animosity and hatred toward the *chinovnik*—the general name for officials—insofar as it remained a purely landed aristocracy. The monopoly of serf ownership did not create a solidary status group, since the competition for *chin* interfered and since only the employ in the Tsar's service provided the great incidental opportunities for enrichment.

In this respect the situation was the same as in the late Roman and Byzantine empire, in their Babylonian, Persian and Hellenistic predecessors and Islamic successors: There manorial patrimonialism—which did not exist at all in China—resulted neither in a definite nexus between landowners and state offices nor in the rise of a homogeneous manorial aristocracy, no matter how many incipient phenomena existed. In the late Roman empire the increasingly important land-owning class of the *possessores* confronted a socially quite distinct stratum of officials, divided into ranks according to the level of benefice-revenues. The same disconnected juxtaposition of landed nobility and patrimonial officialdom can be observed in the early Oriental and the Hellenistic empires. In the Islamic empires, corresponding to their theocratic character, social rank was conferred first of all by the profession of the Islamic creed, and office opportunities depended upon religiously controlled education and

upon the personal favor of the ruler; this did not give rise to permanent and enduringly effective aristocratic monopolies.

19. *Patrimonialism and Status Honor*

On this basis one fundamental feature of medieval Western aristocracy could not develop at all: a central guide to social conduct in the form of a distinctive traditional ethic re-enforced by education; this ethic made personal relations central to the style of life and impressed every individual with the obligations of a status honor that was jointly held and thus a unifying bond for the status group as a whole. Numerous status conventions developed in Russia as well among the strata of *honoratiores* in those empires. But it cannot be ascribed to the above-mentioned ambiguous basis of social rank alone that these conventions could not serve as a uniform ethical guide for "honorable" conduct. They merely provided a framework for the defense of economic interests or the undisguised striving for social prestige and failed to offer to the notables an elementary internalized standard of self-assertion and of proving one's own honor. The individual's social honor and his relation to the lord were either without any inner connection, as in the case of the autonomous *honoratiores*, or simply amounted to career opportunities which merely appealed to the desire to count for something, as in the cases of the court aristocracy, the *chin*, the mandarins and all kinds of positions depending exclusively upon the ruler's favor. On the other hand, appropriated benefices of all types were indeed a suitable basis for a sense of office and status dignity in the manner of the *noblesse de robe*, but not for a personal "honorable" relationship to the lord and a corresponding ethos.

The Occidental *ministerales*, whose social honor depended on the lord's favor, and the English gentleman of the squirearchy, whose social honor was determined by autonomous notability, were both, although in different ways, bearers of a peculiar, personal sense of dignity whose root was personal honor, not only the prestige of office. In the case of the *ministeriales* it is obvious and in that of the English gentleman it can easily be seen that their basic attitudes were influenced by Occidental *knighthood*. The former group merged completely with the knightly stratum; the English gentleman, on the other hand, increasingly absorbed bourgeois traits into his ideal of manliness and his style of life, thus modifying his medieval knightly features as the demilitarization of the notability progressed. Eventually there emerged in the Puritan gentleman a type equal in rank to the old squire but of very hetero-

geneous provenience; this resulted in the most diverse mutual adjustments. But it remains true that for both strata feudal knighthood was the original, specifically medieval center of orientation.

The knight's conduct was molded by the feudal concept of honor and this in turn by the notion of vassalic fealty; this was the only type of status honor conditioned on the one hand by a common and internalized ethos and on the other by an external relationship to the lord. Since the specific feudatory relationship is always extrapatrimonial, it transcends in this respect the boundaries of patrimonial structures of domination. But it can easily be seen that, systematically, the feudatory relationship is best treated as an extreme marginal case of patrimonialism, since it is so much shaped by the purely personal loyalty bond with the lord and since it appears as a "solution" to a specific practical problem, namely that of political domination by a patrimonial prince over, and with the help of, local patrimonial lords.

NOTES

1. The following four chapters have not been available in previous translations, with the exception of sections of the chapter on charisma. The editors' major effort has been the translation of the text and the verification of ambiguous historical references, which required considerable background research. However, the notes have been held to a minimum, since many of Weber's sources for the following chapters can be found in the notes to the *Sociology of Law* (ch. VIII) and *The City* (ch. XVI). All notes, unless otherwise marked, are by Roth.

On the controversies about the origin of the notion of patrimonialism and the actual existence of a patrimonial state in German history see Otto Brunner, *Land und Herrschaft* (Vienna: Rohrer, 1959), 4th ed., 146–64. For Brunner's treatment of the relationship between sociology and history see his *Neue Wege der Sozialgeschichte* (Göttingen: Vandenhoeck, 1956). Brunner deals with Weber in both works.

2. Weber probably refers to Eberhard Gothein, who lived in Heidelberg since 1904; he was the author of *Die Kulturentwicklung Süditaliens in Einzeldarstellungen* (1886) and of *Die Renaissance in Süditalien* (sec. ed., 1924). (W)

3. See Kurt Sethe, *Die altägyptischen Pyramidentexte* (Leipzig 1908–22), 4 vols. This is still a standard work. (W)

4. On the Prussian *Gutsbezirk*, a rural district exempted from the ordinary village association and administered by the *Junker* owners, see *infra*, ch. XVI:v, n.9.

5. One of Weber's major sources about English constitutional history were the writings of Julius Hatschek; see his *Englisches Staatsrecht* (Tübingen 1905/6), 2 vols. and *Englische Verfassungsgeschichte* (Munich 1913). Weber also knew the first comprehensive history of the English constitution by the liberal scholar and parliamentarian Rudolf von Gneist, *The English Constitution* (1891).

CHAPTER XIII

FEUDALISM, STÄNDESTAAT AND PATRIMONIALISM

1. *The Nature of Fiefs and Types of Feudal Relationships*

The structure of *feudal relationships* can be contrasted with the wide realm of discretion and the related instability of power positions under pure patrimonialism. [Occidental] feudalism (*Lehensfeudalität*) is a marginal case of patrimonialism that tends toward stereotyped and fixed relationships between lord and vassal. As the household with its patriarchal domestic communism evolves, in the age of the capitalist bourgeoisie, into the associated enterprise based on contract and specified individual rights, so the large patrimonial estate leads to the equally contractual allegiance of the feudatory relationship in the age of knightly militarism. The personal duty of fealty has here been isolated from household loyalties, and on its basis a cosmos of rights and duties has come into being, just as the purely material relationships were isolated when the enterprise developed. We shall see later that the feudal allegiance between lord and vassal must also be interpreted as a routinization of a charismatic relationship and that from this viewpoint certain specific features of feudal allegiance find their proper systematical location. Here, however, we will attempt to comprehend the internally most consistent form of the feudal relationship. For "feudalism" and also the "fief" can be defined in different ways.

If we define feudalism as the rule of a landed military aristocracy, then Poland, for example, was "feudal" in the most extreme sense. But Poland was unlike a "feudal" realm in the technical sense, for she lacked the decisive element: the feudatory relationship. For the structural development—or lack of it—of the Polish Kingdom it was most

important that the Polish aristocrats were allodial landed notables. The resulting "republic of aristocrats" represents the extreme opposite of Norman centralized feudalism.

The Greek *polis* of the pre-classic period and even the early stages of democracy at the times of Cleisthenes can be called "feudal," because citizenship was always identical with the right and the duty to bear arms, the citizens were generally landowners, and the power of the dominant stratum of *honoratiores* rested on manifold loyalty relationships to clients. This was also true of the Roman Republic up to its last period. In nearly all of Antiquity the connection between land grants and military obligations toward a personal master, a patrimonial prince, or an association of citizens has been of basic importance.

If the "fief" is defined as any grant of rights, especially of land use or of political territorial rights, in exchange for military or administrative service, then the term can be applied to the service fief of the *ministeriales* [in the German Middle Ages], perhaps to the early Roman *precarium*, certainly to the land given to the *laeti*, who were settled in the Roman Empire after the Marcomannic Wars, and later to land which was directly granted to alien tribes upon the condition of military service; the term will apply all the more to the land of the Cossacks, and also to the soldiers' land that is found all over the ancient Orient and in Ptolemaic Egypt, and to similar world-wide phenomena in all epochs.

Most of these cases involve the creation of hereditary livings which establish either a direct patrimonial dependence or at least a liturgical attachment to obligations and thence to the land. Moreover, social positions may be established by an autocratic ruler which, in relation to other "free" strata, are privileged through freedom from taxation and special land rights (*Bodenrecht*). In return, the incumbents are obliged to undergo military training and to be at the lord's arbitrary or limited disposal for military or administrative purposes. The settling of warriors, in particular, is the typical form of securing economically dispensable and readily available military forces under a natural economy, which cannot maintain a mercenary army; these military forces come into being as soon as the standard of living, the intensity of agricultural and non-agricultural work and the development of war technology make the mass of the population indispensable as well as inferior in their military capabilities. Many kinds of political associations resort to such arrangements. One type is the originally inalienable plot of land (κλῆρος) in the Hellenic polis of *hoplites;* their holders were obligated to an association of citizens. A second type is the Egyptian "warrior caste" (μάχιμοι), which was obligated to the patrimonial prince; and a third type is the land grant to "clients," who are obligated to a personal master. All despotic regimes of the ancient Orient and also the cleruchies of the

Hellenistic period have used this type of military manpower in one way or another. We will see later that occasionally it was still used by the Roman nobility.

The last-mentioned cases are functionally and also legally similar to the fief proper without being the same, because even privileged peasants remain, socially speaking, peasants or, at any rate, "common people"; this then is a kind of feudal relationship on the level of plebeian law. By contrast, the relationship of the *ministeriales* to the lord has originally a patrimonial basis and hence is different from that of the fief-holder.

Genuine feudatory relationships in the full technical sense always exist a) between members of a stratum which is hierarchically gradated, but stands above the mass of freemen, forming a unit against them; and b) by virtue of the feudatory relationship individuals are related to one another through a free contract, not through patrimonial dependence. Vassalage does not diminish honor and status of the vassal; on the contrary, it can augment his honor, and commendation is not submission to patriarchal authority, although its forms are borrowed from it.

We can now classify "feudal" relationships in the broad sense of the word as follows: (1) "Liturgic" feudalism: soldiers provided with land, frontier guards, peasants with specific military duties (cleruchs, *laeti, limitanei*, Cossacks); (2) "Patrimonial" feudalism, a) "manorial": levies of *coloni* (for example, of the Roman nobility as late as the Civil War, and of the ancient Egyptian pharaoh); b) "servile": slaves (ancient Babylonian and Egyptian armies, Arabian private troops in the Middle Ages, Mamelukes); c) gentile: hereditary clients as private soldiers (Roman nobility); (3) "free" feudalism, a) "vassalic": only by virtue of personal fealty without the grant of manorial rights (most Japanese Samurai, the Merovingian *trustis*); b) "prebendal": without personal fealty, only by virtue of granted manorial rights and tax revenues (Middle East, including the Turkish fiefs); c) "feudatory" (*lehensmässig*): personal fealty and fief combined (Occident); d) "urban" (*stadtherrschaftlich*): by virtue of the communal association of warriors, based on manorial land allotted to the individual (the typical Hellenic polis of the Spartan type). At this point we will deal primarily with the types of "free" feudalism and, among these, primarily with the most consequential: Occidental feudalism (*Lehensfeudalismus*); we will draw on the other types only for comparative purposes.

The full fief is always a *rent-producing* complex of rights whose ownership can and should maintain a lord in a manner appropriate to his style of life. Primarily seigneurial rights and income-yielding political powers, that is, rent-producing rights, are conferred upon the warrior. In the feudal Middle Ages the *gewere* of a piece of land belonged to the

recipient of the rent. Wherever the hierarchy of fiefs was strictly organized, these feudal sources of rent were registered according to their yield. The Turkish "fiefs," which were classified after the model of the Sassanids and Seljuks, were registered according to their yield in *asper*, and the provisioning of the Japanese vassals (Samurai) according to the *kokudaka* (rice rent). Inclusion in the English "Doomsday Book," as it was later called, did not amount to a feudal matriculation of fiefs, but this register owed its origin to the especially tight centralization of the English feudal administration.

Since manors are the normal object of a fief, every genuine feudal structure has a patrimonial foundation. Moreover, where offices themselves are not treated as fiefs, the patrimonial order normally continues to exist—at least wherever the feudal system, as it happens frequently, is incorporated into a patrimonial or prebendal state as part of its administration. The Turkish cavalry which held fief-like prebends existed next to the patrimonial Janissaries and the partly prebendal organization of offices, and therefore remained itself semi-prebendal.

Excepting Chinese law, the granting of seigneurial rights from the estate of the king can be found in the most diverse legal areas. In the realm of the Rajputs in India, especially in Udaipur, the ruler until recently bestowed territorial and judicial rights upon members of the dominant clan in return for military services; they in turn paid homage to him and renewal fees in case of his death, and they risked the loss of their rights if they violated their duties. The same approach to land and political rights—an approach originating in the joint control of the ruling warriors over conquered land—occurred very often, and probably was once the basis of Japan's political constitution. On the other hand, we can find numerous phenomena typified by the Merovingian royal land grants and by the various forms of *beneficium*. Almost always they presuppose the rendering of military aid and possible revocability in case of default, the extent of which is often ill-defined. Substantively, the numerous Oriental land-grant types that were similar to hereditary leases also had a political purpose. However, neither fits the concept of the "fief," as long as they are not related to the very specific fealty of the vassal.

2. *Fiefs and Benefices*

The fief can also be distinguished legally from the benefice, although we will see soon that the transitions are fluid. The benefice is a lifelong, not a hereditary, remuneration for its holder in exchange for his real or presumed services; the remuneration is an attribute of the

office, not of the incumbent. Therefore, in the Occident during the early Middle Ages the benefice was not, like the fief, forfeited in case of the ruler's death—as U. Stutz has emphasized[2]—, but it reverted to the ruler upon the death of the benefice-holder; at the zenith of the Occidental Middle Ages a non-hereditary fief came to be considered inferior. The income of the benefice, accruing to the office, not to the person, is only used and not personally owned—the Church, for example, drew certain conclusions from this in medieval times—, whereas the fief is the vassal's personal property for the duration of the feudatory relationship; however, it remains inalienable since it is tied to a highly personal relationship, and indivisible since it is intended to preserve the vassal's service capacities. The benefice-holder was often, and sometimes generally, relieved from paying his administrative costs, or portions of the income from the benefice were set aside for this purpose. But the vassal had always to pay from his own resources for the costs of the fice granted to him.

However, such differences were not really pervasive. For example, they did not exist under Turkish nor under Japanese law; however, we will note soon that these two cases are not genuine examples of feudatory law. On the other hand, we have observed that the nonhereditary character of benefices was very often fictitious; the appropriation of benefices—especially of many French benefices—reached a point where even the heirs received a compensation for the loss of revenue drawn from the benefice. The decisive difference must be located elsewhere: Wherever the benefice had lost all traces of patrimonial origin, the benefice-holder was a simple usufructuary or rentier who had certain official duties and was to that extent akin to the bureaucratic officials.

In contrast, the free vassal, who stands outside any patrimonial subordination, is subject to a very demanding code of duties and honor. In a peculiar fashion, the feudatory relationship merged seemingly most contradictory elements in its most developed form: on the one hand, strictly personal fealty, on the other contractual stipulation of rights and duties, their depersonalization by virtue of the rent nexus, and finally hereditary control of the possession. Wherever the original meaning of the relationship had been preserved, "hereditariness" was not a common "inheritance." To begin with, the pretender had to be personally qualified for vassalage before he could claim the fief. Furthermore, he had to enter personally into the fealty relationship. Just as the son of a Turkish vassal had to request a new *bérat* in due time from the *beglerbeg* and, if necessary, through him from the Sublime Porte, so the Occidental aspirant had to void the fief and to ask the lord for being invested with it after performing commendation and the oath of homage.

To be sure, the lord was obliged to accept the vassalage if the aspirant's qualification had been established, but vassalage had a contractual character and could be terminated by the vassal at any time upon yielding the fief. Furthermore, the lord could not arbitrarily impose obligations upon the vassal; rather their typical extent depended upon contractual obligations of fealty and loyalty which were shaped by a code of honor binding upon both parties. Thus the typification of the obligations and the substantial safeguards of the vassal's interest were linked with a highly personal relationship to an individual ruler. This developed to the highest degree in Occidental feudalism, whereas the Turkish feudal system remained much more prebendal with regard to claims of inheritance, since the power of the Sultan and the *beglerbeg* continued to be largely arbitrary despite all of the rules and regulations.

Japanese feudalism, too, does not represent a complete feudatory system.[3] The Japanese *daimyo* was not a feudatory vassal, but a vassal committed to supply definite war contingents, to provide guard units and to pay a fixed tribute; within his own district he exercised administrative, judicial and military authority practically in his own name, in the manner of a territorial ruler. He could be transferred to another district for disciplinary reasons. That he was not a vassal as such is demonstrated by the fact that the Shogun's real vassals (*fudai*), if daimyos-districts had been granted to them, could suffer transfer (*kunigaye*), because of their personal dependence, for reasons of political expediency without any default on their own part. This very fact also proves that the district granted to them was an office, not a fief. These *daimyos* were forbidden to establish alliances, to enter into relations of vassalage with one another, to conclude treaties with foreign powers, to carry on feuds and to build fortresses; their allegiance was assured through the institution of the *sankinkotai*—the requirement of periodic residence in the capital.

The *samurai*, on the other hand, were personally free private soldiers of the individual daimyos (or of the Shogun himself); they were maintained with rice allowances, rarely with land grants; they originated partly in the voluntary following of warriors, partly in office-holders entitled to court service, who developed a practically free contractual relationship, just as the *ministeriales* of the German Middle Ages; they differed greatly in their social status, from the small rentier who gained his rice allowance by serving in the lord's manor, sleeping with up to four others in one room, to the practically hereditary incumbent of a court office. The *samurai* were a class of free retainers, partly plebeians and partly courtiers, not vassals but benefice-holders, whose position was more similar to that of the Frankish *antrustiones* than to that of a

medieval feudal benefice-holder. The relationship to the lord was endowed with a sense of knightly loyalty, which was analogous to, but more intense than, Occidental fealty; this intense attachment grew out of the transformation of the followers' loyalty into a glorified free vassalage, and out of the warrior's concept of status honor.

Finally, the special features of the Islamic warrior's fief can be explained, as C. H. Becker has recently shown, on the basis of their origin in a mercenary army and in tax-farming.[4] Unable to pay his mercenaries, the patrimonial ruler had to give them direct access to the tax payments of his subjects. He also had to transfer to the military official (*emir*) the position of the tax official (*'amil*), who drew a fixed remuneration; this office was originally independent of the military office in accordance with the typical patrimonial division of powers familiar to us. Three different elements merged into the concept of the *iktâh* (*beneficium*): 1) *Takbil*, the farming of revenues of a village or a district to a *muktah* (tax-farmer); 2) *Kata'i'*, the fiefs—called *sawafi* in Mesopotamia—, grants of land to deserving or indispensable supporters, and finally 3) the possession of the subjects' taxes, which were seized as security by, or assigned to, *emirs* and soldiers, especially Mamelukes, in order to cover their arrears of pay. The incumbent of an *iktâh* had to serve as a soldier and was supposed to surrender the surplus of taxes over his pay—which he rarely did. The arbitrary exploitation inherent in this type of control in an early case motivated the vizier Nizam al-Mulk—under the Seljuks in Mesopotamia toward the end of the 11th century—to assign land definitely to the soldiers and emirs as benefices and to give up all claim to tax surpluses, in return for their military service. The Mamelukes adopted the same system in Egypt in the 14th century. The soldiers, who turned from tax-farmers or mortgagees into landowners, now developed a personal interest in the improvement of their subjects' land; this also did away with the friction between the military and the fiscal authorities. The Ottoman *sipahi*-benefices are a modification of this system of military benefices. Its origin in the decaying tax system and the mercenary army of a state based on a money economy, organized on the ancient pattern, distinguishes these military benefices radically from Occidental feudalism developed on the basis of a natural economy and the leader's following. Oriental feudalism was bound to lack all those features that derive from the loyalty of followers, in particular, the norms of the specific as well as personal fealty of the vassal; conversely, Japanese feudalism with its exclusively personal allegiance lacked the manorial component of the *beneficium*. Hence both types differ, in exactly opposite direction, from that combination of

personal fealty, derived from the follower's loyalty, and benefice which accounts for the distinctiveness of Occidental feudalism.

3. *The Military Origin of Feudalism*

The widespread phenomenon of the fief was primarily of military origin. The Turkish fief-benefice committed its holder to live on the land and, during the Empire's great expansion, was considered forfeited if the holder had not served in the army within the last seven years; the claims of the heirs were also partly dependent on the proof of active military service. In the Orient as well as the Occident, the fief-benefice normally served the establishment of a *cavalry*, whose members had identical equipment and were continuously trained. The military effectiveness of these warriors, who were personally devoted to their lord, was enhanced by their notion of *honor*. This cavalry was a substitute for the levy of freemen and sometimes also for the king's charismatic following (*trustis*). The Frankish fiefs originated on secularized church land in defense against the Arabian cavalry. The Turkish fief-benefices, too, were not concentrated in the Ottomans' old peasant settlements (in Anatolia); they were mostly landed estates, managed by Rayas, in areas conquered at a later time (especially in Rumelia). Wherever it substituted for the levy of freemen, the feudal army was a function of intensified economic activities and of expanding boundaries in an inland state with a natural economy. The same was true of the mercenary army in maritime states or inland states with a money economy. For the mass of the landowners increasing pacification and intensified agriculture diminished both their familiarity with military tasks and their opportunities for military training; this reduced the economic dispensability of smallholders. The growing preoccupation of men with work originally done by women tied them to the land, and the increasing differentiation of property through division or accumulation of land destroyed the possibility of identical military equipment; the growing masses of smallholders could no longer equip themselves—the precondition of every army of freemen. In particular, campaigns at the far-away peripheries of a great empire could not be conducted with a peasant levy, just as an urban militia could not control large overseas areas of expansion. And just as the mercenary army replacing the citizens' army substituted professional soldiers for militia men, so the transition to the feudal army resulted initially in identical equipment of high quality. In its Occidental beginnings, horse and arms were part of the fief; self-equipment came later when this institution became widespread.

The specific element that determines the vassal's behavior under fully developed feudalism is the appeal not only to his obligations of fealty, but to his sense of high status which derives from an exalted conception of honor. The warrior's sense of honor and the servant's faithfulness are both inseparably connected with the dignity and conventions of a ruling stratum and buttressed by them. Thus, the peculiarity of Occidental, fully developed feudalism was largely determined by the fact that it constituted the basis of a cavalry—in contrast to the plebeian infantry-fiefs of the clients, cleruchs, μάχιμοι, and ancient Oriental fief-holding soldiers. We will frequently encounter the ramifications of this factor.

4. *Feudal Legitimation*

The feudal system produces men who can equip themselves and handle weapons professionally, who in war identify their own honor with that of the lord, who see in the expansion of his power the chance to secure fiefs for their heirs and, above all, who find the only *basis for the legitimacy of their own fief* in the preservation of *his* personal authority. Everywhere this last element has been eminently important for the transition to feudalism, and especially for the extension of feudalism from its original domain, military service, to public offices. In Japan the ruler attempted in this fashion to emancipate himself from the dominance of lineage groups which had familial charisma. In the Frankish empire the attempts of the patrimonial state to preserve the sovereign's power through limiting tenure in office and through the system of emissaries were again and again subverted; the violent ups and downs in the power struggle of the aristocratic cliques in the Merovingian empire were eventually terminated by the strong arm of a central official, but this resulted in the overthrow of the legitimate dynasty in his favor. The bestowing of offices as fiefs under the Carolingians provided relative stability; from the 9th century on this policy was definitely carried through, after the Carolingians had at first used the vassals as countervailing power against the Merovingian *trustis* and after the strictly personal fealty of all office-holders had emerged as the only support of the royal thrones during the struggles of the kings in the divided empire. Conversely, the destruction of Chinese feudalism—for a long time lamented as the really sacred order of the fathers—by the prebendal-bureaucratic order, which since has consistently followed its own momentum, was propelled by the equally typical motive for eliminating the feudal office: the motive of restoring full power to the sovereign.

For the quite considerable guarantee of the ruler's position through the vassal's knightly honor is acquired at the price of a great decline of his power over the vassals. Fully developed feudalism is the most extreme type of systematically decentralized domination.

To begin with, the lord has only limited "discipline" over the vassal. The only reason for taking back the fief is "felony": the violation of fealty toward the lord through failure to fulfil the feudatory obligations. However, the concept of "felony" is very vague, and normally this does not benefit the lord's arbitrariness but the vassal's position. For even where feudal courts composed of vassals did not exist and hence vassals were not organized as members of an autonomous corporate group (as in the Occident), the generalization is fully valid that the lord is powerful vis-à-vis the individual vassal, but powerless with regard to the interests of all vassals; he must be sure of the support or at least the toleration of the other vassals before he can safely proceed against any one of them. Since the feudatory relationship is founded on mutual loyalty, an arbitrary act of the lord has, as a "breach of faith," an inherently destructive effect upon his relations with all vassals. This fairly rigid limitation of the ruler's disciplinary powers over his own vassals is made more palpable by the fact that he often has no direct control over the subvassals of his own vassals.

Under fully developed feudalism there was a "hierarchy" in two respects: First, only those seigneurial rights, especially only those landed estates, the possession of which could be derived from the supreme ruler as the source of all power, were transferable as full fiefs; second, there was a social rank-order (such as the *Heerschild* of the *Sachsenspiegel*) according to the level of sub-infeudation which the respective fief-holder occupied relative to the supreme ruler. But the extent of the ruler's direct control over subvassals of his own vassals remained very problematic because, as in every feudatory relationship, the one between vassal and subvassal was also strictly personal and hence could not easily be canceled by any felony of the first vassal against his lord. In its classic period the Turkish feudal system achieved a relatively strong centralization through the quasi-prebendal definition of the fief and of the *beglerbeg*'s position in relation to the Sublime Porte. But the Occidental reservation: *salva fide debita domino regi* [with the exception of the fealty owed to the overlord] in the oath of homage did not preclude at the least a conflict of conscience for a subvassal even in cases in which his lord's felony was clear, since he was faced with a dual obligation of loyalty. In any case, he always considered himself entitled to examine for himself whether the overlord of his own lord discharged his obligations.

For the centralistic development of England an arrangement taken over from Normandy by William the Conqueror became crucial: All subvassals were directly oath-bound to the king and considered his men; furthermore, subvassals who did not obtain legal satisfaction from their lord were not forced (as in France) to go through various stages of appeal of the feudal hierarchy but could go directly to the king's courts; thus, the feudal hierarchy in England was not identical, as in most other countries, with a jurisdictional hierarchy in matters of feudal law. In Normandy and England, just as under Turkish feudalism, this tight organization and the firm bonds between lord and vassal were due to the fact that the feudal polity was constituted on conquered territories—similar to the church which established its strictest hierarchical organization in mission territories. However, even then conflicts of conscience on the part of subvassals were not completely absent. For this reason too attempts were frequently made to limit subinfeudation or at least its frequency on lower levels; by contrast, in Germany the limitation of the *Heerschilde* derived from general principles of the office hierarchy.

On the other hand, fully developed feudal law stipulated that all objects which had once been included in a fief would have to be granted again in case of escheat, and it also established the principle: *nulle terre sans seigneur*. Superficially, there is a correspondence between the bureaucratic principle and the feudal rule that all traditional feudatory units must be bestowed upon vassals by the king, but the intent is fundamentally different. Under the bureaucratic system the mandatory filling of offices is intended as a legal protection for the ruled, but the compulsory granting of fiefs cut off most of the vassals' subjects from any direct relation to the supreme ruler; furthermore, this feudal practice establishes as a collective right of the vassals that the lord cannot ignore the feudal distribution of power for the sake of his own interests by taking power back into his hands; rather he must utilize again all existing fiefs for the purpose of equipping the vassals' descendants. According to the familiar scheme, the vassals could press their demands with particular strength whenever they were organized into a legally autonomous groups and especially when legal proceedings in which they participated as members of a feudal court (*Lehenskurie*) dealt with disputes and legal business concerning the obligatory granting of an inheritance, escheat and renewal of fiefs. In this case the demand for fiefs was monopolized in addition to the means for protecting the supply of fiefs.

Monopolization proceeded by virtue of the continuous increase of

demands upon the personal feudal qualifications of the aspirant, just as it does in the bureaucratized community by virtue of the aspirants' demand for more and more specialized examinations and ever more diplomas as a condition of employment. The feudal qualification, however, was the polar opposite of the qualification for bureaucratic office, which is based on specialized knowledge. Bureaucracy and patrimonial officialdom are based on social levelling in the sense that as pure types they are only concerned with personal qualifications, the one with substantive expertise, the other with purely personal characteristics; both types disregard status differences and in fact constitute the specific instrument of their negation—irrespective of the circumstance discussed earlier that the bureaucratic and the patrimonial strata, too, easily become carriers of a distinct status honor with all its consequences. This social honor was here a result of the power position of these strata. But the essence of feudalism is status consciousness, and it increasingly perfects this very characteristic. Everywhere the vassal (in the specific meaning of the word) had to be a free man, not subordinate to the patrimonial power of a lord. The Japanese samurai too changed his lord at will. At first, of course, the vassal's characteristic qualification was most of the time merely his professional capability, his military proficiency; this it remained, for example, under Turkish feudalism; even Rayas could receive fiefs if they had rendered the requisite military services. However, in its fullest elaboration the feudatory relationship can only be an attribute of a ruling stratum, since it rests on emphatic notions of status honor as the basis of fealty and also of military fitness. Therefore, the requirement of seigneurial ("knightly") conduct is added everywhere, especially the injunction against any kind of remunerative labor which would detract from military training and be degrading.

When the opportunities for the support of the descendants begin to decrease, the monopolization of fiefs and offices—and later particularly of the prebends (*Stiftspfründen*) for the maintenance of relatives without proper means—sets in with full force. The increasing influence of status conventionalism comes on top of it, and the claim is advanced that the aspirant for a fief or a prebend must not only live like a knight, but also be of knightly descent. That means, he has to be the offspring of a minimum number of knightly ancestors—at first, knightly parents, then knightly grandparents: the "four ancestors." Finally, in the regulations of the tournaments and convents of the late Middle Ages monopolization reached a point where sixteen ancestors were required and the urban patriciate was excluded because it shared authority with the guilds and sat with them in the same councils.

5. *The Feudal Division of Powers and Its Typification*

The strict legal autonomy (*Eigenrecht*) of the individual vassal paralleled the claim of all qualified aspirants on the possession of all fiefs, a claim which was not everywhere recognized but everywhere advanced in one fashion or another. The fact that in the classic areas of feudalism the vassal's right was contractual and subject to renewal, but at the same time inheritable according to established norms, stereotyped the division of powers far beyond the degree attained under the prebendal structure and made it highly inelastic. This very permeation of the whole system with the guarantee of the fief-holder's position through a bilateral contract was very important for the development of feudalism; this guarantee transcended the mere granting of privileges by the lord and, in contrast to the appropriation of benefices, it was not just a purely economic matter. It turned feudalism into an approximation of the *Rechtsstaat* [constitutional government], at least in comparison to pure patrimonialism with its juxtaposition of traditional prescription and appropriated rights, on the one hand, and arbitrariness and discretion on the other. Feudalism is a "separation of powers," but unlike Montesquieu's scheme, which constitutes a qualitative division of labor, it is simply a quantitative division of authority. The idea of the social contract (*Staatsvertrag*) as the basis of the distribution of political power, an idea which led to constitutionalism, is anticipated in a primitive fashion. Of course, not in the form of a pact between the ruler and the ruled or their representatives—under which the subjection of the ruled is conceived as the source of the ruler's right—, but in the essentially different form of a contract between the ruler and those whose authority derives from him. Type and distribution of powers are fixed through this contract, but there is no general *règlement* and no rational differentiation of individual jurisdiction. For the powers of the office are personal rights, contrary to the bureaucratic case; their extent is determined positively by the official's personal grant *and* negatively by the subjects' exemptions, immunities and privileges, whether they be granted or sanctified by tradition. Only this juxtaposition and the mutual limitation of the subjective right of *one* power-holder by the opposed rights of another produces—very similar to the stereotyped and appropriated patrimonial offices—that power distribution which would correspond to some extent to the bureaucratic notion of official jurisdiction. For in its genuine sense this notion does not exist under feudalism, and therefore the concept of the "agency" (*Behörde*) is also absent.

At first only a section of the vassals was granted political powers, and that means most of all: judicial powers. In France these were the

so-called *seigneurs justiciers*. The ruler could divide his own judicial powers by granting one part of them to one vassal and other parts to another vassal. Typical was the division into higher jurisdiction—including capital judicature (*Blutbann*)—and lower jurisdiction, and their distribution among different vassals. This does not mean that the vassal who has been granted seigneurial powers which were higher in the original hierarchy of offices also has a higher rank in the hierarchy of fiefs, which is established according to the distance from the supreme lord. In principle, at least, the hierarchy of fiefs is not at all concerned with the hierarchy of powers granted, but only with the distance or nearness from the first lord. In fact, however, the possession of the highest judicial powers, especially of capital judicature, everywhere tends to establish its holders as a special group of princely rank (*Fürstenstand*). This tendency had to compete everywhere with the overlapping tendency to consider the immediate feudatory relationship to the king as the mark of belonging to the highest status group. This happened particularly in Germany in characteristic ups and downs, with which we cannot deal here. The result was everywhere a most intricate complex of seigneurial powers which had been fragmented through grants to the most diverse holders. In principle, the territorial jurisdiction of the Occidental lord, which was based on the grant of political rights, was separated from his feudatory jurisdiction over his own vassals, on the one hand, and from his patrimonial (*hofrechtliche*) jurisdiction on the other. All of this resulted in the fragmentation of powers into numerous individual rights, appropriated on different legal grounds, which traditionally limited one another. Absent was the separation, so typical of every bureaucracy and still recognizable in the prebend, of person and vocation, personal property and official means of administration. Since the income from the fief was not an office revenue, the differentiation between allodial and feudal possesions in the case of escheat and inheritance was, unlike the externally similar differentiation in the case of the prebend, only a stratification of inheritance.

Furthermore, not only were all official powers and revenues of a vassal part of his personal rights and of his own household, but above all the *costs* of administration were personal expenditures indistinguishable from those of his own household. Just as every individual, be it lord or fief-holding official, pursued his essentially personal interests on the basis of his own right, so all administrative expenditures were covered by his own personal services and resources or—and especially—by the services of the patrimonial retainers or of the "subjects" who were subordinate by virtue of the political rights granted to him; thus the expenditures were not met out of a rational system of taxation,

as under a bureaucracy, or out of the ruler's household or special prebendal revenues as under patrimonialism. Since the tributes and services of the "subjects" were ordinarily regulated by tradition, the apparatus was financially inelastic, and this was aggravated by the typical practice, or at least universal tendency, of using the feudal association as the vehicle (*Träger*) of political administration; this limited very much the personal as well as the substantive means of power of the ruler and all other lords.

To begin with, the vassals attempted everywhere to regulate through fixed norms the maximal annual duration of their most elementary obligation, for the sake of which the feudal association had been created: the obligation to render military service. Most of the time they were successful. Moreover, the right to carry on feuds existed also between the vassals of the same lord. The lord's power only guaranteed his vassals' fiefs, but nothing else. The private wars of the vassals against one another could of course be very detrimental to the power interests of the feudal lord, but beyond the stipulation that private feuds could at least not take place during one of the lord's own military actions no curb was successful on the European continent up to the time when church and cities, together with the king, enforced the edicts of peace (*"Landfrieden"*).

The limitations on the financial rights of the ruler were particularly severe. Apart from the tutelary utilization of a fief by a lord, these rights consisted mostly in the vassal's obligation to subsidize the lord in certain cases of need; the lord would have liked to turn these obligations into a comprehensive right of taxation, but the vassals set out to turn them into definitely fixed occasional tributes. In compensation for increasingly fictitious military duties, the tax exemption of knightly fiefs eventually became the normal pattern until long after the Middle Ages. In general, the vassals were no less successful, at least as long as the lord was dependent on the feudal army, in freeing their retainers from the lord's taxation, which they permitted only in exceptional cases. As a rule, the lord could directly raise *tallagia* only from his manorial and personal retainers. The right of escheat became increasingly impractical. Everywhere the extension of the right of inheritance to collateral relatives prevailed. The alienation of the fief, which of course required the lord's willingness to accept the new vassal, became more and more the rule and the purchase of his consent one of the most important feudal sources of revenue. However, the purchase was equivalent to the full appropriation of the fief, since the transfer fee came to be fixed by tradition or law. Thus, while the fealty relationship became progressively stereotyped and commercialized, it also lost its unequivocal character

and practical utility as a means of power. As a free man, the vassal could later even take a fief from several lords; this made his support precarious for any one of them in case of a conflict. French feudal law distinguished the *homagium simplex*, the feudal oath with mental reservations as to other obligations, from the *homagium ligium*, the unconditional oath, which was, so to speak, the first mortgage upon fealty; it preceded all other obligations and hence could only be rendered to one ruler. For the rising power of the French monarchy it was important that the great feudal lords were forced to render the latter oath. In general, however, the possibility of multilateral obligations resulted in their far-reaching devaluation. Eventually it became almost impossible to run a continuously functioning administration with the help of vassals. In the abstract, the vassal had the duty to help his lord not only with deeds but also with advice. The great vassals liked to derive from this duty a "right" to be heard before important decisions were made, and usually they succeeded since the feudal lord was dependent upon the morale of the feudal army. As an obligation, however, the vassal's advisory activity was gradually reduced, just like his military duty; it was quite discontinuous and therefore could not be used for the organization of a concrete agency (*Behörde*).

Thus, the feudal association provided to the local office-holders a hereditary appropriation and guarantee of their seigneurial rights; however, for the central administration it did not offer the lord continuously available personnel and easily forced him to adapt his actions to the "advice" of the strongest among his vassals, rather than helping him to control them. Under these circumstances all powerful vassals were so strongly tempted to dissolve the feudal bond altogether, that the only fact to be explained is why this did not happen more often than it actually occurred. The reason was the guarantee of *legitimacy*, which we mentioned earlier and which the vassals found in the feudal association with regard to their land and seigneurial rights; the feudal lord too was interested in this guarantee because of the advantages—no matter how precarious—which his rights entailed, even if they were fictitious.

6. *The* Ständestaat *and the Transition from Feudalism to Bureaucracy*

In contrast to the system of "agencies," which are generally subject to enacted rules and which have equally regulated spheres of jurisdiction, the prebendal and feudal variants of patrimonialism are a cosmos

and, according to the circumstances, also a chaos of concrete subjective rights and duties of the lord, the office-holders and the ruled; these rights and duties overlap and limit one another, and their interaction produces modes of action that cannot be reconstructed with currently prevalent political categories and for which the name "state" in the modern sense of the word is even less applicable than for the purely patrimonial polity. Feudalism is estate-type patrimonialism, a marginal case that contrasts with patriarchal patrimonialism.

Feudalism is oriented not only to characteristic patrimonial features such as tradition, privilege, customal and precedent, but also to *temporary alliances* between the various power-holders, as it was typical of and, in fact, the essence of the *polity of Estates* (*Ständestaat*) in the Occident. Just as the individual holders of fiefs and benefices and the other possessors of appropriated powers exercise their authority by virtue of privileges guaranteed by the prince, so his own power is considered a personal privilege, his "prerogative," which should be recognized and safeguarded by the fief-holders and other power-holders. These holders of privileges consociate with one another for the purpose of a concrete action which would not be possible without this collaboration. The existence of a *Ständestaat* merely indicates that this system of alliances, which was unavoidable because of the contractual guarantee of all rights and duties and because of the resulting inelasticity, has developed into a chronic condition, which under certain circumstances was legally perpetuated through an explicit association. Once the fiefholders constituted an autonomous legal group, the *Ständestaat* came into being for very diverse reasons, mainly however because the stereotyped and therefore inflexible fiefs and privileges had to be adapted to extraordinary or new administrative requirements. These needs were to a large extent economically determined, even though externally this was not true in the majority of cases. Most of the time the economic influence was indirect: The extraordinary needs centered on the political, especially the military administration. The changing economic structure, in particular the advancing money economy, exerted its influence by making it possible, and hence mandatory in view of the struggle and competition with other polities, to satisfy these needs in a manner superior to the normal means of stereotyped feudal-patrimonial administration; this involved especially the raising of considerable amounts of money all at once. These normal means were most of the time inadequate because of the very principle pertaining to this structure of domination: that everybody, the ruler as well as all other power-holders, had to pay the costs of his, and only his, administration out of his own pocket. There

were no provisions for raising these special revenues; hence the frequent conclusion of new agreements was unavoidable, eventually requiring a consociation of the individual power-holders in the form of a corporative assembly. This very association either included the prince or turned privileged persons into "Estates," and thus changed the mere agreed-upon action of the various power-holders and the temporary associations into a permanent political structure.

Within this structure, however, ever new and impelling administrative tasks created the princely bureaucracy, which was destined, in turn, to dissolve the *Ständestaat*. This process must not be understood too mechanically as if the ruler endeavored everywhere, for the sake of expanding his own sphere of power, to destroy the competing power of the Estates by developing the bureaucracy. Unquestionably and quite naturally, this was very often one major determinant, but not always the really crucial one. Quite frequently the Estates demanded from the ruler that he satisfy the requests of interested persons for new administrative services and that he render these through the establishment of a suitable agency; these continuously emerging demands were the result of the general economic and cultural development and thus due to objective developmental factors. The ruler's compliance was tantamount to a spread of officialdom and hence normally to an increase of his power; at first this led to a renaissance of patrimonialism, which remained dominant in Continental Europe up to the French Revolution, but the longer patrimonialism lasted, the more it approached pure bureaucratism. For everywhere the nature of the new administrative tasks exerted a pressure toward creating permanent agencies, fixed jurisdictions and procedural as well as professional qualification.

The feudal association and the *Ständestaat* are by no means indispensable intermediate links in the development from patrimonialism to bureaucracy; on the contrary, under certain circumstances, they present considerable obstacles to bureaucracy. The beginnings of a genuine bureaucracy can be found everywhere in relatively uncomplicated forms of patrimonial administration; the transition from the patrimonial to the bureaucratic office is fluid and the typological attribution dependent not so much upon the nature of the individual office, but upon the manner in which offices in general are set up and administered. However, the fully developed *Ständestaat* as well as the fully developed bureaucracy grew only on European soil, for reasons to which we will turn later. In the meantime we will deal with certain intermediate and transitional forms, which preceded pure bureaucracy within feudal and patrimonial structures.

7. *Patrimonial Officialdom*

For simplicity's sake we have hitherto assumed that the political ruler's affairs in the central administration are managed in purely patrimonial fashion through household and court officials, whom we discussed earlier, or through fief-holders, who in turn have their own patrimonial administration. In reality, the structure of patrimonial and of feudal rulership has not been so simple. As soon as the household administration has passed the stage of "discontinuous" administration through companions and intimates, the addition of purely political tasks regularly leads to the establishment of special central offices and most of the time to the rise of a single political official, who may have various characteristics. Because of its very nature patrimonialism was the specific locus for the rise of favoritism—of men close to the ruler who had tremendous power, but always were in danger of sudden, dramatic downfall for purely personal reasons. If specific structures develop, the most typical patrimonial case is one in which a court official, whose function involves the closest, purely personal position of confidence, also directs the central political administration, formally or in fact; this may be the keeper of the harem or a similarly employed person who deals intimately with the ruler's personal affairs. It also happens that a specifically political position of trust is added. In some African kingdoms the visible representative of capital jurisdiction, the executioner, is the continuous and most influential companion of the ruler. Similarly, the judicial functions of the ruler gain importance with the development of contempt powers (*Banngewalt*), and then an official corresponding to the Frankish Count Palatine often rises to prominence. In militarily active states the same is true of the royal commander-in-chief, and in feudal states of the official who is often identical with him, but also controls the fief patronage (Shogun, *major domus*). In the Orient we find regularly the figure of the Grand Vizier; we will see later for which reasons he became a "constitutional" necessity, just as did the responsible prime minister in modern states.

In general we can only say that, on the one hand, the existence of such a monocratically unified position can become especially dangerous to the prince's authority, if the official concerned controls the economic accoutrements of the vassals and subordinate officials so that he can bind them to his own person vis-à-vis the ruler—consider the well-known examples of Japan and of the Merovingian Kingdom; on the other hand, the complete absence of such a central figure tends to lead regularly to the disintegration of the realm—see the telling example of the Carolingians whose own experience made them wary of

the creation of a centralized office. We will soon come back to the manner in which the resulting problems were solved.

We are here first interested in the following phenomenon: Because of the increasing continuity and complexity of administrative work, especially because of the development of the grants and privileges characteristic of patrimonial and feudal structures, and finally because of the growing rationalization of finance, the *clerical and accounting officials* begin to play an increasingly important role. Without them a ruler's household is condemned to instability and powerlessness. The more developed the clerical and accounting system is, the stronger is the central power, even in the pure feudal state (for example, in Norman England and the Ottoman Empire in the period of its greatest power). In ancient Egypt the scribes controlled the administration. In the modern Persian empire the accounting officials usurped a very considerable role by virtue of their "secret" art—a secrecy sanctified by tradition. In the Occident the chancellor, the chief of the secretariat, was most of the time the central figure of the political administration. The central administration may also originate in the accounting office, the Exchequer in Normandy and later in England. At the same time, such offices are regularly the beginning of bureaucratization, because the working officials, who were mostly clerics in medieval times, gain actual control from the high-ranking courtiers who officially occupy them.

We have dealt earlier [XI:12] with the rise of the great *collegiate* central agencies as a concomitant of the qualitative extension of administrative tasks; we discussed them as antecedents of bureaucracy and in the context of the increasing importance of specialized knowledge, which propels bureaucratization. Of course, not all of the ruler's advisory bodies in prebureaucratic states have been early stages of modern bureaucracy. Advisory assemblies of central officials can be found in the most diverse patrimonial and feudal structures all over the world. They serve the ruler often as a counterbalance, not to the power of specialized knowledge—as do those early bureaucratic structures—but simply to the power of the highest-ranking officials; furthermore, they are a means of establishing administrative continuity. To that extent they are everywhere products of a certain stage in the qualitative development of administrative tasks; however, as this development progresses ever further, these advisory assemblies approximate those phenomena of early bureaucratism by taking on the character of a collegiate "agency," which operates according to definitive procedures; they assume this form the more the office organization and administrative procedures approach the bureaucratic pattern; the boundary is here very fluid, as

the examples of China and Egypt demonstrate. Typologically these agencies should be distinguished, again despite the natural continuity of the transitions, from those collegiate bodies which share authority not by virtue of the ruler's fiat, but by virtue of their own right (after the fashion of the "Council of Elders" or of a body of *honoratiores*); we will briefly deal with the latter below, for they do not partake in the transition from patrimonialism to bureaucratism, but are a stage of the division of powers between the ruler and other holders of power, whether they have charismatic or estate-type characteristics.

We cannot treat here the influence of the patrimonial or feudal polities on the general *cultural* development. Patrimonialism, especially the non-stereotyped, arbitrary type, and feudalism are *distinguished* from one another very definitely in that area which everywhere provides the most important opening for the impact of domination upon culture: the field of *education*. Only a few general remarks will be added here to the brief earlier statements about the connection between education and domination. Wherever feudalism develops a status-oriented "knightly" stratum, systematic preparation for a corresponding way of life emerges with all its consequences. Typically, certain *artistic* creations (in literature, music and the visual arts), which cannot be treated here, become a means of self-glorification and establish and preserve the nimbus of the dominant stratum vis-à-vis the ruled. Thus "refinement" is added to the at first purely military-gymnastic training; the result is that very complex type of "cultivation" which is the polar opposite of specialized education in a bureaucratic regime. Wherever domination is prebendally organized, education tends to be intellectualist-literary, and thus to be intrinsically related to the bureaucratic ideal of transmitting specialized knowledge. In a particularly typical form this is true of China and in cases—to be discussed later [ch. XV:4]—in which theocracy takes over education. The last development tends to reach its culmination in the secular state of the arbitrary patrimonial type, which does not develop an educational system of its own.

8. *The Indeterminate Economic Preconditions of Patrimonialism and Feudalism*

Little that is definitive can be said about purely economic preconditions for the rise of patrimonial and feudal structures. The existence and the predominance of royal and aristocratic manors is indeed the general basis of all forms of feudal organization, whether fully developed or not. And the Chinese state of officials, which in its own

way is the most consistent political form of patrimonialism, is not based on landed estates, but, as we have seen, is so uniformly patrimonial because of their very absence. Patrimonialism is compatible with household and market economy, petty-bourgeois and manorial agriculture, absence and presence of capitalist economy. The well-known Marxist statement that the hand-mill requires feudalism just as the steam-mill necessitates capitalism is at most correct in its second part, and then only partially.[5] The steam-mill fits without any difficulty into a state-socialist economy. The first part of the statement, however, is entirely incorrect: The hand-mill has lived through all conceivable economic structures and political "superstructures." In general we can say about capitalism only that, since its opportunities for expansion are limited under feudalism and patrimonialism, its champions usually attempt to substitute bureaucratization or a plutocratic domination by *honoratiores*. This too, however, is only true of production-oriented modern capitalism, based on the rational enterprise, the division of labor and fixed capital, whereas politically oriented capitalism, just as capitalist whole-sale trade, is very much compatible with patrimonialism. Indeed we have seen that a strong development toward a market economy, which provides sufficient tax revenues for buying slave soldiers or for recruiting mercenaries, was the very precondition for the rise of Oriental Sultanism and thus for the strictly patriarchal variant of patrimonialism, which—compared to our Occidental *Rechtsstaat*—is farthest removed from modern forms of the state.

The relationship between market economy and feudalism is very different. However, there is no general economic formula which would determine whether a patrimonial *or* a feudal structure will prevail—with the exception, of course, that the manorial system strongly facilitates the development of feudalism in its various forms. As we have seen, the rationalization of the irrigation economy in the ancient Orient—the fact that the area of cultivation had to be won systematically from the desert through organized draft labor—worked in favor of semi-bureaucratic political patrimonialism, just as did large-scale construction in China. In both cases, however, patrimonialism had to exist before these edifices became possible. By contrast, the acquisition of new land through the clearing of forests in Northern Europe favored the manorial system and therefore feudalism. However, feudalism also existed in the Orient, although in much less consistent forms. For the rest, we can only make the generalization that the weak development of the technical means of communication and therefore of political control, together with the prevailing natural economy, promoted decentralized patrimonialism—a system of tributary satraps, because of the

difficulties of creating a rational system of taxation and hence the precondition for a centralized administration of patrimonial officials; these weaknesses provided a strong impetus for the use of personal fealty and the feudal code of honor as means of political cohesion, wherever this was possible, that is, wherever the manorial system determined social stratification.

9. *The Impact of Trade on the Development of Patrimonialism*

Scholars have often overlooked one constant that has been historically important in the development of strong, centralized patrimonial bureaucracies—*trade*. We saw previously that the power positions of all rulers transcending the level of the primitive village headman were based on their possession of precious metals in raw or finished form. They needed this treasure above all for the maintenance of their following, the body-guards, patrimonial armies, mercenaries and especially officials. This treasure was supplied through the exchange of gifts with other rulers—this was in fact often an instance of barter—, through the ruler's own regular trade (in particular, the coastal intermediate trade), which can lead to a direct monopolization of foreign trade, or finally through other uses of foreign trade. This was done either directly in the form of taxation through tariffs, tolls and other tributes, or indirectly through market-privileges and the founding of cities, which were princely prerogatives that yielded high ground-rents and subjects capable of paying high taxes. Throughout history, this last type of utilizing trade was systematically undertaken; as late as the beginning of modern times, Polish seigneurs founded countless towns and settled them with Jews emigrating from the West. Typically, patrimonial political structures persist and expand territorially, although their trade is relatively moderate or outright weak in comparison to their size or their population—see the case of China and of the Carolingian empire—, but the genesis of patrimonial political rulership is infrequent without trade playing a considerable role; it has happened—witness the Mongolian empire and the kingdoms of the Teutonic Migration—, but nearly always according to the pattern that tribes who live adjacent to territories with a highly developed money economy invade these, take possession of their precious metals and found new polities on these territories. The royal trade monopoly can be found all over the world, in Polynesia just as much as in Africa and in the ancient Orient. Only recently, for example, all larger political entities on the West African

coast collapsed because the Europeans destroyed the intermediate trade monopoly of the respective chiefs. The location of most of the oldest large patrimonial polities is closely related to this function of trade.

Very often the ruler's special power position as a seigneurial landowner is only secondary. Of course, royal and aristocratic power originate most of the time in landholdings; with regard to areas in which there is still a surplus of land—as between the Congo and Zambesi rivers—it is more precise to say that this pre-eminence depends upon the possession of men and cattle, which advances rent-producing cultivation. Income from rent property is naturally necessary for that mode of life which socially establishes prince and aristocrat. But the subsequent development toward the monopolization of "ground-rent" is very often codetermined by trade gains. When a ruler is considered the landlord (not just the feudal overlord) of a whole country—as often happens at the most diverse stages of cultural development—, this is usually not the starting point, but the consequence of his political position, of the resulting advantages in the acquisition of chattel—in Caffraria the possession of humans (women) and of cattle—and, generaly, of the economic ability, based in particular on the possession of precious metals, to maintain patrimonial soldiers or mercenaries. The situation is usually not different with regard to the monopolistic land control of the aristocracy in maritime states: debt-serfs are an important part of agricultural labor in Hellenic Antiquity and probably also in the ancient Orient. They till the soil for the urban patriciate for a share in the crops. Direct and indirect trade gains provide the urban patriciate with the means for accumulating land and people. In a natural economy even the moderate possession of precious metals was extraordinarily important for the rise and the power position of a state. Of course, this did not change the fact that the bulk of the needs could be, and most of the time was, satisfied by the natural economy. Both things must not be confused with one another, as it happens all too often, when somebody talks about the impact of trade in primitive times.

The causal influence of trade upon the formation of political associations is certainly not unequivocal. As we pointed out, neither are all origins of patrimonial authority necessarily rooted in trade, nor did a patrimonial state arise wherever there was trade. Domination by *honoratiores*, too, was often a primary product of trade. However, very often there was a connection between trade and the rise of a simple chief to the rank of a prince. By contrast, trade is on the whole very antagonistic to the strictly feudatory system and the tightly-knit structure of the feudal hierarchy. It is true that trade typically created the "municipal feudalism" of a seigneurial patriciate, especially in the Medi-

terranean area. However, in Japan and India as well as in the Occident and in the Islamic Orient, feudalization was closely related to the slow progress, and often to the decline, of the market economy, but one factor was as often the cause as the consequence of the other. In the Occident, feudalism was a consequence of natural economy and provided the only possible means of establishing an army; in Japan and in the Near East during the Middle Ages the opposite situation prevailed. What was the origin of the latter development?

10. *The Stabilizing Influence of Patrimonialism and Feudalism on the Economy*

Both forms of domination, but feudalism much more so than patrimonialism, may have a strongly stabilizing effect upon the economy. Patrimonialism may have such an effect because under its rule only the leading officials, whose activities cannot be controlled continuously by the ruler, have in general the chance of getting rich quickly: witness the mandarins in China. The source of the accumulation of wealth is not acquisition by exchange, but the exploitation of the tax capacities of the subjects and the latter's need to buy all official actions of the ruler and the officials, given the wide latitude for granting favors and for arbitrariness. On the other hand, the power of the patrimonial officials is, in essence, limited only by tradition; its violation is dangerous even for the most powerful official. Therefore, material and personal innovations, new classes that are not sanctified by tradition, new kinds of acquisition and enterprise that run counter to tradition, are in a very precarious situation and at the least exposed to the arbitrariness of the ruler and of his officials. Both traditionalism and arbitrariness affect very deeply the developmental opportunities of capitalism. Either the ruler himself or his officials seize upon the new chances of acquisition, monopolize them and thus deprive the capital formation of the private economy of its sustenance, or the ubiquitous resistance of traditionalism is reinforced by them so as to hinder economic innovations that might endanger the social equilibrium or meet religious and ethical objections; the latter have to be taken into account because the patrimonial ruler's own authority is rooted in the sanctity of tradition. On the other hand, the wide latitude of the ruler's unrestricted discretion can reinforce the anti-traditional power of capitalism in a given case, as it happened in Europe during the period of absolutism. However, we must add that—apart from other peculiarities of this kind of privileged capitalism—the royal government was already bureaucratic-rational. As a rule, the nega-

tive aspect of this arbitrariness is dominant, because—and this is the major point—the patrimonial state lacks the political and procedural *predictability*, indispensable for capitalist development, which is provided by the rational rules of modern bureaucratic administration. Instead we find unpredictability and inconsistency on the part of court and local officials, and variously benevolence and disfavor on the part of the ruler and his servants. It is quite possible that a private individual, by skillfully taking advantage of the given circumstances and of personal relations, obtains a privileged position which offers him nearly unlimited acquisitive opportunities. But a capitalist economic system is obviously greatly handicapped by these factors, for the individual variants of capitalism have a differential sensitivity toward such unpredictable factors. Wholesale trade can tolerate them most easily, relatively speaking, and adapt itself to all changing conditions. Moreover, if the ruler does not monopolize trade himself, as under simple and transparent conditions, his self-interest demands that he permit the accumulation of wealth, so that he can draw on tax-farmers, farmers of official supplies and on credit sources. The "financier" is already known in the period of Hammurabi, and the formation of trade capital is feasible under almost all conditions of domination, especially under patrimonialism.

It is different with *industrial* capitalism. If it is to become the typical form of the industrial enterprise, it requires an organization of labor that aims at a mass market and depends upon the possibility of correct calculations. This is true the more capital-intensive industrial capitalism is, and especially the more saturated it is with fixed capital. Industrial capitalism must be able to count on the continuity, trustworthiness and objectivity of the legal order, and on the rational, predictable functioning of legal and administrative agencies. Otherwise those guarantees of predictability are absent that are indispensable for the large industrial enterprise. They are especially weak in patrimonial states with a low degree of stereotyped operations: conversely, they exist at an optimum under modern bureaucratism. Industrialization was not impeded by the Islam as the religion of individuals—the Tartars in the Russian Caucasus are often very "modern" entrepreneurs—, but by the religiously determined structure of the Islamic *states*, their officialdom and their jurisprudence.

This negative anticapitalist effect of patrimonial arbitrariness can be aggravated by a positive consequence, hitherto almost completely overlooked, which arbitrary patrimonialism may have, under otherwise suitable conditions, especially in a developed money economy. A peculiar type of artificial immobilization of wealth may result from the instability

of all legal guarantees under patrimonial justice and administration. By far its most important examples are a certain type of Byzantine monastic foundation and the Islamic *wakfs*, which apparently were patterned after this legal form. This type of Byzantine foundation may be sketched as follows: Land is given as an endowment, for example, building-sites in Constantinople; value and revenue will be tremendously increased by projected harbor installations. The monastery thus endowed must maintain a definite number of monks, through fixed prebends, and of the poor, through alms; in addition, there are administrative costs. However, the whole surplus of the monastery's income over its expenditures goes to the family of the founder. It is clear that the latter stipulation reveals the real purpose of the foundation: In the guise of a monastery, the foundation is in reality inalienable family property, with probably increasing revenues; it has sacred protection, *especially* against seizure by *secular*—that means, patrimonial-bureaucratic—*authorities*. (Besides, the founder also achieves the purpose of gaining favor with God and men and, under certain circumstances, of securing for his family an influence upon the filling of prebends; thus the family can grant favors to influential families, for many prebends were easy sinecures for the *garçons* of Constantinople; seclusion and even compulsory residence were not required. Another purpose was the securing of influence upon the administration of a family chapel.) The whole arrangement was a kind of surrogate, within a money economy, for the private churches (*Eigenkirchen*) of the feudal Occident.

It appears likely that endowments of a very similar form existed already under ancient Egyptian patrimonialism. At any rate, the same phenomenon can be observed during the Islamic Middle Ages in the *wakf*—an endowment for a mosque or a similar foundation—, as the records testify. At that time, too, objects which had an increasing financial value: building sites, rentable workshops (*ergasteria*) were given as endowments, without doubt for the same purpose and for the same reason. The consecration provided an optimal guarantee, although no absolute security, against arbitrary intervention of the secular officialdom. Thus the arbitrariness and unpredictability of patrimonial domination had the effect of strengthening the realm of subjection to sacred law. And since, on the other hand, the theoretical rigidity and immutability of the *shari'ah* was "corrected" by the judges through subjective and often quite unpredictable interpretation, the two components of patrimonialism, equally hostile to capitalism, reinforced one another. C. H. Becker probably assumes correctly that the very persistent immobilization of accumulated property in the form of *wakfs* was of very great importance for the economic development of the Orient.[8] This immobiliza-

tion corresponded fully to the spirit of the ancient economy which used accumulated wealth as a source of rent, not as acquisitive capital. (Through Spanish mediation, the institution of the profane "entailed estate" (*fidei commissum*), which is probably a secularized imitation of the *wakf* and first emerged in Spain, was imported to Germany in the 17th century.)

11. *Monopolism and Mercantilism*

In a relatively developed money economy and in periods in which it strongly approaches the rational bureaucratic system, patrimonialism has another influence upon economic development that results from its mode of "public finance." Just as the patrimonial state easily dissolved into a congeries of privileges, so the satisfaction of needs through monopolist-capitalist means and through positive and negative privileges—in the previously discussed meaning—was particularly frequent. With the help of a well-functioning patrimonial officialdom, it was easy to establish all kinds of fiscal enterprises and monopolies. State enterprises and monopolies emerged, on a sometimes very extensive scale, in Egypt, the late Roman empire and in the Near and Far East; the public enterprises (*Regiegewerbe*) of the rulers at the beginning of modern times were similar. Public financing through profit-making has by no means been limited to patrimonialism. During the Middle Ages and early in modern times, the cities too participated, often under great losses (for example, Frankfurt on the Main), in partly quite risky industrial and trading enterprises of a purely profit-making character. But the effective range of monopolies for state commercial enterprise was, generally speaking, greater in the patrimonial states, and therefore the public monopolies were on the whole more frequent and pervasive in them. Often, however, the satisfaction of needs through privileges could affect the economy even more strongly.

Public "financing" of a *negatively* privileging kind [that means, through functions *imposed* on certain status groups], the system of liturgies, was carried through most comprehensively by the most rational patrimonial-bureaucratic empires of Antiquity: Egypt and, imitating it, the Late Roman and Byzantine monarchy. The Egyptian economy of the Pharaohs acquired thereby a peculiar "state-socialist" strain, linked with periodically quite far-reaching hereditary ties to guilds and, at certain times, also to landed estates; it transmitted this trait also to the Late Roman economy. It is clear that this narrowed down considerably private capital formation and the realm of capitalist acquisition.

Next to, and instead of, this type of public finance which smothered capital formation and hence private capitalism, patrimonialism also uses a *positively* privileging type in the form of concessions to private trade or craft monopolies for high fees, a share in profit or a fixed annuity. Such positive privileges are found in many patrimonial states of the past all over the world. They played their last and most important role in the age of mercantilism, when the incipient capitalist organization of trades, the bureaucratic rationalization of patrimonial rulership and the growing financial needs of the military, external [foreign affairs] and internal administration revolutionized the financial techniques of the European states. Everywhere and in the most diverse forms the princely power, whether that of the Stuarts, the Bourbons, Maria Theresia, Catherine the Great and Frederick the Great, sought to create cash revenues through the establishment of monopolistic industries; these revenues did not require the approval of the estates of the realm, and in the *Ständestaat* and in parliamentary states they were often directly used as a political weapon. Here too the characteristic features of patrimonial capitalism emerged—and the bureaucracy of "Enlightened Despotism" was still as patrimonial as was the basic conception of the "state" on which it rested. This was recently shown very neatly by H. Levy with regard to the most impressive example: Stuart England.[1] There the question of the "monopolies" was one of the major issues in the struggle between the monarchy and the rising bourgeois classes; the monarchy strove for financial independence from parliament and for a rational-bureaucratic organization of the whole state and of the economy according to the pattern of a caesaropapist "welfare state," whereas in parliament the bourgeois class interests became increasingly decisive. Members and favorites of the royal family, courtiers, military men and officials grown rich, great speculators and adventurous inventors of "systems" of political economy such as that of John Law, outside of England often also Jews, at that time too made up the economically interested groups behind the royal monopolies and the industries which were imported, founded or protected on that basis. This was an attempt to transfer to modern industries patrimonial capitalism, which had existed everywhere in Antiquity and the Middle Ages of East and West, with only a few interruptions. It often furthered or awakened the "entrepreneurial spirit," at least for the moment. But the attempt itself failed by and large: The manufactories of the Stuarts, the Bourbons, Peter the Great and Frederick the Great survived the period of their sponsorship only in very few specialties. In England the compulsory monopolistic industry collapsed together with the autocratic welfare state of the Stuarts. Neither the period of Colbert nor of Frederick and Peter

succeeded in turning their countries into industrial states. The *economic* roots of this failure were the disregard of the economics of location, in England and elsewhere frequently the qualitative inferiority of protected products and the hindrance of the capital flow in directions indicated by the market conditions; the legal insecurity owing to the always doubtful duration of monopolies in view of possible new privileges was the *political* reason for this failure—hence the retarding factor was again the arbitrariness of patrimonial rulership.

12. *The Formation and Distribution of Wealth under Feudalism*

The feudal order has a different effect upon the economy than does patrimonialism, which in part furthers and in part deflects modern capitalism. The patrimonial state offers the whole realm of the ruler's discretion as a hunting ground for accumulating wealth. Wherever traditional or stereotyped prescription does not impose strict limitations, patrimonialism gives free rein to the enrichment of the ruler himself, the court officials, favorites, governors, mandarins, tax collectors, influence peddlers, and the great merchants and financiers who function as tax-farmers, purveyors and creditors. The ruler's favor and disfavor, grants and confiscations, continuously create new wealth and destroy it again. In contrast, feudalism, with its closely delineated rights and duties, does not only have a stabilizing effect upon the economy as a whole, but also upon the distribution of individual wealth.[8] To begin with, it achieves this effect through its legal order. The feudal association and also the related patrimonial forms that have a stereotyped status structure constitute a synthesis of purely concrete rights and duties. They amount, as we have pointed out, to a "constitutional state" (*Rechtsstaat*) on the basis of "subjective" rights, not "objective" law. Instead of a system of abstract rules, compliance with which permits everybody the free use of his economic resources, we find a congeries of acquired rights, which impede the freedom of acquisition and provide opportunities for capitalist acquisition only through the granting of further concrete privileges, as they were generally the basis of the oldest manufactories. To be sure, in this manner capitalist acquisition gains a support which is steadier than the personal changeable favors of patriarchal patrimonialism, but the danger that the granted privileges will be disputed persists since older acquired rights remain untouched.

Capitalist development is handicapped even more by the economic foundations and consequences of feudalism. Land granted as a fief

became immobilized, since it was normally inalienable and indivisible; the vassal's ability to discharge his obligations, to live in a knightly fashion and to raise his children properly depended upon the holding together of his property. Sometimes the vassals were not even permitted to alienate their own private lands, or restraints were imposed upon them, for example, the prohibition to sell their land to persons who were not status equals—witness the case of the Japanese vassals (*gokenin*) of the *shogun*. And since the revenues from the land grants, which the vassals normally do not work themselves, at least not in a capitalist fashion, are dependent upon the peasants' capacity to render goods and services, the restraints on property and economic management were extended downward under the seigneurial system. The spread of feudalism in Japan is paralleled by injunctions against subdivision, the selling of land—in order to prevent the rise of *latifundia*—and leaving the land: all this in the interest of preserving the peasants' economic capacities by protecting the existing livings. It is well known that exactly the same development occurred in the Orient. These restrictions and the feudal structure in general are not necessarily inimical to the *money* economy, as it is sometimes claimed. Tariffs, fees and revenue-yielding territorial rights, among them especially judicial powers, were also granted as fiefs. Wherever it appeared economically feasible, the manorial lord was strongly inclined to transform the peasants' services into taxes; this happened early in England. And wherever the peasants were economically unable to pay taxes, the landlord tended to resort to forced-labor enterprises (*Fronbetrieb*) and thus directly to capitalist acquisition; wherever feasible, the feudal lord of the manor or the political ruler attempted to sell his surplus in kind in order to get money. According to Rathgen, the Japanese *daimyos* maintained their agencies in Osaka primarily for the sale of their rice surplus. On a magnificent scale, the Teutonic Order —an economically rational community of collectively living monastic knights, whose vassals were the rural landlords—engaged in trade through its sales agencies in Bruges. The antagonism between the Order and the Prussian cities, Danzig and Thorn in particular, was essentially due to the competition between the Order's communal economy and the burghers. The Polish aristocrats, marketing grain from the hinterland, and the urban intermediary trade, co-operated against the monopolistic claims of the Order; this resulted in the cities' defection to the Poles and in the loss of Western Prussia for German culture (*Deutschtum*).

Of course, the manorial export trade did not only consist in the marketing of rent in kind but also of other products. The feudal landlord or political ruler can be a capitalist producer or creditor—witness

again the *daimyos*. With the help of serf labor feudal landlords often established commercial enterprises, manorial home industries and especially factories, for example in Russia. Therefore, the patrimonial foundation of feudalism implies by no means a necessary linkage with a natural economy. But partly for this very reason modern capitalism is impeded, since it depends upon the development of mass purchasing power for industrial products. However, the frequently massive tributes and services of the peasants to the landlords or feudal magistrates confiscate much of their purchasing power, which could have contributed toward the creation of a market for industrial products. The landlords' purchasing power, which derives from this confiscation, does not benefit mass-produced articles, upon which modern industrial capitalism largely depends; rather, it creates luxury demands, especially the consumption-oriented maintenance of personal servants. Moreover, since the manorial profit-making enterprises operate with forced labor and since in general the manorial household and craft enterprises utilize unpaid labor and hence waste manpower, they withhold labor from the free market and use it in a manner which largely fails to create capital, and sometimes simply consumes it. Insofar as these enterprises can compete with the urban trades because their workforce is paid little or nothing, wages cannot create mass purchasing power; and insofar as these enterprises cannot compete, in spite of this advantage, because of technological "backwardness"—and this is the rule—, the manorial lord tries to impede the capitalist development of the urban trades through political repression. In general, the feudal stratum tends to restrict the accumulation of wealth in bourgeois hands or at least to "declass" the *nouveaux riches*. This happened particularly in feudal Japan where eventually the whole foreign trade was greatly restricted, primarily in the interest of stabilizing the social order. In varying degrees similar phenomena can be observed everywhere. The social prestige of the manorial lords also motivates the *nouveaux riches* to invest their acquired wealth not in a capitalist venture but in land, in order to rise into the nobility if it be possible. All of this impedes the formation of productive capital; this was very typical of the Middle Ages, especially in Germany.

Thus feudalism more or less handicaps or diverts capitalist development; moreover, its strong traditionalism generally strengthens the authoritarian powers which distrust all new social formations. But the continuity of the legal order, which is after all much greater than in the non-stereotyped patrimonial state, may facilitate capitalist development. Where the bourgeois accumulation of wealth is not restricted as much as in Japan, it will be slowed down, but whatever is lost in this way, especially in comparison with the vacillating economic opportunities in the

patrimonial state, can eventually benefit the formation of a rational capitalist *system* through a more gradual and continuous development, and can further its advance within the interstices of the feudal system. Opportunities for individual acquisition were certainly much smaller in the Northern countries of the Occidental Middle Ages than for the officials and government purveyors of the Assyrian empire, the Caliphate and Turkey, or for the Chinese mandarins, or Spanish and Russian government purveyors and state creditors. But exactly because these chances were lacking, capital flowed into the channels of purely bourgeois acquisition through the putting-out system and the manufactories. And the more successfully the feudal stratum prevented the intrusion of *nouveaux riches*, excluded them from offices and political power, socially "declassed" them and blocked their acquisition of aristocratic landed estates, the more it directed this wealth to purely bourgeois-capitalist uses.

13. *Patrimonial Monopoly and Capitalist Privilege*

Patriarchal patrimonialism is much more tolerant than feudalism toward social mobility and the acquisition of wealth. The patrimonial ruler does not like independent economic and social powers, and therefore does not favor the rational enterprises based on the division of labor, that means, on the trades. But he also does not support status barriers, which he considers inconvenient limitations of his own power, in the area of free acquisition and trade, unless there are liturgical ties. Thus in the Ptolemaic empire complete freedom of trade and a highly developed monetary economy extended into the last household, and this despite the fact that the full patrimonial power of the king and his personal divinity persisted with far-reaching effects, just as in the times of the state socialism of the pharaohs. For the rest, diverse circumstances determine the extent to which patrimonialism tends more toward monopolies of its own, and therefore toward hostility to private capitalism, or more toward direct privileges for capital. The two most important factors are political:

1) The very structure of patrimonial domination, whether estate-like or patriarchal. In the former case the ruler is naturally more limited, *ceteris paribus*, in the free development of his own monopolies. Nevertheless, it is true that in modern times the Occident has known many monopolies by patrimonial rulers, much more so than China, at least during the same period; but it is also true that most of these monopolies were used only in the form of leases or licenses to capitalists, that means,

in private capitalist fashion. Furthermore, the ruler's monopolies evoked a very effective response from the ruled. Such a strong reaction would have been scarcely possible under strictly patriarchal domination; to be sure, state monopolies—as Chinese literature too seems to confirm—has everywhere been resented, but most of the time it was hated by the consumers, not, as in the Occident, by the (bourgeois) producers.

2) The second factor has already been mentioned in a different context: The privileges of private capital in patrimonial states were always the more developed, the more the power competition of *several* states made it necessary for them to woo the mobile money capital. Politically privileged capitalism flourished in Antiquity, as long as several states fought for ascendancy and survival; in China, too, it seems to have developed in the corresponding past. It flourished during the age of mercantilism in the Occident, when the modern power states entered upon their political competition. It disappeared in the Roman empire when the latter became a universal state and merely had to protect frontiers; it was almost completely absent in the Chinese empire, and relatively weak in the Oriental and Hellenistic states—the weaker, the more these states were "universal"—and also in the Caliphate. Of course, not every competition for power led to privileges for capital; this could only happen when capital formation was already under way. Conversely, pacification and the resulting decline of political demands for capital on the part of the great universal states eliminated the privileged position of capital.

Among the most important objects of government monopolies is *coinage*, which was monopolized by the patrimonial rulers primarily for purely fiscal purposes. In the Occidental Middle Ages the normal means for achieving these purposes consisted in depressing the value of bullion through establishing a monopoly for one's own coinage; deterioration of coinage was the abnormal means. But such practices are already indicative of a highly developed general use of coinage. Coins were used neither in Egyptian and Babylonian Antiquity nor in the Phoenician and pre-Hellenistic Indian culture; in the Persian empire and in Carthage they were used exclusively for payments in precious metals to soldiers and foreign mercenaries accustomed to this compensation (in Carthage, these mercenaries were Greeks); coins were not a means of economic exchange, which had to resort to weighing in the case of commercial exchange and to conventionally established forms of money in the case of retail transactions. Therefore coinage was limited to gold pieces in Persia. Conversely, the ruler's coinage in China created up to the present only means of exchange for *retail* trade, whereas *commerce* had to rely on weighing. These last two phenomena, which seemingly point into opposite directions, may serve as a warning not to consider

the state of coinage symptomatic for the advance of the money economy —especially in China where paper money was known. Rather, both symptoms refer to the same fact: the extensiveness of patrimonial administration and its resulting inability to force its coinage upon the merchants. Nevertheless, there is no doubt that the rationalization of coinage by the state and its increasing use greatly furthered the technical development of commerce. The superiority of the Hellenes with regard to trading techniques during the one and ¾ millennia from the 6th century B.C. to the supremacy of Venice and Genoa, on the one hand, and of Saracen trade on the other certainly was in part due to the fact that they were the first to exploit this advance. The development of an intensive money economy in the Orient, extending to India, after the conquests of Alexander was at least technically codetermined by it. However, the fate of the economy was from now on also more intimately connected with the ups and downs in the financial conditions of the powers issuing coinage. The catastrophe of the Roman finances in the third century, caused by the increasing grants to the army and the resulting monetary disorders, was by no means the cause for the return to a natural economy in late Antiquity, but it contributed to it. On the whole, however, the ordering of the monetary system by the government was much more determined by the given demands of the economy toward the state, which arose from the long-established conventions of commercial transactions, rather than being a condition of economic development. In Antiquity as well as in the Middle Ages the demand for rational coinage emanated in the cities, and urban development in the Occidental sense, especially the rise of independent crafts and indigenous retail trade, not wholesale trade, was reflected in the rationalization of coinage.

14. *Ethos and Style of Life*

The structure of domination affected the general habits of the peoples more by virtue of the *ethos* which it established than through the creation of these technical means of commerce. In this respect feudalism and patriarchal patrimonialism differ greatly. Both shaped strongly divergent political and social ideologies and through them a very different style of life.

Especially in the form of free vassalage and of the fief system, feudalism appeals to honor and personal fealty, freely assumed and maintained, as constitutive motives of action. Loyalty and personal fealty are also at the root of many plebeian forms of patrimonial or liturgical

feudalism (slave armies, soldiers settled as clerucbs, peasants or frontier guards, and especially levies of clients and *coloni*). However, they lack status honor as the integrating component. On the other hand, status honor counts for much in the army of "urban feudalism": the status honor of the Spartiates rests upon the warrior's knightly honor and etiquette; it employs the "duel of purification" for those who evaded combat or violated the etiquette; in attenuated form these features were generally characteristic of the early Hellenic armies of *hoplites*. But the personal relationship of fealty was absent. In the age of the Crusades Oriental prebendal feudalism sustained a sense of knightly status, but on the whole it remained formed by the patriarchal character of rulership. The combination of honor and fealty was only known, as we have seen, in Occidental feudalism and Japanese "vassalic" feudalism. Both have in common with Hellenic urban feudalism a special status education which aims at the inculcation of *ethos* based on status honor. But in contrast to Hellenic feudalism they made the vassal's fealty the center of a view of life which perceives the most diverse social relations, to the Savior as well as the loved one, from this vantage-point. The feudal consociation thus permeated the most important relationships with very personal bonds; their peculiarity also had the effect of centering the feeling of knightly dignity upon the cult of the personal. This contrasts violently with all impersonal and commercial relationships, which are bound to appear undignified and vulgar to the feudal ethic.

However, the antagonism toward commercial rationality also has other roots. First, there is the specific military character of the feudal system, which eventually is transposed to the political structure. The typical feudal army is an army of knights, and that means that individual heroic combat, not the discipline of a mass army, is decisive. The goal of military education is not, as in mass armies, drill for the sake of adaptation to an organized operation, but individual perfection in personal military skills. Therefore, one element finds a permanent place in training and general conduct, which, as a form of developing qualities useful for life, belongs to the original energy household of men and animals, but is increasingly eliminated by every rationalization of life—the *game*. Under feudal conditions it is just as little a "pastime" as in organic life, rather it is the natural form in which the psycho-physical capacities of the organism are kept alive and supple; the game is a form of "training," which in its spontaneous and unbroken animal instinctiveness as yet transcends any split between the "spiritual" and the "material," "body" and "soul," no matter how conventionally it is sublimated. Only once did the game find a specifically artistic perfection, imbued with genuine naiveté: in the wholly or semi-feudal Hellenic society of

warriors, first in Sparta. Among Occidental feudal knights and Japanese vassals the aristocratic status convention, with its stricter sense for distance and dignity, imposed a greater limitation on this kind of freedom than existed under the (relative) democracy of the citizenry of *hoplites*. But inevitably the game also occupies a most serious and important position in the life of these knightly strata; it constitutes a counterpole to all economically rational action. However, this kinship with an artistic style of life, which resulted from this aspect of the game, was maintained also directly by the "aristocratic" ethos of the dominant feudal stratum. The need for "ostentation," glamour and imposing splendor, for surrounding one's life with utensils which are not justified by utility but, in Oscar Wilde's sense, useless in the meaning of "beautiful," is primarily a feudal status need and an important power instrument for the sake of maintaining one's own dominance through mass suggestion. "Luxury" in the sense of rejecting purposive-rational control of consumption is for the dominant feudal strata nothing superfluous: it is a means of social self-assertion

Finally, positively privileged feudal strata do not view their existence functionally, as a means for serving a mission, that is, an idea that should be realized purposively. Their typical myth is the value of their "existence." Only the knightly fighter for the true faith has a different orientation, and wherever he was permanently dominant, most prominently in Islam, the free artistic game had only a limited importance. At any rate, feudalism is inherently contemptuous of bourgeois-commercial utilitarianism and considers it as sordid greediness and as the life force specifically hostile to it. Feudal conduct leads to the opposite of the rational economic ethos and is the source of that nonchalance in business affairs which has been typical of all feudal strata, not only in contrast to the bourgeois, but also to the peasants' proverbial shrewdness. This solidarity of feudal society is based on a common education which inculcates knightly conventions, pride of status and a sense of honor. This education is opposed to the charismatic magic asceticism of prophets and heroes through its secular orientation, to literary education through its belligerent heroic stance and to rational specialized training through its playful and artistic features.

In nearly all of these respects *patriarchal* patrimonialism has a different effect upon the style of life. Feudalism is always domination by the few who have military skills. Patriarchal patrimonialism is mass domination by one individual; as a rule it requires officials, whereas feudalism minimizes the demand for these. As far as it does not rely on alien patrimonial troops, it strongly depends upon the subjects' good will, which feudalism can afford to forego to a large extent. Against the dangerous

aspirations of the privileged status groups patriarchalism plays out the masses who everywhere have been its natural following. The "good king," not the hero, was the ideal glorified by mass legend. Therefore, patriarchal patrimonialism must legitimate itself as guardian of the subjects' welfare in its own and in their eyes. The "welfare state" is the legend of patrimonialism, deriving not from the free cameraderie of solemnly promised fealty, but from the authoritarian relationship of father and children. The "father of the people" (*Landesvater*) is the ideal of the patrimonial states. Patriarchalism can therefore be the carrier of a specific welfare policy, and indeed develops it whenever it has sufficient reason to assure itself of the good will of the masses. In modern history this happened, for example, in England under the regime of the Stuarts, when they fought against the anti-authoritarian forces of the Puritan bourgeoisie and of the semi-feudal *honoratiores*: Laud's Christian welfare policies had partly clerical, partly patrimonial roots. The minimization of administrative functions under feudalism, which is concerned about the welfare of the retainers only to the extent that this is indispensable for the lord's economic maintenance, contrasts with the maximization of administrative interests under patriarchalism. For every new administrative function which the patrimonial ruler appropriates means an elevation of his power and ideological significance and creates new benefices for his officials. The patrimonial ruler is not at all interested in a stereotyped distribution of property, especially of land. He establishes economic restrictions only to the extent that he satisfies his needs liturgically, he accomplishes this through collectively responsible bodies, within which an internal subdivision of property may take place. If he satisfies his needs through a money economy, then small landholdings and very intensive agriculture, combined with freely alienable land ownership, are very much compatible with his own interests. The patrimonial ruler does not abhor in the least new property formation through rational acquisition; in fact, he favors it under the condition that it does not establish new powers which gain authority independent of his approval.

Typical of patrimonialism is the determined rise from rags, from slavery and lowly service for the ruler, to the precarious all-powerful position of the favorite. In the interest of his domination, the patrimonial ruler must oppose the status autonomy of the feudal aristocracy and the economic independence of the bourgeoisie. Ultimately, every autonomous dignity and simply any sense of honor on the part of the "subjects" must be suspected of hostility to authority; the inner devotion to the authority of the sovereign indeed fared everywhere according to the outcome of the resultant historical struggles. The minimization of effec

tive administration by *honoratiores* and the ruler's dependence upon their voluntary participation in England, the success of revolutions in France and the other Latin countries, the independence of the social revolutionary ethos in Russia have impeded or destroyed that internalized devotion to authority which has remained an almost ineradicable legacy of unrestrained patrimonial rule in Germany and appears undignified to the outside observer. From a political viewpoint the German has indeed been the typical *Untertan* (subject) in the most poignant sense of the word, and therefore Lutheranism was his proper religiosity.

The only specific educational system of patriarchal patrimonialism is administrative training, which alone provides the basis for a stratum that in its most consistent form is an educated status group of the well-known Chinese type. However, education may also remain in the hands of the clergy as possessors of the skills useful for patrimonial administration, which needs accounting and clerical work unknown to feudalism. This happened in the Near East and in the Occidental Middle Ages. In this case education has a specifically literary character. Education may also be secular professional training in law, as it developed in the medieval universities, but even then it remains a literary education, and its increasing rationalization leads to the mentality of specialization and to the ideal of a "vocation" that is typical of modern bureaucracy. Patrimonial education always lacks the features of playfulness and elective affinity to art, of heroic asceticism and hero worship, of heroic honor and heroic hostility to the utilitarianism of business and office—features which feudalism inculcates and preserves. Indeed the administrative "organization" (*amtliche Betrieb*) is an impersonal "business" (*sachliches Geschäft*): The patrimonial official bases his honor not upon his "being," but on his "functions," he expects advantages and promotion from his "services"; the idleness, the games and the commercial nonchalance of the knight must appear to him as slothfulness and lack of efficiency. The status ethos adequate to the patrimonial official enters here into the avenues of the bourgeois business ethos. Already the philosophy of the ancient Egyptian officials, as we know it from exhortations by scribes and officials to their sons, has a distinctly utilitarian bourgeois character. In principle, nothing has changed since, apart from the increasing rationalization and professional specialization in the development from patrimonial officialdom to modern bureaucracy.

The main difference between the utilitarianism of the officials and the specifically bourgeois ethos has always been the former's abhorrence of the acquisitive drive, which is natural for a person who draws a fixed salary or takes fixed fees, who is ideally incorruptible, and whose performance finds its dignity precisely in the fact that it is not a source of

commercial enrichment. To that extent the spirit of patrimonial administration, interested as it is in public peace, the preservation of traditional means of livelihood and the satisfaction of the subjects, is alien to and distrustful of capitalist development, which revolutionizes the given social conditions; this was true, as we have seen, most of all of the Confucian ethos and to a moderate degree everywhere, especially since resentment against the emergent autonomous economic powers became an additional factor. So far it is no accident that specifically modern capitalism developed first in England where the rule of officials was minimized, just as under similar conditions ancient capitalism had reached its high point. This kind of resentment and the traditional status-oriented attitude of the bureaucracy toward rational economic profit eventually became the motives on which modern state welfare policies could rely and which facilitated them especially in bureaucratic states; however, these motives also determined the limitations and the peculiarities of these policies.

NOTES

1. Some of Weber's sources from the large German literature on feudalism have already been cited in the *Soc. of Law* and elsewhere (G. v. Below, H. Mitteis, etc.). Among Weber's contemporaries Otto Hintze in particular was impressed by his comparative approach. Hintze, who for a Prussian historian had a rare sense for the comparative method, wrote "Wesen und Verbreitung des Feudalismus" (1929), "Typologie der ständischen Verfassungen des Abendlandes" (1930), "Weltgeschichtliche Bedingungen der Repräsentativverfassung" (1931), and "Das monarchische Prinzip und die konstitutionelle Verfassung" (1911); see *id., Staat und Verfassung* (Göttingen: Vandenhoeck, 1962). Hintze also reviewed Weber's *Collected Essays on the Sociology of Religion* (1922) and *Wirtschaft und Gesellschaft* (1926); see *id., Soziologie und Geschichte* (Göttingen: Vandenhoeck, 1964).

For Otto Brunner's summary treatment of the literature on feudalism, see "Feudalismus. Ein Beitrag zur Begriffsgeschichte," *Akademie der Wissenschaften und der Literatur. Abh. der Geistes- und sozialwissenschaftlichen Klasse*, 1958, vol. 10, 3–39.

Apart from the standard works by Marc Bloch and François Ganshof on European feudalism, the English readers should consult John Whitney Hall, "Feudalism in Japan" (*Comparative Studies in Society and History*, V, Oct. 1962), since Japan is the other major case of feudalism. See also Vatro Murvar, "Some Reflections on Weber's Typology of *Herrschaft*," and Norman Jacobs, "The Patrimonial Thesis and Pre-Modern Japanese *Herrschaft*," both in *The Sociological Quarterly*, V:4, 1964, 374–95.

2. See Ulrich Stutz, *Geschichte des kirchlichen Benefizialwesens* (Scientia Alen, 1961), sec. ed. (first published in 1895); *id., Die Eigenkirche* (Berlin, 1895) and article on "Eigenkirche" in *Realenzyklopädie für protestantische Theologie und Kirche*, XXIII, 1913, 364–77. (R and W)

3. Cf. Weber's observations in "Hinduismus und Buddhismus," *GAzRS* II, 295ff; English in *Religion of India*, 270ff. (W)

4. Cf. C. H. Becker, *Islam-Studien*, I (1924). (W)

5. See Karl Marx, "Das Elend der Philosophie," in Marx/Engels, *Werke* (Berlin, 1959), IV, 130.

6. Cf. C. H. Becker, *op. cit.*, 62f., 263ff. (W)

7. See Hermann Levy, *Monopoly and Competition* (London, 1911) and *Economic Liberalism* (London, 1913), ch. III; German editions of 1909 and 1902 respectively.

8. For a critique, see Alfons Dopsch, *Herrschaft und Bauer in der deutschen Kaiserzeit* (Stuttgart: Fischer, 1964; first publ. in 1939), 199ff. Dopsch, a contemporary of Weber, criticized him for asserting that the distribution of individual wealth was stabilized by feudalism and pointed to the busy trade in fiefs among the nobility and the monasteries during the 12th and 13th century. However, he ignored the comparative nature of Weber's statement, i.e., that it was made in comparison to patrimonial structures, as well as Weber's attempt to assess the balance of forces that restrain and favor the development of capitalism. Dopsch argues that the subleasing of fiefs, which Weber may have underestimated, furthered economic growth and that the feudal lords were motivated not by traditionalist economic standards (p. 210) but by a "rationally calculating economic spirit" (p. 207). However, Weber points out subsequently that feudal restrictions were not necessarily inimical to the money economy. Dopsch consistently blurs Weber's distinction between the ubiquitous acquisitive spirit and the specific motives and activities that entered into the making of modern capitalism. During the time Weber wrote *Economy and Society*, Dopsch tried to prove that the capitalist enterprise and market production existed as early as the Carolingian period (*Die Wirtschaftsentwicklung der Karolingerzeit*, 1912).

CHAPTER XIV

CHARISMA AND ITS TRANSFORMATION

i

The Nature and Impact of Charisma

1. *The Sociological Nature of Charismatic Authority*[1]

Bureaucracy and patriarchalism are antagonistic in many respects, but they share *continuity* as one of their most important characteristics. In this sense both are structures of everyday life. Patriarchalism, in particular, is rooted in the need to meet ongoing, routine demands, and hence has its first locus in the *economy*, to be precise, in those of its branches which are concerned with normal want satisfaction. The patriarch is the natural leader in matters of everyday life. In this respect, bureaucracy is merely the rational counterpart of patriarchalism. Bureaucracy, too, is a permanent structure and, with its system of rational rules, oriented toward the satisfaction of calculable needs with ordinary, everyday means.

All *extra*ordinary needs, i.e., those which *transcend* the sphere of everyday economic routines, have always been satisfied in an entirely heterogeneous manner: on a *charismatic* basis. The further we go back into history, the more strongly does this statement hold. It means the following: that the "natural" leaders in moments of distress—whether

psychic, physical, economic, ethical, religious, or political—were neither appointed officeholders nor "professionals" in the present-day sense (i.e., persons performing against compensation a "profession" based on training and special expertise), but rather the bearers of specific gifts of body and mind that were considered "supernatural" (in the sense that not everybody could have access to them).

The term "charisma" in this context must be used in a completely value-free sense. The heroic ecstasy of the Nordic berserk, the legendary Irish folk hero Cuchulain or the Homeric Achilles was a manic seizure. The berserk, for example, bit into his shield and all about himself, like a mad dog, before rushing off in bloodthirsty frenzy; for a long time his seizure was said to have been artificially induced through drugs. In Byzantium, a number of such "blond beasts" were kept just like war elephants in ancient times. The ecstasis of the Shamans is linked to constitutional epilepsy, the possession and testing of which proves the charismatic qualification. For us, both forms of ecstasy are not edifying; neither is the kind of revelation found in the Holy Book of the Mormons: if we were to evaluate this revelation, we would perhaps be forced to call it a rank swindle. However, sociology is not concerned with such value judgments. Important is that the head of the Mormons and those "heroes" and "magicians" proved their charisma in the eyes of their adherents. They practiced their arts, and they exercised their authority, by virtue of this gift ("charisma") and, where the idea of God had already been clearly established, by virtue of the Divine mission inherent in their ability. This was true of doctors and prophets just as much as of judges, military leaders, or the leaders of great hunting expeditions.

It is to Rudolf Sohm's credit that he worked out the sociological character of this kind of domination (*Gewaltstruktur*); however, since he developed this category with regard to one historically important case —the rise of the ecclesiastic authority of the early Christian church—, his treatment was bound to be one-sided from the viewpoint of historical diversity.[2] In principle, these phenomena are universal, even though they are often most evident in the religious realm.

In radical contrast to bureaucratic organization, charisma knows no formal and regulated appointment or dismissal, no career, advancement or salary, no supervisory or appeals body, no local or purely technical jurisdiction, and no permanent institutions in the manner of bureaucratic agencies, which are independent of the incumbents and their personal charisma. Charisma is self-determined and sets its own limits. Its bearer seizes the task for which he is destined and demands that others obey and follow him by virtue of his mission. If those to whom

he feels sent do not recognize him, his claim collapses; if they recognize it, he is their master as long as he "proves" himself. However, he does not derive his claims from the will of his followers, in the manner of an election; rather, it is their *duty* to recognize his charisma. Chinese theory makes the emperor's right to govern dependent upon popular consent, but this is just as little an instance of popular sovereignty as is the necessity of the prophet's "recognition" by the believers in the early Christian congregation. In the Chinese case this is simply the recognition of the charismatic character of the royal office, which requires his *personal* qualification and effectiveness. As a rule, charisma is a highly individual quality. This implies that the mission and the power of its bearer is qualitatively delimited from within, not by an external order. Normally, the mission is directed to a local, ethnic, social, political, vocational or some other group, and that means that it also finds its limits at the edges of these groups.

As in all other respects, charismatic domination is also the opposite of bureaucracy in regard to its economic substructure. Bureaucracy depends on continuous income, at least *a potiori* on a money economy and tax money, but charisma lives in, not off, this world. This must be understood properly. Frequently charisma abhors the owning and making of money—witness Saint Francis and many of his kind. But this is not the rule. In our value-free sense of the term, an ingenious pirate may be a charismatic ruler, and the charismatic political heroes are out for booty—especially, money. The point is that charisma rejects as undignified all methodical rational acquisition, in fact, all rational economic conduct. This accounts also for its radical difference from the patriarchal structure, which rests upon an orderly household. In its pure form charisma is never a source of private income; it is neither utilized for the exchange of services nor is it exercised for pay, and it does not know orderly taxation to meet the material demands of its mission; rather, if it has a peaceful purpose, it receives the requisite means through sponsors or through honorific gifts, dues and other voluntary contributions of its own following. In the case of charismatic warriors, the booty is both means and end of the mission. In contrast to all patriarchal forms of domination, pure charisma is opposed to all systematic economic activities; in fact, it is *the* strongest anti-economic force, even when it is after material possessions, as in the case of the charismatic warrior. For charisma is by nature not a continuous institution, but in its pure type the very opposite. In order to live up to their mission the master as well as his disciples and immediate following must be free of the ordinary wordly attachments and duties of occupational and family life. Those who have a share (κλῆρος) in charisma must inevitably turn

away from the world: witness the statute of the Jesuit order forbidding members to hold ecclesiastic offices; the prohibitions for members of other orders to own property, or for the order itself, as in the original rule of Saint Francis; the celibacy of priests and knights of an order; the actual adherence to the rule of celibacy on the part of numerous holders of prophetic or artistic charisma. According to the type of charisma and the conduct corresponding to it, the economic conditions of participation may contrast with one another. It is just as consistent for modern charismatic movements of artistic origin to consider "men of independent means"—in plain words, *rentiers*—the most qualified followers of the charismatic leader, as it was for the medieval monasteries to demand the economic opposite, the friar's vow of poverty.[3]

2. *Foundations and Instability of Charismatic Authority*

Charismatic authority is naturally unstable. The holder may lose his charisma, he may feel "forsaken by his God," as Jesus did on the cross [cf. Ps. 22:1, Mat. 27:46, Mark 15:34]; it may appear to his followers that "his powers have left him." Then his mission comes to an end, and hope expects and searches for a new bearer; his followers abandon him, for pure charisma does not recognize any legitimacy other than one which flows from personal strength proven time and again. The charismatic hero derives his authority not from an established order and enactments, as if it were an official competence, and not from custom or feudal fealty, as under patrimonialism. He gains and retains it solely by proving his powers in practice. He must work miracles, if he wants to be a prophet. He must perform heroic deeds, if he wants to be a warlord. Most of all, his divine mission must prove itself by *bringing well-being* to his faithful followers; if they do not fare well, he obviously is not the god-sent master. It is clear that this very serious meaning of genuine charisma is radically different from the convenient pretensions of the present "divine right of kings," which harks back to the "inscrutable" will of the Lord, "to whom alone the monarch is responsible."[4] The very opposite is true of the genuinely charismatic ruler, who is responsible to the ruled—responsible, that is, to prove that he himself is indeed the master willed by God.

For this reason a ruler such as the Chinese emperor, whose power still contains—in theory—important charismatic vestiges, may publicly accuse himself of his sins and insufficiencies, if his administration fails to banish the distress of the ruled, whether it is caused by floods or unsuccessful wars; we have witnessed this in China even during the

last decades. If this penitence does not propitiate the gods, the ruler faces deposition and death, often enough as an expiatory sacrifice. This is the concrete meaning of Meng-tse's (Mencius') statement that the people's voice is God's voice (according to him, the *only* way in which God speaks): If the people withdraw their recognition, the master becomes a mere private person—this is explicitly stated—, and if he claims to be more, a usurper deserving of punishment. This state of affairs is also found under primitive conditions, without the pathos of these highly revolutionary phrases. Since all primitive authorities have inherent charismatic qualities, with the exception of patriarchalism in the strictest sense, the chief is often simply deserted if success is unfaithful to him.

3. *The Revolutionary Nature of Charisma*

The mere fact of recognizing the personal mission of a charismatic master establishes his power. Whether it is more active or passive, this recognition derives from the surrender of the faithful to the extraordinary and unheard-of, to what is alien to all regulation and tradition and therefore is viewed as divine—surrender which arises from distress or enthusiasm. Because of this mode of legitimation genuine charismatic domination knows no abstract laws and regulations and no formal adjudication. Its "objective" law flows from the highly personal experience of divine grace and god-like heroic strength and rejects all external order solely for the sake of glorifying genuine prophetic and heroic ethos. Hence, in a revolutionary and sovereign manner, charismatic domination transforms all values and breaks all traditional and rational norms: "It has been written . . . , but *I* say unto you. . . ."

The specific form of charismatic adjudication is prophetic revelation, the oracle, or the Solomonic award of a charismatic sage, an award based on concrete and individual considerations which yet demand absolute validity. This is the realm proper of "*kadi*-justice" in the proverbial, not the historical sense. For the adjudication of the (historical) Islamic *kadi* is determined by sacred tradition and its interpretation, which frequently is extremely formalistic; rules are disregarded only when those other means of adjudication fail. Genuine charismatic justice does not refer to rules; in its pure type it is the most extreme contrast to formal and traditional prescription and maintains its autonomy toward the sacredness of tradition as much as toward rationalist deductions from abstract norms. We cannot compare here the recourse to the principle *aequum et bonum* in Roman law and the original meaning of "equity"

in English law to charismatic justice in general and the theocratic *kadi*-justice of the Islam in particular.[5] Both are products partly of a law that is already strongly rationalized and partly of abstract natural law; at any rate, the principle *ex fide bona* refers to standards of fairness in business relations and thus is just as little truly irrational justice as our own principle of "judicial discretion." By contrast, all adjudication which uses ordeals as evidence derives from charismatic justice. However, because such adjudication replaces personal charismatic authority by a regular procedure which formally determines the will of God, it belongs already to the realm of that depersonalization of charisma with which we will deal soon.

As we have seen, bureaucratic rationalization, too, often has been a major revolutionary force with regard to tradition. But it revolutionizes with *technical means*, in principle, as does every economic reorganization, "from without": It *first* changes the material and social orders, and *through* them the people, by changing the conditions of adaptation, and perhaps the opportunities for adaptation, through a rational determination of means and ends. By contrast, the power of charisma rests upon the belief in revelation and heroes, upon the conviction that certain manifestations—whether they be of a religious, ethical, artistic, scientific, political or other kind—are important and valuable; it rests upon "heroism" of an ascetic, military, judicial, magical or whichever kind. Charismatic belief revolutionizes men "from within" and shapes material and social conditions according to its revolutionary will. Of course, this contrast must be correctly understood. In spite of vast differences, "ideas" have essentially the same psychological roots whether they are religious, artistic, ethical, scientific or whatever else; this also applies to ideas about political and social organization. It is a time-bound, subjective value-judgment which would like to attribute some of these ideas to "reason" and others to "intuition" (or whatever other distinctions may be used). The mathematical imagination of a Weierstrass, for instance, is "intuition" in exactly the same sense as is that of any artist, prophet—or demagogue.[6] But not here lies the difference. (Parenthetically, in the value sphere, which does not concern us here, all these kinds of ideas—including artistic intuition—have in common that to objectivate themselves, to prove their reality, they must signify a grasp on demands of the "work" or, if you prefer, a being seized by them; they are not merely a subjective feeling or experience.) The decisive difference—and this is important for understanding the meaning of "rationalism"—is not inherent in the *creator* of ideas or of "works," or in his inner experience; rather, the difference is rooted in the manner in which the ruled and led experience and internalize these ideas. As

we have shown earlier," rationalization proceeds in such a fashion that the broad masses of the led merely accept or adapt themselves to the external, technical resultants which are of practical significance for their interests (as we "learn" the multiplication table and as too many jurists "learn" the techniques of law), whereas the substance of the creator's ideas remain irrelevant to them. This is meant when we say that rationalization and rational organization revolutionize "from the outside," whereas charisma, if it has any specific effects at all, manifests its revolutionary power from within, from a central *metanoia* [change] of the followers' attitudes. The bureaucratic order merely replaces the belief in the sanctity of traditional norms by compliance with rationally determined rules and by the knowledge that these rules can be superseded by others, if one has the necessary power, and hence are not sacred. But charisma, in its most potent forms, disrupts rational rule as well as tradition altogether and overturns all notions of sanctity. Instead of reverence for customs that are ancient and hence sacred, it enforces the inner subjection to the unprecedented and absolutely unique and therefore Divine. In this purely empirical and value-free sense charisma is indeed the specifically creative revolutionary force of history.

4. *Range of Effectiveness*

Both charismatic and patriarchal power rest on personal devotion to, and personal authority of, "natural" leaders, in contrast to the appointed leaders of the bureaucratic order, yet this basis is very different in the two cases. Just like the official, the patriarch benefits from devotion and authority as a bearer of norms, with the difference that these norms are not purposively established as are the laws and regulations of bureaucracy, but have been inviolable from times out of mind. The bearer of charisma enjoys loyalty and authority by virtue of a mission believed to be embodied in him; this mission has not necessarily and not always been revolutionary, but in its most charismatic forms it has inverted all value hierarchies and overthrown custom, law and tradition. In contrast to the charismatic structure that arises out of the anxiety and enthusiasm of an extraordinary situation, patriarchal power serves the demands of everyday life and persists in its function, as everyday life itself, in spite of all changes of its concrete holder and its environment. Both structures are found in all areas of life. Many of the old Teutonic armies fought in a patriarchal manner, each lineage group led by its head; the armies of *coloni* of ancient Oriental monarchs and the contingents of Frankish retainers, who took the field under their *seniores*, were patrimonial. The

patriarch's religious function and domestic worship persist side by side with the official community cult, on the one hand, and the great movements of charismatic prophecy, which are almost always revolutionary, on the other. Whether we look at Teutonic or American Indian tribes, the charismatic hero, who marches out with a voluntary following, appears next to the chieftain of peace, who is responsible for the routine economic affairs of the community, and next to the popular levy, which is mobilized in the case of tribal warfare. In an official war of the whole tribe, too, the normal peace-time authorities are often replaced by a warlord who is proclaimed *ad hoc* the "leader of the army" (*Herzog*), since he proved himself a hero in military exploits.

In contrast to the revolutionary role of charisma, the traditional everyday needs in politics and religion are met by the patriarchal structure, which is based upon habituation, respect for tradition, piety toward parents and ancestors, and the servant's personal faithfulness. The same is true in the economic field. As an orderly round of activities which procures the material means of want satisfaction, the economy is the specific locus of patriarchal rulership and, with the rise of the enterprise in the course of rationalization, also of bureaucratic domination. However, charisma is by no means alien to the economy. Under primitive conditions charismatic features are frequently found in one economic branch, the relevance of which declined with the advance of material culture: hunting, which was organized like a military operation, even at a later stage, as can be seen from the Assyrian royal inscriptions. However, the antagonism between charisma and everyday life arises also in the capitalist economy, with the difference that charisma does not confront the household but the enterprise. An instance of grandiose robber capitalism and of a spoils-oriented following is provided by Henry Villard's exploits. [In 1889] he organized the famous "blind pool" in order to stage a stock exchange raid on the shares of the Northern Pacific Railroad; he asked the public for a loan of fifty million pounds without revealing his goal, and received it without security by virtue of his reputation. The structure and spirit of this robber capitalism differs radically from the rational management of an ordinary capitalist large-scale enterprise and is most similar to some age-old phenomena: the huge rapacious enterprises in the financial and colonial sphere, and "occasional trade" with its mixture of piracy and slave hunting. The double nature of what may be called the "capitalist spirit," and the specific character of modern routinized capitalism with its professional bureaucracy, can be understood only if these two structural elements, which are ultimately different but everywhere intertwined, are conceptually distinguished.

5. The Social Structure of Charismatic Domination

It is true that the "purer" charismatic authority in our sense is, the less can it be understood as an organization in the usual sense: as an order of persons and things that function according to the means-ends scheme. However, charismatic authority does not imply an amorphous condition; it indicates rather a definite social structure with a staff and an apparatus of services and material means that is adapted to the mission of the leader. The personal staff constitutes a charismatic aristocracy composed of a select group of adherents who are united by discipleship and loyalty and chosen according to personal charismatic qualification. For the charismatic subject adequate material contributions are considered a dictate of conscience, although they are formally voluntary, unregulated and irregular; they are offered according to need and economic capacity. The more typical the charismatic structure, the less do followers or disciples obtain their material sustenance and social position in the form of benefices, salaries or other kinds of orderly compensation, titles or ranks. Instead, insofar as the individual's maintenance is not already assured, the followers share in the use of those goods which the authoritarian leader receives as donation, booty or endowment and which he distributes among them without accounting or contractual fixation. Thus the followers may have a claim to be fed at the common table, to be clothed and to receive honorific gifts from the leader, and to share in the social, political or religious esteem and honor in which he himself is held. Any deviation from this pattern affects the "purity" of the charismatic structure and modifies it in the direction of other structures.

6. The Communist Want Satisfaction of the Charismatic Community

Next to the household, charisma is thus the second important historical representative of *communism*, defined here as the absence of formal accountability in the *consumption* sphere, not as the rational organization of *production* for a common account (as under socialism). Every historical instance of communism in this sense has either a traditional, that means, patriarchal basis or the extraordinary foundation of charismatic belief; in the former case it is household communism, and only in this form has it been an everyday phenomenon; in the latter case it was, if fully developed, either the spoils communism of the camp or the monastery's communism of love with its variations and its degeneration into *caritas* and alms-giving. In various degrees of purity the spoils com-

munism of the camp is found in all charismatic warriors' organizations, from the pirate state of the Ligurian islands to the Islamic state of the caliph Omar and the military orders of Christianity and of Japanese Buddhism. In one form or another, the communism of love was paramount in all religions. It persists among the professional followers of the Divine: the monks. We also find it in numerous Pietist organizations—for example, among Labadie's followers—and in other high-strung religious groups of an exclusive character. The preservation of authentic heroism and saintliness appears to the adherents dependent upon the retention of a communist basis and the absence of the striving for individual property. And correctly so, since charisma is basically an extraordinary and hence necessarily non-economic power, and its vitality is immediately endangered when everyday economic interests become predominant, as it threatens to happen everywhere. The first step in this direction is the prebend—an allowance replacing the old communist maintenance out of common provisions—, which has here its real origin. With all available means the charismatic leaders attempt to limit this disintegration. All warrior states retained remnants of charismatic communism—Sparta is a typical example—and tried to protect the heroic individual against the "temptation" posed by responsibility for property, rational acquisition and a family, just like the religious orders did. The adjustment between these charismatic remnants and the individual's economic interests, which arise with prebendalization and persist ever after, may take the most diverse forms. Invariably, however, the reign of genuine charisma comes to an end when it can no longer withhold the unqualified permission to found families and to engage in economic pursuits. Only the common danger of military life or the love ethos of an unworldly discipleship can preserve such communism, which in turn is the only guarantor of the purity of charisma vis-à-vis everyday interests.

Every charisma is on the road from a turbulently emotional life that knows no economic rationality to a slow death by suffocation under the weight of material interests: every hour of its existence brings it nearer to this end.

ii

The Genesis and Transformation of Charismatic Authority

1. *The Routinization of Charisma*

Charismatic rulership in the typical sense described above always results from unusual, especially political or economic situations, or from extraordinary psychic, particularly religious states, or from both together. It arises from collective excitement produced by extraordinary events and from surrender to heroism of any kind. This alone is sufficient to warrant the conclusion that the faith of the leader himself and of his disciples in his charisma—be it of a prophetic or any other kind—is undiminished, consistent and effective only *in statu nascendi*, just as is true of the faithful devotion to him and his mission on the part of those to whom he considers himself sent. When the tide that lifted a charismatically led group out of everyday life flows back into the channels of workaday routines, at least the "pure" form of charismatic domination will wane and turn into an "institution"; it is then either mechanized, as it were, or imperceptibly displaced by other structures, or fused with them in the most diverse forms, so that it becomes a mere component of a concrete historical structure. In this case it is often transformed beyond recognition, and identifiable only on an analytical level.

Thus the pure type of charismatic rulership is in a very specific sense unstable, and all its modifications have basically one and the same cause: The desire to transform charisma and charismatic blessing from a unique, transitory gift of grace of extraordinary times and persons into a permanent possession of everyday life. This is desired usually by the master, always by his disciples, and most of all by his charismatic subjects. Inevitably, however, this changes the nature of the charismatic structure. The charismatic following of a war leader may be transformed into a state, the charismatic community of a prophet, artist, philosopher, ethical or scientific innovator may become a church, sect, academy or school, and the charismatic group which espouses certain cultural ideals may develop into a party or merely the staff of newspapers and periodicals. In every case charisma is henceforth exposed to the conditions of everyday life and

to the powers dominating it, especially to the economic interests. The turning point is always reached when charismatic followers and disciples become privileged table companions, as did the *trustis* of the Frankish king, and subsequently fief-holders, priests, state officials, party officials, officers, secretaries, editors and publishers, all of whom want to live off the charismatic movement, or when they become employees, teachers and others with a vested occupational interest, or holders of benefices and of patrimonial offices. The charismatically dominated masses, in turn, become tax-paying subjects, dues-paying members of a church, sect, party or club (*Verein*), soldiers who are systematically impressed, drilled and disciplined, or law-abiding "citizens." Even though the apostle admonishes the followers to maintain the purity of the spirit, the charismatic message inevitably becomes dogma, doctrine, theory, reglement, law or petrified tradition.

In this process the two basically antagonistic forces of charisma and tradition regularly merge with one another. This stands to reason, for their power does not derive from purposive-rational regulations and their observance, but from the belief in the sanctity of an individual's authority, which is unquestionably valid for the ruled (children, disciples, retainers or vassals), whether or not it really claims to be absolute. Both charisma and tradition rest on a sense of loyalty and obligation which always has a religious aura.

The external forms of the two structures of domination are also often similar to the point of being identical. It is not directly visible whether the companionage of a war leader with his followers has a patrimonial or a charismatic character; this depends upon the spirit which imbues the community, and that means upon the basis of the ruler's claim to legitimacy: authority sanctified by tradition, or faith in the person of the hero. The transition is fluid. As soon as charismatic domination loses its personal foundation and the acutely emotional faith which distinguishes it from the traditional mold of everyday life, its alliance with tradition is the most obvious and often the only alternative, especially in periods in which the rationalization of organizational techniques (*Lebenstechnik*) is still incipient. In such an alliance the essence of charisma appears to be definitely abandoned, and this is indeed true insofar as its eminently revolutionary character is concerned. It is the basic feature of this ever recurring development that charisma is captured by the interest of all economic and social power holders in the *legitimation* of their possessions by a charismatic, and thus sacred, source of authority. Instead of upsetting everything that is traditional or based on legal acquisition (in the modern sense), as it does *in statu nascendi*, charisma becomes a legitimation for "acquired rights." In this function, which is alien to its

essence, charisma becomes a part of everyday life; for the needs which it satisfies in this way are universal, especially for one general reason [namely, the legitimation of leadership and succession].

2. *The Selection of Leaders and the Designation of Successors*

Our earlier analysis of bureaucratic, patriarchal and feudal domination dealt only with the manner in which these everyday powers *functioned*. It did not explore the criteria for the selection of the highest-ranking bureaucratic or patriarchal holder of power. Even the head of a bureaucracy might conceivably be a high official who moves into his position according to general rules. However, it is no accident that this is usually not the case; at the least he is not selected according to the same norms as the officials in the hierarchy below him. Exactly the pure type of bureaucracy, a hierarchy of *appointed* officials, requires an authority (*Instanz*) which has not been appointed in the same fashion as the other officials. The holder of patriarchal power is naturally given in the nuclear family of parents and children, and in the extended family he is established through unambiguous traditional prescription. This is not equally true of the head of a patriarchal state or a feudal hierarchy.

For charismatic leadership, too, if it wants to transform itself into a perennial institution, the first basic problem is that of finding a successor to the prophet, hero, teacher or party leader. This problem inescapably channels charisma into the direction of legal regulation and tradition.

Given the nature of charisma, a free election of a successor is originally not possible, only the acknowledgment that the pretender actually *has* charisma. Hence the followers may have to wait for the epiphany of a personally qualified successor, temporal representative or prophet. Specific examples are the incarnations of Buddha and the Mahdis. Frequently, however, there is no such incarnation, or it may even be ruled out by dogmatic considerations, as in the case of Christ and originally of Buddha. Only genuine (Southern) Buddhism drew radical conclusions from this conception: After his death Buddha's followers continued to be a community of mendicant monks which maintained a minimal organization and consociation and, so far as possible, remained amorphous and intermittent. Wherever the old prescriptions of the Pâli texts were followed, as was often the case in India and Ceylon, there is neither a patriarch nor is the individual firmly attached

to a monastic consociation. The "dioceses" are only convenient geographical demarcations of areas within which the monks gather for the few communal ceremonies, which are free of any elaborate ritual. The "officialdom" is limited to the caretakers of clothes and a few similar functionaries. The renunciation of property on the part of the individual and the community and want satisfaction through the maecenatic system (gifts and alms) are carried as far as this is possible under the conditions of everyday life. Precedence in the order of seating or speaking at meetings is conferred only by seniority and by the relationship of the teacher to the novice who serves as his attendant (*famulus*). Resignation is possible at any time, and admission requirements are very low (including an apprenticeship, a recommendation and release by the teacher, and a minimum of ceremonies). There is neither dogma nor professional instruction and preaching. The two half-legendary *concilia* of the first centuries were not repeated.

It is certain that this highly amorphous character of the monastic community contributed heavily to the disappearance of Buddhism in India. It was, at any rate, possible only in a purely monastic community in which individual salvation was exclusively a personal matter. For in any other group such behavior, and a merely passive waiting for a new epiphany, will endanger the cohesion of the charismatic community, which yearns for the physical presence of the lord and master. If this strong desire to have a charismatic leader present all the time is accommodated, an important step in the direction of routinization has been made. Recurrent incarnation depersonalizes charisma. Its chosen holder must be sought either on the basis of some revealing characteristics and thus at least of some "rules"—like the new Dalai Lama, whose selection does not differ in principle from that of the Apis bull—; or some other definite and regular means must be available. In the latter category we find the belief, which easily emerges, that the holder of charisma himself is qualified to designate his successor or, if he is considered a unique incarnation such as Christ, his temporal representative. In all originally charismatic organizations, whether prophetic or warlike, the designation of a successor or representative has been a typical means of assuring the continuity of domination. But this indicates, of course, a step from autonomous leadership based on the power of personal charisma toward legitimacy derived from the authority of a "source." Pertinent religious examples are well-known. Instead we refer to the Roman magistrates, who designated their successors from among qualified persons before they were acclaimed by the assembled anny. The charismatic features of this mode of selection were preserved on a ceremonial level even after tenure in the office had been limited and formal *prior* consent ("elec-

tion") by the citizens' army had been introduced in an effort to curb the powers of the office. The designation of a *dictator* in the field, during military exigencies that called for an extraordinary man, remained for a long time a characteristic remnant of the old pure type of charismatic selection. The *princeps* emerged from the army's acclamation of the victorious hero as *imperator;* the *lex de imperio* did not make him the ruler, rather it acknowledged him as the rightful pretender. Hence, during the most typical period of the Principate, the only "legitimate" means of succession to the throne was the designation of a colleague and successor. This designation was regularly clothed in the form of an adoption. These customs, in turn, undoubtedly had a strong influence upon the Roman family, which came to accept the completely free designation of a *heres* to take the place of the late *pater familias* with respect to the gods and *familia pecuniaque* [family and property]. Even though the notion of the heritability of charisma was used in the case of succession by adoption—by the way, without ever being accepted as an explicit principle in the period of military emperorship—, the principate itself always remained an office and the *princeps* continued to be an official with specified bureaucratic jurisdiction as long as the military emperorship retained its Roman character. To have established the principate as an office was the achievement of Augustus, whose reform appeared to contemporaries as the preservation and restoration of Roman tradition and liberty, in contrast to the notion of a Hellenistic monarchy that was probably on Caesar's mind.

3. *Charismatic Acclamation*

If the charismatic leader has not designated a successor and if there are no obvious external characteristics, like those that usually facilitate identification in the case of incarnation, it may easily occur to the ruled that the participants (*clerici*) in his exercise of authority, the disciples and followers, are best suited to recognize the qualified successor. At any rate, since the disciples have in fact complete control over the instruments of power, they do not find it difficult to appropriate this role as a "right." However, since the effectiveness of charisma rests on the faith of the ruled, their approval of the designated successor is indispensable. In fact, acknowledgment by the ruled was originally decisive. For example, even after membership in the [medieval German] college of Electors as a screening committee had become firmly circumscribed, it remained a question of practical significance who of the Electors was to present the proposal to the assembled army, for in principle he was

able to procure the acclamation for his personal candidate irrespective of the wishes of his colleagues.

Thus designation by the closest and most powerful vassals and acclamation by the ruled is normally the end product of this mode of choosing a successor. In the "routine" patrimonial and feudal state we find this charismatically derived right of designation as the right of nomination (*Vorwahlrecht*) of the most important patrimonial officials or vassals. In this respect the election of the German king was patterned after the election of a bishop. The "election" of a new king, pope, bishop or priest through (1) designation by the disciples and followers (Electors, cardinals, diocesan priests, chapter, elders) and (2) subsequent popular acclamation was therefore not an "election" in the modern sense of a presidential or parliamentary election. In its essence it was something completely different, namely, the recognition or acknowledgment of a qualification older than the election, hence of a charisma, acceptance of which its bearer was in fact entitled to demand. In principle, therefore, a majority decision was at first not possible, for a minority, no matter how small, might be right in its recognition of genuine charisma, just as the largest majority might be in error. Only one person can be the genuine bearer of charisma; the dissenting voters thus commit a sacrilege. All rules of the papal election aim at unanimity, and the election of an anti-king is the same thing as a church schism: It obscures the correct identification of the "chosen" ruler. In principle, such a situation can be corrected only by Divine judgment as revealed in the outcome of a physical or magical combat, an institution found among pretenders to the throne, especially brothers, in certain African tribes and also elsewhere.

Once the majority principle has come to prevail, it is considered the moral duty of the minority to yield to the right cause proven by the election and to join the majority after the event. Yet charismatic domination begins to yield to a genuine electoral system once succession is determined by the majority principle. However, charisma is not alien to all modern, including all democratic, forms of election. Certainly the democratic system of so-called plebiscitarian rulership—the official theory of French caesarism—has essentially charismatic features, and the arguments of its proponents all emphasize this very quality. The plebiscite is not an "election," but the first or the renewed recognition of a pretender as a personally qualified, charismatic ruler; an example of the latter case is the French plebiscite of 1870. Periclean democracy, too, which according to the intent of its creator was the domination of the *demagogos* by means of a charisma of the spirit and the tongue, received its characteristic charismatic trait by virtue of the election of one

of the *strategoi* (the others being determined by lot, if Eduard Meyer's hypothesis is correct).[8] Wherever originally charismatic communities enter on the path of electing their rulers, the electoral procedures will in the long run be tied to norms. This happens above all because with the vanishing of the genuine roots of charisma the everyday power of tradition and the belief in its sanctity regain their preponderance, so that only the observance of tradition can henceforth guarantee the right choice. Acclamation by the ruled recedes increasingly behind the charismatically determined right of prior election (*Vorwahlrecht*) by clerics, court officials or great vassals, and ultimately an exclusive oligarchic electoral agency comes into being, as in the Catholic church and the Holy Roman empire. Indeed this is bound to happen wherever a group with procedural experience has the right of nomination or of prior selection. Throughout the history of the city, this prerogative everywhere turned into a right of cooptation on the part of ruling families, who in this fashion reduced the lord to the position of a *primus inter pares* (archon, consul, doge) and the electoral participation of the community to insignificance. In our own days we find a parallel, for example, in the development of the senatorial election in Hamburg. From a formal viewpoint this transformation is by far the most frequent "legal" road to oligarchy.

4. *The Transition to Democratic Suffrage*

However, the reverse may also happen: Acclamation by the ruled may develop into a regular electoral system, with standardized suffrage, direct or indirect election, majority or proportional method, electoral classes and districts. It is a long way to such a system. As far as the election of the supreme ruler is concerned, only the United States went all the way—and there, of course, the nominating campaign within each of the two parties is one of the most important parts of the election business. Elsewhere at most the parliamentary representatives are elected, who in turn determine the choice of the prime minister and his colleagues. The development from acclamation of the charismatic leader to popular election occurred at the most diverse cultural stages, and every advance toward a rational, emotionally detached consideration of the process could not help but to facilitate this transfonnation. However, only in the Occident did the election of the ruler gradually develop into the representative system. In Antiquity the *boiotarchai* represented [in the Boeotian League] their communities (as originally also the members of the House of Commons), not the voters as such, and

wherever, as in the case of Attic Democracy, the officials were really popular mandataries and representatives and the *demos* was subdivided into sections, the principle of rotation rather than of representation prevailed [and gave each section a turn]. However, if this principle is radically applied, the elected person is formally the agent and hence the servant of his voters, not their chosen master, just like in a system of direct democracy. This means that structurally the charismatic basis has been completely abandoned. But in countries with large administrative bodies such a radical application of the principles of direct democracy has very narrow limits.

5. *The Meaning of Election and Representation*

For purely technical reasons, it is not feasible to tie the mandate of the representative completely to the voters' will since situations are always unstable and unanticipated problems always arise. The recall of the representative through a vote of no confidence has been rarely tried, and the approval of parliamentary decisions through a referendum results primarily in a considerable strengthening of all irrational powers of inertia, since as a rule the referendum precludes horse-trading and compromises between the interested parties. Finally, increasing costs make frequent elections impossible. All attempts at subordinating the representative to the will of the voters have in the long run only one effect: They reinforce the ascendancy of the party organization over him, which alone can mobilize the people. Both the pragmatic interest in the flexibility of the parliamentary apparatus and the power interest of the representatives and the party functionaries converge on one point: They tend to treat the representative not as the servant but as the chosen "master" of his voters. Most constitutions express this in the formula that the representative—like the monarch—is free to decide as he sees fit and that he "represents the interests of all the people." His actual power may vary considerably. In France the individual deputy normally controls not only the patronage of all offices, but he is in the proper sense of the word the "master" of his electoral district—this explains the resistance to the proportional system and the absence of party centralization; in the United States this is precluded by the predominance of the Senate, whose members occupy a similar position; in England and even more so in Germany the individual deputy, for very different reasons, is less the master than the agent of the economic interests in his electoral district, and patronage is controlled by the influential party chiefs.

Here we cannot deal further with the manner in which the electoral system distributes power; this depends upon the historically given mode of domination, and largely upon autonomous, that is, technically determined factors. We have been concerned only with the principles. Any election may be purely formal without having any real significance. This happened in the *comitia* of early Imperial Rome and in many Hellenic and medieval cities, as soon as an oligarchic club or a despot managed to seize political power and in fact designated the candidates to be elected into office. Even where this is not formally the case, the observer is well advised, whenever historical sources speak in general terms of an "election" of the prince or any other power-holder by the community—as in the case of the Germanic tribes—, to understand the expression not in the modern sense but to interpret it as a mere acclamation of a candidate who was designated by some other authority and also elected from only one or a few qualified families. We are not at all dealing with an election, of course, when voting for a political ruler has a plebiscitary and hence charismatic character: when instead of a real choice between candidates only the power claims of a pretender are being acknowledged.

Normal "elections," too, can only be a decision between several candidates who have been screened before being offered to the voters. This decision is brought about in the arena of electoral agitation through personal influence and appeal to material or ideal interests. The electoral provisions constitute, as it were, the rules of the game for this "peaceful" contest. The designation of these candidates takes place within the parties, for it stands to reason that party leaders and their followers, not the amorphous activities of voters, organize the contest for votes and thus for office patronage. Quadrennial campaign costs in the United States already amount to about as much as a colonial war, and in Germany too election costs are increasing for all parties which cannot draw upon the cheap manpower provided by Catholic auxiliary clergymen, noble or office-holding notables, or salaried trade union and other secretaries.

In addition to the power of money, the "charisma of rhetoric" gains great influence under these conditions. Its impact is not necessarily dependent upon any particular cultural level; it is also known to the assemblies of Indian chiefs and to the African palavers. Under Hellenic democracy it experienced its first great qualitative efflorescence, with immense consequences for the development of language and thought. However, from a purely quantitative viewpoint modern democratic electioneering with its "stump speeches" surpasses anything seen previously. The more mass effects are intended and the tighter the bu-

reaucratic organization of the parties becomes, the less significant is the content of the rhetoric. For its effect is purely emotional, insofar as simple class situations and other economic interests do not prevail which must be rationally calculated and manipulated. The rhetoric has the same meaning as the street parades and festivals: to imbue the masses with the notion of the party's power and confidence in victory and, above all, to convince them of the leader's charismatic qualification.

Since all emotional mass appeals have certain charismatic features, the bureaucratization of the parties and of electioneering may at its very height suddenly be forced into the service of charismatic hero worship. In this case a conflict arises between the charismatic hero principle and the mundane power of the party organization, as Roosevelt's [1912] campaign demonstrated.

6. Excursus *on Party Control by Charismatic Leaders, Notables and Bureaucrats*

Almost all parties originate as a charismatic following of legitimate or caesarist pretenders, of demagogues in the style of Pericles, Cleon or Lassalle. If parties develop at all into routinized permanent organizations, they generally are transformed into structures controlled by *honoratiores*. Until the end of the 18th century this almost always meant a federation of nobles. In the Italian cities of the Middle Ages a person could be elevated into the ranks of the *nobili* as a political punishment (since the great urban vassals were almost always Ghibelline); this was tantamount to disqualification from office and political disfranchisement. However, it was very rare, even under the *popolani*, for a commoner to hold leading offices, even though here as always the bourgeois strata had to finance the parties. The decisive element was that the military power of the parties, which often resorted to direct force, was provided by the nobility, in case of the Guelphs, for example, according to fixed contributions. Huguenots and Catholic League, the English parties, including the Roundheads, indeed all parties before the French Revolution typically developed into associations of notables, mostly led by nobles, after they had passed through a period of charismatic excitement that broke down class and status barriers in favor of one or several heroes. The same was true of the so-called "bourgeois" parties in the 19th century, even the most radical ones: all of them fell under the control of *honoratiores*, for only they could govern a party or the state without compensation, and they had of course the advantage of status or economic influence. Whenever the owner of a landed estate changed

his party affiliation, it was more or less taken for granted in England, and in East Prussia until the eighteen-seventies, that not only his patrimonial subjects but also the peasants would follow him—except in times of revolutionary excitement. At least in the smaller towns, a somewhat similar role was played by the mayors, judges, notaries, lawyers, ministers and teachers, and often also by the manufacturers until the workers organized themselves as a class. We will discuss in a different context why the manufacturers, even apart from their class situation, were generally not suited for this role. In Germany the teachers constitute a stratum that—for reasons inherent in its particular status position—provides unpaid electoral agents to the so-called "bourgeois" parties, just as the clergy normally does for the authoritarian parties. In France the lawyers have always been available to the bourgeois parties, partly because of their technical qualifications and partly—during and after the Revolution—because of their status position.

During the French Revolution some party organizations began to evolve in a bureaucratic manner, but they were too short-lived to develop a definite structure; only in the last decades of the 19th century did bureaucratic organization gain the upper hand everywhere. The oscillation between subordination to charisma and obedience to *honoratiores* was succeeded by the struggle of the bureaucratic organization with charismatic leadership. The more bureaucratization advances and the more substantial the interests in benefices and other opportunities become, the more surely does the party organization fall into the hands of experts, whether these appear immediately as party officials or at first as independent entrepreneurs—witness the American boss. These experts systematically maintain personal relations with the ward leaders, agitators, controllers and other indispensable personnel, and keep the voters' lists, files and all other materials required for running the party machine. Henceforth only the control of such an apparatus makes possible an effective influence on the party's policies and, if need be, a successful secession. The [1880] *Sezession* [in the German National Liberal Party] became possible because the Reichstag deputy Rickert had the lists of the ward leaders; from the beginning the subsequent breakup of the *Freisinnige Partei* appeared likely since Eugen Richter and Rickert each retained his own apparatus; and the fact that the former Secessionists managed to seize control of the party's executive board was a more serious symptom of the forthcoming split than all the preceding rhetoric.[9] Conversely, the impossibility of merging the personnel of two rival organizations has been much more important than any substantive disagreement for the failure of attempts at party mergers; this is again illustrated by German experiences.

In normal times such a bureaucratic apparatus, more or less consistently developed, controls the party's course, including the vitally important nomination of candidates. However, in times of great public excitement, charismatic leaders may emerge even in solidly bureaucratized parties, as was demonstrated by Roosevelt's campaign in 1912. If there is a "hero," he will endeavor to break the technician's hold over the party by imposing plebiscitary designation and possibly by changing the whole machinery of nomination. Such an eruption of charisma, of course, always faces the resistance of the normally predominant pros, especially of the bosses who control and finance the party and maintain its routine operations, whose tools the candidates usually are. For not only the material interests of the job hunters depend upon the selection of the party candidates, but very much also those of the party sponsors—banks, contractors and trusts. Since the times of Crassus, a typical figure has been the great sponsor who at times finances a charismatic leader and who expects from the latter's electoral victory government contracts, tax-farming opportunities, monopolies or other privileges, and especially the repayment with interest of his advances. But the regular party organization also lives off party sponsors. Rarely sufficient are the ordinary revenues, such as dues and possibly kickbacks from the salaries of officials who got their government job through the party (as in the United States). The direct exploitation of the party's power position enriches the participants, but does not necessarily fill the party coffers. For propagandistic reasons dues are frequently abolished or depend upon the member's self-assessment; this puts the control over the party's finances even formally into the hands of the big sponsors. The regular manager and political professional, the boss or the party secretary, can expect their financial support only if he firmly controls the party machine. Hence every irruption of charisma is also a financial threat to the regular organization It happens quite frequently that the warring bosses or other managers of the competing parties combine in defense of their common economic interests to prevent the rise of charismatic leaders, who would be independent of the regular party apparatus. As a rule, the party organization easily succeeds in this castration of charisma. This will also remain true of the United States, even in the face of the plebiscitary presidential primaries, since in the long run the continuity of professional operations is tactically superior to emotional worship. Only extraordinary conditions can bring about the triumph of charisma over the organization. The peculiar relationship between charisma and bureaucracy that split the English Liberal party over the issue of the first home rule bill is well known: Gladstone's very personal charisma, which was irresistible to

Puritan rationalism, forced the caucus bureaucracy to make an about-face and to stand with him despite the most serious objections and the prognosis of an unfavorable outcome of the elections; this resulted in the split of the apparatus that Chamberlain had created and in the loss of the electoral battle. A similar thing happened in the United States last year [1912].

It stands to reason that a party's general character is significant for the chances that charisma has in its struggle with the party bureaucracy. These chances vary greatly with the character of the party, which may be a pragmatic group of patronage seekers with an *ad hoc* program for a given campaign, or primarily a party of notables or of a class, or again predominantly an ideological party with a *Weltanschauung*. These distinctions are, of course, always relative. In certain respects the chances of charisma are greatest in the first case. A patronage party makes it much easier, *ceteris paribus*, for impressive personalities to win the necessary following than do the petty-bourgeois organizations of notables of the German parties, particularly of the liberal ones, with their programs and *Weltanschauungen* which are forever the same; any attempt to adapt the latter to the momentary demagogic opportunities easily precipitates a catastrophe. However, it is probably not possible to generalize on this score. The internal dynamics of party organization and the social and economic conditions of each concrete case are all too intimately interwoven in any given situation.

7. *Charisma and the Persistent Forms of Domination*

As these examples show, charismatic domination is by no means limited to primitive stages of development, and the three basic types of domination cannot be placed into a simple evolutionary line: they in fact appear together in the most diverse combinations. It is the fate of charisma, however, to recede with the development of permanent institutional structures. As far as we know the early stages of social life, every concerted action that transcends the traditional mode of satisfying economic needs in the household has a charismatic structure. Primitive man perceives all external influences that shape his life as the actions of specific forces which are inherent in things and men, living and dead, and give them the power to do good as well as harm. The entire conceptual apparatus of primitive tribes, including their nature- and animal-fables, proceeds from such assumptions. Concepts like *mana*, *orenda* and similar ones, the meaning of which ethnography explains to us, denote such specific forces whose supernatural character is ex-

clusively due to the fact that they are not accessible to everybody but linked to some definite carrier—person or object. Magic and heroic qualities are nothing but particularly important instances of such specific powers. Every event transcending the routines of everyday life releases charismatic forces, and every extraordinary ability creates charismatic beliefs, which are subsequently weakened again by everyday life. In normal times the powers of the village chief are very limited, amounting to little more than arbitration and representation. In general, the members of the community do not claim the right to depose him, for his power is charismatic and not elective; however, if need be they desert him without hesitation and settle elsewhere. Among the Germanic tribes a king could still be rejected in this manner because of inadequate charismatic qualification. We might almost say that the normal condition of primitive communities was anarchy moderated by compliance with customs, which was either unreflecting or motivated by apprehension toward the uncertain consequences of innovation. The magician's social influence is similarly weak in everyday life.

However, the charisma of the hero or the magician is immediately activated whenever an extraordinary event occurs: a major hunting expedition, a drought or some other danger precipitated by the wrath of the demons, and especially a military threat. The charismatic hunting or war leader is often not identical with the peacetime chief who has primarily economic and also mediating functions. When the manipulation of deities and demons becomes an object of a permanent cult, the charismatic prophet and magician turns into a priest. When wars become chronic and technological development necessitates the systematic training and recruitment of all able-bodied men, the charismatic war leader becomes a king. The Frankish royal officials, count and *sakebaro*, were originally military and financial officials; all other tasks are of a later date, especially the judicial functions, which at first remained in the hands of the ancient charismatic communal arbitrators. The entrenchment of a war leader with a permanent staff is the decisive step to be linked with the notions of "kingship" and "state," as compared to the peacetime chief whose primary functions are sometimes more economic (regulating common economic concerns of the village or market community), sometimes more magic (religious or medical), sometimes more judicial (originally limited to arbitration). It is arbitrary to derive kingship and state, in adaptation of Nietzschean concepts, from the subjection of one tribe by another, which thereupon creates a permanent apparatus in order to maintain its ascendancy and to exact tribute.[28] For the same differentiation between arms-bearing and tax-exempt warriors and unarmed, service-rendering non-combattants can easily develop

within any tribe that is chronically threatened with war; incidentally, the dependence of the non-combattants is frequently not patrimonial. The chief's following may form a military brotherhood and exercise political rights, so that a feudal aristocracy emerges. Alternatively, the chief may increasingly resort to hiring his following, first in order to launch marauding expeditions and later to dominate his own people; for this case, too, there are examples. [The conquest theory] is correct only to the extent that kingship is normally charismatic war leadership that has become permanent and has developed a repressive apparatus for the domestication of the unarmed subjects. This apparatus naturally became strongest in conquered territories, because of the continuous threat to the ruling stratum. It is no accident that the Norman states, especially England, were the only feudal states in the Occident with a really centralized and highly developed administration; the same was true of the Arabic, Sassanid and Turkish warrior states, which were most highly organized in conquered areas. The development of hierocratic power followed the same pattern. The strict centralization of the Catholic church originated in the Occidental mission territory and was completed in the wake of the [French] Revolution which destroyed the power of the local clergy: as *ecclesia militans* the church created its technical apparatus. However, kingship and high-priesthood exist also without conquest and missionary activities, if we consider as the decisive feature the persistence of a bureaucratic, patrimonial or feudal structure of domination.

8. *The Depersonalization of Charisma: Lineage Charisma, "Clan State" and Primogeniture*

Whatever we have said until now about the possible consequences of the routinization of charisma has not affected its strictly personal quality. However, we will now turn to phenomena whose common feature is a peculiar depersonalization of charisma. From a unique gift of grace charisma may be transformed into a quality that is either (a) transferable or (b) personally acquirable or (c) attached to the incumbent of an office or to an institutional structure regardless of the persons involved. We are justified in still speaking of charisma in this impersonal sense only because there always remains an extraordinary quality which is not accessible to everyone and which typically overshadows the charismatic subjects. It is for this very reason that charisma can fulfill its social function. However, since in this manner charisma becomes a component of everyday life and changes into a permanent

structure, its essence and mode of operation are significantly transformed.

The most frequent case of a depersonalization of charisma is the belief in its transferability through blood ties. Thus the desires of the disciples or followers and of the charismatic subjects for the perpetuation of charisma are fulfilled in a most simple fashion. However, the notion of a truly individual inheritance was as alien here as it was originally to the household. Instead of individual inheritance we find the immortal household as property-holder vis-à-vis the succeeding generations. In the beginning, charisma too is hereditary only in the sense that household and lineage group are considered magically blessed, so that they alone can provide the bearers of charisma. This notion lies so close at hand that its genesis scarcely needs an explanation. Because of its supernatural endowment a house is elevated above all others; in fact, the belief in such a qualification, which is unattainable by natural means and hence charismatic, has everywhere been the basis for the development of royal and aristocratic power. For just as the charisma of the ruler attaches itself to his house, so does that of his disciples and followers to their houses. The *kobetsu*, the families who (allegedly) descended from the house (*uji*) of the Japanese charismatic ruler Jimmu Tennô, are considered to be permanently blessed and retain this preeminence over the other *uji*, among whom the *shinbetsu* constitute the charismatic aristocracy; the latter comprise the clans of followers which (allegedly) immigrated with Jimmu Tennô as well as those native ones that he incorporated into his following. This aristocracy assigns the administrative positions to its members. The two clans of the *Muraji* and the *Omi* occupied the highest charismatic rank. In these as in all the other clans, the same phenomenon occurred when the joint household disintegrated: one house is considered the Great House (*ô* = *oho*). The houses *O Muraji* and *O Omi* are the bearers of the specific charisma of their clans, and their heads therefore claim the right of occupying the corresponding positions at court and in the political community. Wherever the principle of charismatic blood relationship has been fully applied, all occupational status, down to the lowest craft, rests, at least theoretically, upon the tie between a specific charisma and a specific lineage group and between the prerogative of leadership within such a group and its charismatically qualified Great House. The political organization of the state depends upon lineage groups, their retainers and territorial holdings. As a type such a "clan state" (*Geschlechterstaat*) should be clearly distinguished from any type of feudal or patrimonial state or state with hereditary offices (*Amtsstaat*), regardless of the fluid historical transitions. For the rights of the individual lineage groups to their functions are legitimated by the charisma inherent in their

houses, not by any personal fealty that derives from a grant of property or office. As previously mentioned, the transition from this condition to the feudal state is regularly motivated by the ruler's interest in destroying the autonomous legitimacy of these lineage groups and in replacing it with a feudal legitimacy derived from his own person.

We are not interested here in the degree of correspondence between historical reality and the pure type of charismatic blood relationship; for our purposes it is sufficient that the principle existed in more or less developed form among the most diverse peoples. Remnants of it can be found in the historical period of Germanic as well as Greek Antiquity (witness the preeminence, by virtue of their blood line, of the Eteobutadai in Athens and, conversely, the disqualification of the Alkmaionidai by virtue of their blood guilt).

In historical times, however, the principle of dynastic and lineage charisma has generally been adhered to far less consistently. As a rule, the most primitive and the highest stages of culture only know the charismatic privilege of the ruling dynasty and possibly of a very limited number of other powerful families. Under primitive conditions the charisma of the magician, rainmaker, medicine-man and priest, as long as it is not fused with political authority, is much less frequently tied to the charisma of a house; only the development of a regular cult gives rise to those charismatic blood ties between certain priestly positions and aristocratic lineage groups that occur often and in turn affect the hereditability of other types of charisma. As physiological blood ties gain increasing importance, deification sets in, at first of the ancestors and eventually also of the incumbent ruler, if the process is not interrupted; we shall return to some of its consequences.

Lineage charisma, however, does not assure the unambiguous identification of the successor. This requires a definite rule of succession; hence the belief in the charismatic importance of blood relationship must be implemented by the belief in the charisma of primogeniture. For all other systems, including the system of "seniority" frequently applied in the Orient, lead to wild palace intrigues and revolts, particularly when polygamy is practiced and the wives' struggle for the succession rights of their children is added to the ruler's interest in eliminating potential pretenders in favor of his own offspring. In a feudal state the principle of primogeniture is usually established first for fief-holders because the division of hereditary fiefs must be limited in the interest of their service capacities. Subsequently, the principle is, so to speak, projected back to the apex of the feudal pyramid, as it happened in the course of Occidental feudalization. In a patrimonial state, whether of the Oriental or Merovingian variety, the validity of the principle of

primogeniture is much less certain. In its absence the alternative is either to divide the political powers just like any other patrimonial possession or to select the successor according to some regular procedure: Divine judgment (duelling among the sons, often practiced in primitive tribes), the oracular drawing of lots (which in reality means selection by the priests, as among the Jews since Joshua), or finally the normal form of charismatic selection through nomination and popular acclamation; this case, even more than the others, is fraught with the danger of double elections and of succession fights. At any rate, dominance of monogamy as the sole legitimate form of marriage has been one of the most important reasons for continuity of monarchic power; it benefited the Occidental monarchies, but under the Oriental conditions the mere thought of an impending or possible succession haunted the whole administration, and the actual succession always threatened to be catastrophic for the state.

On the whole, the belief in the hereditariness of charisma belongs to those conditions which account for the greatest historical "accidents" with regard to the structure and persistence of polities, especially since the principle of heredity may have to compete with other forms of designating a successor. The structure of Islam has been affected decisively by the fact that Mohammed died without male heirs and that his followers did not found the Caliphate on hereditary charisma, and indeed during the Omayyad period developed it in an outright anti-theocratic manner. It is largely owing to such differences about the ruler's qualification that Shiism, which recognizes the hereditary charisma of Ali's family and hence accepts the infallible doctrinal authority of an *imâm*, is so antagonistic to orthodox Sunna, which is based on tradition and *idshmâ* (*consensus ecclesiae*). Apparently it was easier to displace Jesus' family from its originally important position in the community. The fact that the German Carolingians and the subsequent royal dynasties died out just when hereditary charisma might have become strong enough to prevail over the electoral claims of the princes, has been highly significant for the decline of royal power in Germany, while in France and England, by contrast, the rise of kingship was strengthened by hereditary charisma. This has had probably even more far-reaching consequences than the fate of Alexander's family. In contrast to this role of heredity, almost all capable Roman emperors of the first three centuries ascended the throne by virtue of designation through adoption, not by virtue of blood relationship; and most of those who became emperors in the latter way weakened the office. The reasons for these divergent consequences are apparently connected with the difference between the political structure of a feudal state and that of an increasingly bureaucratized state that is dependent upon a

standing army and its officers. We will not pursue this difference at this point.

9. *Office Charisma*

Once the belief is established that charisma is bound to blood relationship, its meaning is altogether reversed. If originally a man was ennobled by virtue of his own actions, now only the deeds of his forefathers could legitimate him. Hence one became a member of the Roman nobility not by holding a nobilitating office, but because one's own ancestors had done so, and the office aristocracy delimited in this way endeavored to monopolize the offices. This reversal of genuine charisma into its exact opposite occurred everywhere according to the same pattern. The genuinely American (Puritan) mentality glorified the self-made man as the bearer of charisma and counted the heir for nothing, but this attitude is being reversed before our own eyes; now only descent—from the Pilgrim Fathers, Pocahontas and the Knickerbockers—or membership in the accepted families of "old" wealth is valued. The closing of the rolls of nobility, the tests of ancestry, the admission of the newly rich only as *gentes minores*, and similar phenomena are all equally an expression of the attempt to increase status by making it scarce. Economic motives are not only behind the monopolization of remunerative offices or of other connections with the state, but also behind the monopolization of the *connubium*; noble rank provides an advantage in the quest for the hands of rich heiresses and also increases the demand for one's own daughters.

In addition to the depersonalization of charisma in the form of inheritance, there are other historically important forms. First of all, charisma may be transferred through artificial, magical means instead of through blood relationship: The apostolic succession secured through episcopal ordination, the indelible charismatic qualification acquired through the priest's ordination, the king's coronation and anointment, and innumerable similar practices among primitive and civilized peoples all derive from this mode of transmission. Most of the time the symbol has become something merely formal, and in practice is less important than the conception often related to it—the linkage of charisma with the holding of an *office*, which itself is acquired by the laying on of hands, anointment, etc. Here we find that peculiar transformation of charisma into an institution: as permanent structures and traditions replace the belief in the revelation and heroism of charismatic personalities, charisma becomes part of an established social structure.

In the early Christian church the Bishop of Rome occupied an essentially charismatic position (originally together with the Roman *ecclesia*): The church of Rome acquired very early a specific authority and asserted it time and again against the intelletual superiority of the Hellenistic Orient, which produced almost all great church fathers, established the dogmas and held all ecumenical councils; this predominance lasted as long as the unity of the church was maintained on the basis of the firm belief that God would not permit the church of the world capital to err despite its much smaller intellectual endowment. This authority was nothing but charismatic; it was by no means a primacy in the modern sense of a definitive doctrinal authority (*Lehramt*), nor did it resemble universal jurisdictional powers in the sense of an appellate function or even an episcopal jurisdiction in competition with the local powers. Such notions had not yet been developed. Moreover, just like any other charisma, this one too was at first considered a precarious gift of grace; at least one Bishop of Rome was anathematized by a Council. But on the whole this charisma was believed to be a Divine promise to the church. Even Innocent III at the height of his power did not invoke more than the rather general and vague belief in this promise; only the bureaucratized and intellectualized church of modern history turned it into a charisma of office and differentiated, as does every bureaucracy, between the office (*ex cathedra*) and the incumbent.

The charisma of office—the belief in the specific state of grace of a social institution—is by no means limited to the churches and even less to primitive conditions. Under modern conditions, too, it finds politically relevant expression in the attitudes of the subjects to the state. For these attitudes may vary considerably according to whether they are friendly or hostile to the charisma of office. The specific lack of respect of Puritanism for mundane affairs, its rejection of all idolization, eradicated all charismatic respect towards the powers-that-be in the areas of Puritan predominance. The conduct of an office appeared as a business like all others, the ruler and his officials as sinners like everyone else —strongly emphasized by Kuyper—and as no wiser than anyone else. Through God's inscrutable will they chanced upon their position and thus gained the power to fabricate laws, statutes, judgments and ordinances. Whoever shows the marks of damnation must of course be removed from a church office, but this principle is inapplicable and also dispensable with regard to state offices. As long as the secular power-holders do not directly violate conscience and God's honor, they are tolerated, for any change would merely replace them with others just as sinful and probably just as foolish. But they do not have any inwardly

binding authority since they are merely parts of an order made by and for man. The office is functionally necessary, but it does not transcend its incumbent and cannot reflect upon him any dignity, such as is possessed, for example, by the lowest royal court (*königliches Amtsgericht*) according to normal German sentiment. This naturalistic and rational attitude toward the state, which has had very conservative or very revolutionary effects depending on the given conditions, has been basic to numerous important features of countries under Puritan influence. The fundamentally different attitude of the average German toward the *Amt*, toward the "supra-personal" authorities and their "nimbus" is of course conditioned in part by the peculiarities of Lutheranism, but also corresponds to a very general type: the endowment of powerholders with the office charisma of "God-given authority." The purely emotive state metaphysics, flourishing on this ground, has had far-reaching political consequences.

The Catholic theory of the priest's *character indelebilis* with its strict distinction between the charisma of office and the worthiness of the person constitutes the polar opposite of the Puritan rejection of office charisma. Here we encounter the most radical form of depersonalization of charisma and of its transformation into a qualification that is inherent in everybody who has become a member of the office hierarchy through a magic act, and that sanctifies official acts. This depersonalization was the means whereby an hierocratic organization was grafted upon a world which perceived magic qualifications everywhere. The bureaucratization of the church was possible only if the priest could be absolutely depraved without endangering thereby his charismatic qualification; only then could the institutional charisma of the church be protected against all personnel contingencies. Since pre-bourgeois man is still disinclined to moralize about the natural and the supernatural world, since he perceives the gods not as good but merely as strong, and believes that all kinds of animal, human and superhuman creatures have magic capacities, this differentiation between person and function conforms to widely accepted beliefs; the church only put them deliberately into the service of a great organizational idea: that of bureaucratization.

10. *Charismatic Kingship*[10]

A particularly important case of the charismatic legitimation of institutions is that of political charisma, as it appears with the rise of kingship.

Everywhere the king is primarily a warlord. Kingship originates in charismatic heroism. In the history of civilized peoples, kingship is not

the oldest form of political domination, that is, a power transcending patriarchal authority and differing from it because it does not primarily direct the peaceful struggle of man with nature but the violent struggle of one community against another. Kingship is preceded by all those charismatic forms which assure relief in the face of extraordinary external or internal distress or which promise success in risky undertakings. In early history, the precursor of the king, the chieftain, often has a double function: He is the patriarch of the family or sib, but also the charismatic leader in hunt and war, the magician, rainmaker, medicine man—hence priest and doctor—, and finally, the arbiter. Frequently each of these kinds of charisma has a special bearer. Next to the peacetime chieftain (the head of the sib), whose power originates in the household and who has mainly economic functions, stands the hunting and war leader, who proves his heroism in successful raids undertaken for the sake of victory and booty. (Even in historical times, in Assyrian royal inscriptions, hunting booty and cedars from the Lebanon—dragged along for construction purposes—are enumerated alongside the number of slain enemies and the size of walls of conquered cities which were covered with their skins.) In such cases charisma is acquired irrespective of its bearer's position in the sib or household, indeed, of any rules. This dualism between charisma and everyday life is often found among the American Indians, for instance, the Confederacy of the Iroquois, as well as in Africa and elsewhere.

Wherever war and big game hunt do not occur, we do not find the charismatic chieftain either: the "warlord," as we want to call him in order to avoid the usual confusion with the peacetime chieftain. In this case, especially when natural calamities—drought or epidemics—are frequent, a charismatic sorcerer may have an essentially similar power and become a "priestly ruler." The charisma of the warlord rises and falls with its efficacy and also with the demand for it; the warlord becomes a permanent figure when there is a chronic state of war. It is mainly a terminological question whether kingship and the state are said to begin with the annexation and incorporation of alien subjects into the community [cf. above, sec. 7]. For our purposes it remains expedient to use the term "state" in a much narrower way.

As a rule, the phenomenon of the warlord is *not* linked to tribal domination over another tribe and to the existence of individual slaves, but only to a chronic state of war and a comprehensive military organization. However, it is true that kingship develops frequently into a regular royal administration only when the military following controls the working or paying masses. But the subjection of alien tribes is not a necessary intermediate step. The internal stratification resulting from

the development of charismatic warriors into a ruling caste may have the same differentiating effect. At any rate, as soon as their domination has been stabilized, the royal power and those with vested interests in it, the royal following, search for legitimacy, that is, for the mark of the charismatically qualified ruler.[11]

11. *Charismatic Education*

Once charismatic qualification has become an impersonal quality, which can be transmitted through various and at first purely magic means, it has begun its transformation from a personal gift that can be tested and proven but not transmitted and acquired, into a capacity that, in principle, can be taught and learned. Thus charismatic qualification can become an object of *education*, even though at first not in the form of rational or empirical instruction, since heroic and magical capacities are regarded as inborn; only if they are latent can they be activated through a regeneration of the whole personality. Therefore, the real purpose of charismatic education is regeneration, hence the development of the charismatic quality, and the testing, confirmation and selection of the qualified person. [The elements of charismatic education are:] Isolation from the familiar environment and from all family ties (among primitive tribes the novices—*epheboi*—move into the forests); invariably entrance into an exclusive educational community; complete transformation of personal conduct; asceticism; physical and psychic exercises of the most diverse forms to awaken the capacity for ecstasy and regeneration; continuous testing of the level of charismatic perfection through shock, torture and mutilation (circumcision may have originated primarily as a part of such ascetic practices); finally, graduated ceremonious reception into the circle of those who have proven their charisma.

Within certain limits the transition between charismatic and rational specialized training is of course fluid. Every charismatic education includes some specialized training, depending on whether the novices are trained to be warriors, medicine men, rainmakers, exorcisers, priests or legal sages. This empirical and professional component, which is often treated as secret know-how for the sake of prestige and monopolization, increases quantitatively and in rational quality with professional differentiation and the accumulation of specialized knowledge; finally, in a world of predominantly specialized training and drill only the familiar juvenile phenomena of barrack and student life remain as residues of the ancient ascetic means for awakening and testing charis-

matic capacities. However, genuine charismatic education is the radical opposite of specialized professional training as it is espoused by bureaucracy. Between these two forms of education we find all those kinds that are concerned with "cultivation" (in the meaning defined above: the change of basic attitudes and of personal conduct) and retain only remnants of the original irrational means of charismatic education. The most important instance has been the training of warriors and priests, which once was primarily a selection of the charismatically qualified. He who does not pass the heroic trials of the warrior's training remains a "woman," just as he who cannot be awakened to the supernatural remains a "layman." In the familiar pattern, the standards of qualification are energetically defended and raised because of the material interests of the following, which forces the master to share the prestige and material opportunities of his rulership only with those who have passed the same trials.

In the course of these transformations charismatic education may become a state or ecclesiastic institution, or it may be left to the formally free initiative of organized interest groups. The actual developments depend upon the most diverse circumstances, in particular upon the distribution of power between the various competing kinds of charisma. This is especially true of the extent to which either military-knightly training or ecclesiastic instruction predominates in a community. In contrast to knightly training, the very *spiritualism* of ecclesiastic education facilitates its development toward *rational* instruction. The training of the priest, rainmaker, medicine man, shaman, dervish, monk, sacred singer and dancer, scribe and jurist as well as the training of the knight and warrior assumes many forms, but remains ultimately similar. Different is merely the relative impact of the various educational groups. This depends not only upon the power distribution between *imperium* and *sacerdotium* (which will be discussed again below), but first of all upon the extent to which military service is a matter of social honor, the duty of a stratum that is thereby specifically qualified. Only where such a duty exists does militarism establish its own educational system; conversely, the development of ecclesiastic education is usually a function of the bureaucratization of rulership, at first of sacred domination.

The basic Hellenic institution of the *epheboi*, a component of the individual's athletic-artistic perfection, is only a special case of a universal kind of military training, which includes in particular the preparations for the initiation rites, that is, for the rebirth as a hero, and the reception into the male fraternity (*Männerbund*) and the communal house of the warriors, which is a kind of primitive barracks. (This is the origin of the "men's house" which Schurtz traced everywhere with such loving care.)[11a] These are instances of lay education: the warrior

clans dominate education. The institution disintegrates whenever the member of the political community is no longer primarily a warrior and war is no longer chronic. An example for the far-reaching "clericalization" of education is provided by the control of the Egyptian priests over the training of officials and scribes in this typically bureaucratic state. In numerous other Oriental cases, too, the priesthood controlled the training of officials, and that means education in general, because it alone developed a rational educational system and provided the state with scribes and officials trained in rational thinking. In the Occidental Middle Ages the education offered by the church and the monasteries —as the agents of every kind of rational instruction—was also of paramount importance. There clerical-rational and knightly education coexisted, competed and cooperated with one another, owing to the feudal and status character of the ruling stratum, and imparted to Occidental medieval man and the Occidental universities their specific character. In contrast, there was no counterweight to the clericalization of education in the purely bureaucratic Egyptian state; the other patrimonial states of the Orient also failed to develop a specifically knightly education, since they lacked the requisite Estate structure; and finally, the completely depoliticized Jews, whose cohesion depended upon the synagogue and the rabbinate, developed a major type of strictly clerical education.

In the Hellenic polis and in Rome there was no state bureaucracy or priestly bureaucracy that might have created a clerical educational system. It was only in part a fateful historical accident that Homer, the literary product of a secular aristocracy which was most irreverent toward the gods, remained the major vehicle of literary education—which explains Plato's deep hatred against him—and prevented any theological rationalization of the religious powers. The decisive fact was the complete absence of a clerical system of education.

In China, finally, the character of Confucian rationalism, its conventionalism and its reception as the basis of education was conditioned by the bureaucratic rationalization of the secular patrimonial officialdom and the absence of feudal powers.

12. *The Plutocratic Acquisition of Charisma*

Every kind of training, whether for magical charisma or for heroism, may become the concern of a small circle of professional associates out of which may develop secret priestly fraternities or exclusive aristocratic clubs. The number of variations is great, ranging from systematic domination to occasional plundering by the political or magic brotherhood,

which especially in West Africa was often a secret society. All those groups that developed into clubs and brotherhoods, whether they originated in a voluntary military following or in the levy of all able-bodied men, share the tendency to replace charismatic capacities increasingly with purely economic qualifications. A young man had to be dispensable in the household before he could subject himself to charismatic training, which was time-consuming and economically not immediately profitable; however, such dispensability was the less frequent, the more the intensity of economic work increased. The result was a monopolization of charismatic education by the well-to-do, who purposively reinforced this trend. As the original magic or military functions lost importance, economic aspects came to predominate ever more.

At the end of this development, a person can simply buy his position in the various levels of political "clubs," as in Indonesia; under primitive conditions it may suffice to organize a rich feast. The transformation of the charismatic ruling stratum into a purely plutocratic one is typical of otherwise primitive peoples, whenever the practical importance of military and magic charisma declines. It is then not necessarily property itself that ennobles a person, but rather the style of life that is possible only on the basis of property. In the Middle Ages, a knightly style of life implied, among other things, above all the keeping of an open house. Among many tribes it is possible to secure the title of a chief simply by offering banquets, and to retain it in the same manner; this is a kind of *noblesse oblige* that has always easily impoverished the notables who taxed themselves in this fashion.

13. *The Charismatic Legitimation of the Existing Order*

As domination congeals into a permanent structure, charisma recedes as a creative force and erupts only in short-lived mass emotions with unpredictable effect, during elections and similar occasions. However, charisma remains a very important element of the social structure, even though it is much transformed. We must now go back to those economic motives mentioned above [*ii*: 1] that largely account for the routinization of charisma: the needs of privileged strata to legitimize their social and economic conditions, that is, to transform them from mere resultants of power relationships into acquired rights, and hence to sanctify them. These interests are by far the strongest motive for the preservation of charismatic elements in depersonalized form. Since genuine charisma is based neither on enacted or traditional order nor on acquired rights, but on legitimation through heroism and revelation, it is radically opposed to this motive. But after its routinization its very

quality as an extraordinary, supernatural and divine force makes it a suitable source of legitimate authority for the successors of the charismatic hero; moreover, in this form it is advantageous to all those whose power and property are guaranteed by this authority, that is, dependent upon its perpetuation. However, the forms of charismatic legitimation vary according to the relationship to the supernatural forces which establish it.

If the legitimacy of the ruler is not clearly identifiable through hereditary charisma, another charismatic power is needed; normally this can only be hierocracy. This is true even of a ruler who is a divine incarnation and hence possesses the highest degree of personal charisma. Insofar as he does not prove himself through his own deeds, his very claim must be confirmed by the experts in matters divine. Hence divine rulers are peculiarly subject to confinement by the groups which have the greatest material and ideal stakes in their legitimacy, the court officials and the priests; this confinement may result in permanent palace arrest and even in the killing of the God-King when he comes of age, so that he cannot compromise his divinity or emancipate himself from tutelage. In general, the very fact that the charismatic ruler carries such a heavy burden of responsibility in relation to the ruled tends to create an urgent need for some form of control over him.

Because of his exalted charismatic qualities such a ruler needs a person who can take over responsibility for the acts of government, especially for failures and unpopular measures; this is still true of the Oriental caliph, sultan and shah: They need the traditional figure of the Grand Vizier. In Persia, the attempt failed only a generation ago to abolish the position of the Grand Vizier in favor of bureaucratic ministries under the Shah's personal supervision, because this would have made him personally responsible for all the troubles of the people and for all administrative abuses; it also would have endangered, not only the ruler himself, but also his charismatic legitimacy. Therefore, the position of the Grand Vizier had to be restored so that it could protect the Shah and his charisma.

This is the Oriental counterpart to the responsible *chef du cabinet* in the Occident, especially in the parliamentary state. There we find the formula *le roi règne, mais il ne gouverne pas,* and the theory that for his dignity's sake the king should "not appear in public without his ministerial trappings"[12] or, even more so, that for the same reason he should completely abstain from interfering with the regular bureaucratic administration and instead defer to the leaders of the political parties who hold the cabinet posts. This corresponds to the insulation of the deified patrimonial ruler by the specialists in tradition and ceremony: the priests, court officials and high dignitaries. In all these cases the sociological

nature of charisma accounts for these limitations as much as do the interests of the court officials or party leaders and their following. The parliamentary monarch is retained in spite of his powerlessness, because, by his very existence and by virtue of the fact that power is exercised "in his name," he guarantees the legitimacy of the existing social and property order through his charisma; all those interested in this order must fear the subversion of the belief in its legitimacy if the king is removed. The function of legitimizing the governmental decisions of the victorious party as lawful acts can also be fulfilled by a president elected according to fixed rules. However, the parliamentary monarch fulfills another function which an elected president cannot fulfill: He formally limits the power struggle of the politicians by definitively occupying the highest position in the state. From a purely political viewpoint, this essentially negative function, which depends on the mere existence of a legitimate king, is perhaps in practice the most important one. In more positive terms, this function indicates in the most typical case that the king can take an active part in government only by virtue of his personal capacities or his social influence (*Kingdom of Influence*), not simply by virtue of his rights (*Kingdom of Prerogative*); recent events and personalities have shown that a king can exercise such an influence in spite of the parliamentary system. The "parliamentary" monarchy in England makes it possible to limit access to real power to politically qualified monarchs. For the king can lose his crown by a false move in foreign and domestic politics or by raising claims which do not accord with his personal gifts or his prestige. To that extent the English parliamentary monarchy is more genuinely charismatic than the Continental monarchy, which encourages the ruler to exercise power merely because of his birth right, whether he is a simpleton or a political genius.[18]

iii

Discipline and Charisma

1. *The Meaning of Discipline*

It is the fate of charisma to recede before the powers of tradition or of rational association after it has entered the permanent structures of social action. This waning of charisma generally indicates the diminish-

ing importance of individual action. In this respect, the most irresistible force is *rational discipline*, which eradicates not only personal charisma but also stratification by status groups, or at least transforms them in a rationalizing direction.

The content of discipline is nothing but the consistently rationalized, methodically prepared and exact execution of the received order, in which all personal criticism is unconditionally suspended and the actor is unswervingly and exclusively set for carrying out the command. In addition, this conduct under orders is uniform. The effects of this uniformity derive from its quality as social action within a mass structure. Those who obey are not necessarily a simultaneously obedient or an especially large mass, nor are they necessarily united in a specific locality. What is decisive for discipline is that the obedience of a plurality of men is rationally uniform.

Discipline as such is not hostile to charisma or to status honor. On the contrary, status groups that are attempting to rule over large territories or large organizations—the Venetian aristocracy of the Council, the Spartans, the Jesuits in Paraguay, or a modern officer corps with a prince at its head—can maintain effective superiority over their subjects only by means of a very strict internal discipline. The blind obedience of subjects, too, can be secured only by training them exclusively for submission under the disciplinary code. If a status group maintains a stereotyped prestige and style of life only for reasons of discipline, this deliberate and rational component will always become prominent and in turn affect all of the culture influenced by such a group; we shall not discuss these effects here. A charismatic hero may make use of discipline in the same way; indeed, he must do so if he wishes to expand his sphere of domination. Thus Napoleon created a strict disciplinary organization for France, which is still effective today.

Discipline in general, like its most rational offspring, bureaucracy, is impersonal. Unfailingly neutral, it places itself at the disposal of every power that claims its service and knows how to promote it. This does not prevent it from being intrinsically alien to charisma as well status honor, especially of a feudal sort. The berserk with manic seizures of frenzy and the feudal knight who measures swords with an equal adversary in order to gain personal honor are equally alien to discipline, the former because of the irrationality of his action, the latter because his attitude lacks matter-of-factness. Discipline puts the drill for the sake of habitual routinized skill in place of heroic ecstasy, loyalty, spirited enthusiasm for a leader and personal devotion to him, the cult of honor, or the cultivation of personal fitness as an art. Insofar as discipline appeals to firm ethical motives, it presupposes a sense of duty and con-

scientiousness—"men of conscience" versus "men of honor" in Cromwell's terms. All of this serves the rationally calculated optimum of the physical and psychic preparedness of the uniformly conditioned masses. Enthusiasm and unreserved devotion may, of course, have a place in discipline; every modern conduct of war weighs, frequently above everything else, precisely the morale factor in troop effectiveness. Military leadership uses emotional means of all sorts—just as the most sophisticated techniques of religious discipline, the *exercitia spiritualia* of Ignatius of Loyola, do in their way. It seeks to influence combat by "inspiring" the soldiers and, even more, by developing their empathy for the leaders' will. The sociologically decisive points, however, are, first, that everything is rationally calculated, especially those seemingly imponderable and irrational emotional factors—in principle, at least, calculable in the same manner as the yields of coal and iron deposits. Secondly, devotion is normally impersonal, oriented toward a purpose, a common cause, a rationally intended goal, not a person as such, however personally tinged devotion may be in the case of a fascinating leader.

The case is different only when the prerogatives of a slaveholder create a situation of discipline: On a plantation or in a slave army of the ancient Orient, on galleys manned by slaves or by prisoners in Antiquity and the Middle Ages. In these cases the only effective element is indeed the mechanized drill and the individual's integration into an inescapable, inexorable mechanism, which forces the team member to go along. However, this form of compulsory integration remains a strong element of all discipline, especially in a systematically conducted war, and it emerges as an irreducible residue in all situations in which the ethical qualities of duty and conscientiousness have failed.

2. *The Origins of Discipline in War*

The conflict between discipline and individual charisma has been full of vicissitudes. It has its classic seat in the development of the structure of warfare, in which sphere the conflict is to some extent purely determined by technology. However, the kind of weapons—pike, sword, bow—is not necessarily decisive, for all of them allow disciplined as well as individual combat; still, at the beginning of the known history of the Near East and of the Occident, the importation of the horse and, to some uncertain degree, the rise of the epoch-making iron tool have played decisive roles. The horse brought the war chariot and with it the hero driving into combat and possibly fighting from his chariot; this was the dominant figure in the warfare of the Oriental, Indian, and ancient

Chinese kings, as well as throughout the Occident, including the Celtic areas and Ireland until late times. Cavalry came after the war chariot, but lasted longer; from it the *knight* emerged—the Persian, Thessalian, Athenian, Roman, Celtic, and Germanic. The foot-soldiers, who certainly played some part earlier in the development of discipline, receded in importance for quite some time. The replacement of the bronze javelin by iron arms for close combat was probably among the factors that again pushed development in the opposite direction. Yet, just as in the Middle Ages gun powder can scarcely be said to have brought about the transition from undisciplined to disciplined fighting, so iron as such did not bring about the change; after all, long-range and knightly weapons were also made of iron. It was the *discipline* of the heavily armed Hellenic and Roman foot-soldiers (*hoplites*) which brought about the change. An oft-quoted passage shows that even Homer knew of the beginnings of discipline with its prohibition of fighting out of line. For Rome, the turning-point is symbolized by the legend of the execution of the consul's son who, in accordance with the ancient heroic fashion, had slain the opposing commander in individual combat. One after the other, we encounter the well-trained army of the Spartan professional soldier, the holy *lochos* of the Boeotians, the well-trained phalanx of the Macedonians equipped with long pikes (*sarissae*), and the more mobile but equally well-trained maniple of the Roman legions. These troops gained supremacy, in turn, over the Persian knight, the militias of the Hellenic and Italic citizenry, and the general levies of the Barbarians. In the early period of the Hellenic *hoplites*, attempts were made to exclude long-range weapons by "international law" as unchivalrous, just as during the Middle Ages there were attempts to forbid the cross-bow.

It is evident that the kind of weapon has been the result and not the cause of discipline. Exclusive use of the infantry tactic of close combat during Antiquity brought about the decay of cavalry, and in Rome the status of a knight became practically equivalent to exemption from military service. At the close of the Middle Ages it was the massed force of the Swiss, with its parallel and ensuing developments, which first broke the monopoly of knighthood to wage war. And even then the Swiss still allowed the Halberdiers to come forward for hero combat, after the main force had advanced in closed formation, with the pikemen occupying the outside positions. At first this resulted only in the lesser frequency of individual knightly combat. And in the battles of the sixteenth and seventeenth century, cavalry, as an increasingly disciplined force, still played a decisive role. Without cavalry it was im-

possible to wage offensive wars and actually to overpower the enemy, as the course of the English Civil War demonstrated.

It was discipline and not gun powder which initiated the transformation of warfare. The Dutch army under Maurice of the House of Orange was one of the first modern disciplined armies. It was shorn of all status privileges; the mercenaries, for examples, could no longer refuse rampart work as something beneath their dignity (*opera servilia*). The sober and rational Puritan discipline made Cromwell's victories possible, despite the fierce bravery of the Cavaliers. His Ironsides—the "men of conscience"—trotted forward in closed formation, aiming calmly and firing simultaneously before drawing their sabres. After the attack they remained in closed formation or immediately realigned themselves. This discipline was technically superior to the Cavaliers' *élan*. For it was the habit of the Cavaliers to gallop enthusiastically into the attack and then to disperse, either to plunder the enemy camp or prematurely to pursue single opponents in order to capture them for ransom. All successes were forfeited by such habits, as was typically and often the case in Antiquity and the Middle Ages—for example, at Tagliacozzo [where Charles of Anjou defeated Konradin, the last of the Hohenstaufen, in 1268]. Gun powder and all the war techniques associated with it became significant only with the existence of discipline—and to the full extent only with the use of war machinery, which presupposes discipline.

The economic bases upon which army organizations have been founded are not the only agent determining the development of discipline, yet they have been of considerable importance. In turn, however, the varying impact of discipline on the conduct of war has had even greater effects upon the political and social order, even though this influence has been ambiguous. Discipline, as the basis of warfare, gave birth to patriarchal kingship among the Zulus, where the monarch, however, was constitutionally limited by the power of the army commanders—similar to the [manner in which the] Spartan [kings were checked by the] ephors.[14] Similarly, discipline gave birth to the Hellenic *polis* with its *gymnasia*. When infantry drill was perfected to the point of virtuosity (as in Sparta), the *polis* had inevitably an aristocratic structure; when cities resorted to naval discipline, they had a democratic structure (Athens). Military discipline was also the basis of Swiss democracy, which in the heyday of the Swiss mercenaries was very different from the Athenian but controlled—in Greek terms—territories with inhabitants of limited rights (*perioeci*) or with no rights (helots). Military discipline was also instrumental in establishing the rule of the Roman patriciate and, finally, the bureaucratic states of Egypt, Assyria and modern Europe.

These examples show that war discipline may go hand in hand with totally different economic conditions. But it has always in some way affected the structure of the state, the economy, and possibly the family. For in the past a fully disciplined army has necessarily been a professional army, and therefore the basic problem has always been how to provide for the sustenance of the warriors. The original way of creating trained troops ready to strike was *warrior communism,* which we have already mentioned. It may take the form of the men's house, as a kind of barracks or casino of the professional warriors; in this form it is spread over the largest part of the earth; warrior communism may also follow the pattern of the communist community of the Ligurian pirates, the Spartan mess-hall (*syssitia*) principle, or the organization of Caliph Omar, or of the religious knightly orders of the Middle Ages. As we have noticed above, the warrior community may constitute either a completely autonomous, closed association or, as is the rule, it may be incorporated into a territorial political association. Thus, its recruitment may be determined by the larger order, but it may, of course, in turn exert decisive influence upon this order. Most of the time the linkage is relative. Even the Spartans, for example, did not insist upon "purity of blood," since military education was decisive for membership.

The communist warrior is the perfect counterpart to the monk, whose garrisoned and communistic life in the monastery serves the purpose of disciplining him in the service of his other-worldly master (and, resulting therefrom, perhaps also his this-worldly master). With consistent development of the warriors' community, the dissociation from the family and all private economic interests is found also outside the celibate knightly orders which were created in direct analogy to the monastic orders. The inmates of the men's house purchase or capture girls, or they claim that the girls of the subject community be at their disposal as long as they have not been sold in marriage. The children of the Areoi—the dominant status group in Polynesia—are killed. Men can join enduring sexual unions with a separate economy only after completing their service in the men's house—often only at an advanced age. The communist military organization, which is widely spread under conditions of chronic warfare and which requires warriors without home and family, may be reflected residually in several phenomena: differentiation according to age groups, which is sometimes also important for the regulation of sexual relationships; survivals of an allegedly primitive "endogamous promiscuity" or of a "primeval right" of all male warriors to all unappropriated women; likewise, abduction as the allegedly earliest form of marriage, and above all the "matrilineal family" (*Mutterrecht*).[15]

It is likely that the communist warrior community is everywhere a remnant of the following of charismatic warlords. These leaders decline when the following establishes a permanent association which endures in peacetimes. But under favorable conditions, the warrior chief may well gain complete control over the disciplined warrior formations. Accordingly, the military organization based on the "*oikos*" offers an extreme contrast to this communism of warriors who live on booty and from the contributions of women, those unfit to bear arms, and possibly serfs. The patrimonial army was sustained and equipped from the stores of its master, as we know it especially from Egypt, but its features were very often also components of other military organizations and hence provided the root of princely despotism. The reverse phenomenon, the emancipation of the warrior community from the unlimited power of the lord—as evidenced in Sparta through the institution of the ephors—proceeds only so far as the interest of discipline permits. In the polis, therefore, the weakening of the king's power—which meant the weakening of discipline—prevailed only in peacetime and in the homeland (*domi* in contrast to *militiae*, according to the technical terms of Roman administrative law). The Spartan king's prerogatives approached the zero point only in peacetime; in the interest of discipline, the king was omnipotent in the field.

An all-round weakening of discipline—but varying greatly in degree—usually accompanies any kind of decentralized military establishment, whether it is prebendal or feudal. The well-trained Spartan army, the κλῆροι of the other Hellenic and Macedonian and of several Oriental military establishments, the Turkish quasi-prebendal fiefs, and finally the feudal fiefs of the Japanese and Occidental Middle Ages—all of these were stages of the economic decentralization which usually goes hand in hand with the weakening of discipline and the rise of individual heroism. From the disciplinary aspect, just as from the economic, the seigneurial vassal represents an extreme contrast to the patrimonial or bureaucratic soldier. And the disciplinary aspect is a consequence of the economic aspect. The feudal vassal not only cares for his own equipment and provisions and directs his own baggage-train, but he summons and leads sub-vassals who, in turn, also equip themselves. Both the late medieval and early modern semi-capitalist recruiting of mercenary armies by *condottieri* and the raising and equipping of standing armies by means of public finance signify an intensification of discipline on the basis of an increasing concentration of the means of warfare in the hands of the warlord. We shall not describe here in detail the increasing rationalization of procurement for the armies; it began with Maurice of Orange, proceeded to the armies of Wallenstein, Gustavus Adolphus,

Cromwell, the armies of the French, of Frederick the Great and of Maria Theresia. We also cannot deal in detail with the transition from the professional army to the people's army of the French Revolution, its reorganization by Napoleon into a partly professional army, and the general introduction of universal conscription during the 19th century. This development indicated in effect, the increasing importance of discipline as well as the parallel advance from private capitalism to public finance as the basis of military organization.

Whether the exclusive dominance of universal conscription will be the last word in the age of machine warfare remains to be seen. The shooting records of the British navy, for instance, seem to be determined by the continuity of professional teams through the years. The belief in the technical superiority of the professional soldier for certain categories of troops is almost sure to gain influence, especially if the process of shortening the term of service—stagnating in Europe at the moment—should continue. Esoterically, this view is already held in some officers' circles. The introduction of a three-year period of compulsory service by the French army in 1913 was motivated here and there by the slogan of a "professional army," but this was somewhat inappropriate since no distinction was made between the various categories of troops. These still ambiguous possibilities, and also their possible political consequences, are not to be discussed here. In any case, none of them will alter the extreme importance of mass discipline. We wanted to show here that the separation of the warrior from the means of warfare, and the concentration of the means of warfare in the hands of the warlord have everywhere been basic to this mass discipline, whether the process occurred in a patrimonial, capitalist or bureaucratic context.

3. *The Discipline of Large-Scale Economic Organizations*

Military discipline gives birth to all discipline. The *large-scale economic organization* is the second great agency which trains men for discipline. No direct historical transitions link the Pharaonic workshops and construction projects (however little detail about their organization is known) with the Carthaginian-Roman plantation, the mines of the late Middle Ages, the slave plantation of colonial economies, and finally the modern factory. However, all of these have in common the one element of *discipline.*

The slaves of the ancient plantations slept in barracks, living without family and without property. Only the managers—especially the *villicus*

—had individual domiciles, somewhat comparable to the noncoms' [private] quarters or the housing provided the salaried supervisors on modern landed estates. Usually, the *villicus* alone had quasi-property (*peculium*, i.e., originally property in cattle) and quasi-marriage (*contubernium*). In the morning the slaves lined up in "squads" (*decuriae*) and were led to work by "whips" (*monitores*); their supplies were stored in a depot (to use a barrack term) and handed out according to need. Infirmary and stockade were not absent. The discipline of the manor of the Middle Ages and the modern era was considerably less strict because it was traditionally stereotyped, and therefore it somewhat limited the lord's power.

No special proof is necessary to show that military discipline is the ideal model for the modern capitalist factory, as it was for the ancient plantation. However, organizational discipline in the factory has a completely rational basis. With the help of suitable methods of measurement, the optimum profitability of the individual worker is calculated like that of any material means of production. On this basis, the American system of "scientific management" triumphantly proceeds with its rational conditioning and training of work performances, thus drawing the ultimate conclusions from the mechanization and discipline of the plant. The psycho-physical apparatus of man is completely adjusted to the demands of the outer world, the tools, the machines—in short, it is functionalized, and the individual is shorn of his natural rhythm as determined by his organism; in line with the demands of the work procedure, he is attuned to a new rhythm through the functional specialization of muscles and through the creation of an optimal economy of physical effort.[16] This whole process of rationalization, in the factory as elsewhere, and especially in the bureaucratic state machine, parallels the centralization of the material implements of organization in the hands of the master. Thus, discipline inexorably takes over ever larger areas as the satisfaction of political and economic needs is increasingly rationalized. This universal phenomenon more and more restricts the importance of charisma and of individually differentiated conduct.

NOTES

Unless otherwise indicated, all notes and emendations are by Roth.

1. For a different translation of secs. 1 and 2, see Gerth and Mills, *From Max Weber, op. cit.*, 245–50.

2. See Rudolf Sohm, *Kirchenrecht* I (1892), 6, 26; II (1923), 176ff. and *Outlines of Church History* (Boston 1958; first publ. in 1887), 33.

3. Both the references to the celibacy of holders of artistic charisma and to followers with independent means allude to the charismatic poet Stefan George and his circle; cf. Part One, ch. III:10.

4. This is directed against William II, who demanded loyalty by virtue of a latter-day divine right of kings irrespective of his many political blunders.

5. Cf. above, *Soc. of Law*, sec. *iii* and *v*:5. (W)

6. Karl Weierstrass (1815–1897), a mathematician known for his theory of analytical functions.

7. Cf. *GAzW*, 471ff. (W)

8. Eduard Meyer, *Geschichte des Altertums* (Stuttgart 1944), IV, 695.

9. In 1880 a section of the largest German liberal party, the National Liberal Party, seceded because it refused to go along with the party's acceptance of Bismarck's tariff increase. The Secessionists were largely committed to laissez-faire policies; in 1884 they merged with the leftwing liberals, the Progressives, into the *Freisinnige Partei*. The merger was motivated by the desire to create a strong new party that could provide a backing for the relatively liberal Crown Prince Frederick, whose ascendance to the throne was expected in the near future. As it was, Bismarck managed to decimate the party, which had begun with as many as one hundred deputies in the Reichstag, and Frederick ruled only three months in 1888. When his successor, William II, replaced Bismarck with Caprivi in 1890, the former Secessionists hoped for a more liberal government and tried to change the intransigent policy of Eugen Richter, the domineering leader of the old Progressive party and the united party. In the ensuing struggle the former Secessionists under Heinrich Rickert, who had retained his own apparatus, managed to gain a majority on the party's executive board, but Richter's grassroots organization and his newspapers proved strong enough to defeat the challenge. The precarious unity was destroyed and the party split in 1893. Cf. Thomas Nipperdey, *Die Organisation der deutschen Parteien vor 1918* (Düsseldorf: Droste, 1961), 206–17.

9a. Probably a reference to the "sociological state concept" of Ludwig Gumplowicz, as propounded in his *The Outlines of Sociology* (Philadelphia 1899; German ed. 1885), *Die soziologische Staatsidee* (1892), and other works. (Wi)

10. For a differ t version, see Gerth and Mills, *From Max Weber, op. cit.*, 251f. On another aspect of charismatic kingship, see Marc Bloch, *Les Rois thaumaturges. Étude sur le caractère surnaturel attribué à la puissance royale, particulièrement en France et en Angleterre* (Strasbourg 1924).

11. The manuscript breaks off at this point. The line of thought is continued below in sec. 13 and ch. XV:1. (W)

11a. Cf. Heinrich Schurtz, *Altersklassen und Männerbünde* (Berlin 1902).

12. One of Bismarck's puns, in which a term for clothing (*Bekleidung*) is associated with entourage (*Begleitung*).

13. An invidious comparison between William II, on the one hand, and Edward VII and George V on the other.

14. The ephors were five elected magistrates, who checked the powers of the two kings. Some of them accompanied the king on campaigns, but they did not have any command powers. However, they could bring the king to trial, if he had failed in their opinion.

15. On *Mutterrecht*, cf. Weber, *General Economic History*, 38–45 and literature cited 271.

16. Cf. Weber's survey of psychological studies and his own research report and research proposals, "Zur Psychophysik der industriellen Arbeit" (1908–09), reprinted in *GAzSS*, 61–255.

CHAPTER XV

POLITICAL AND HIEROCRATIC DOMINATION

1. *Charismatic Legitimation: Rulers versus Priests*

Just as the powerlessness of the parliamentary monarch permits the legitimate rule of the party leader, so the powerlessness of the "insulated" monarch, who is an incarnation, results either in priestly domination or, at least frequently, in the seizure of power by a family that is not encumbered with the monarch's charismatic obligations and hence can provide the real ruler (*maior domus, shogun*). Here too, the formal ruler must be retained because only his specific charisma can guarantee the proper relation to the deities, which is indispensable for the legitimacy of the whole political structure, including the position of the actual ruler. If the official ruler has genuine charisma—if it is personal, not derived—he cannot be removed in the same manner as the Merovingians, in whose case the papacy provided a charismatically qualified power for the legitimation of the new ruling house. If an incarnated deity or a descendant of deity (for example, the Mikado) exercises genuinely charismatic authority, any attempt at deposing not just the incumbent—which, of course, is always possible in some violent or peaceful manner—but the whole charismatic house will endanger the legitimacy of all powers and weaken all traditional buttresses of the subjects' compliance. Even under the worst conditions, therefore, such a removal is anxiously avoided by all groups which benefit from the existing order; it remains to be seen whether such a dethronement is permanently feasible even when the ruling dynasty is considered representative of an alien regime, as now in China [1911/13].

The papal confirmation of Carolingian rule is typical of all those numerous cases in which the ruler is not himself a deity or, at any rate,

cannot sufficiently legitimize himself through charisma that is unambiguously secured through hereditary succession or some other rule; hence he is dependent upon legitimation by another power, most naturally the priesthood. This has usually happened wherever the development of religious charisma into a priestly attribute was sufficiently advanced, and its bearers were not identical with the political power-holders. The qualified bearer of royal charisma is then legitimated by God, that means, by the priests, or, at the least, his legitimacy is confirmed by them; as experts in all things divine, they recognize the ruler who appears as the incarnation of a deity. In the Judaic Kingdom the priesthood consulted an oracle of lots (*Losorakel*) about the king; the priests of Amon-Re actually controlled the crown after defeating the descendants of the heretic pharaoh Akhenaton; the Babylonian king clasped the hands of the empire-god [Marduk]; there are many other examples up to the exemplary case of the Holy Roman Empire. In all these cases legitimation can, in principle, not be denied to any genuine bearer of charisma. This was also true of the Imperial Crown during the Middle Ages, and the Electors' resolution at Rhense [where they formed an alliance, in 1338, against the Pope's claim to confirm the election of the German king] reaffirmed this very principle. For it is a question of recognition, not of discretion, whether charismatic qualification exists. At the same time, however, it is believed that only the manipulations of the priests can assure the full effectiveness of charisma, and to that extent a depersonalization of charisma occurs here also. In the extreme case, the priests' control over the crown may lead to a priestly kingship, with the headpriest himself exercising secular authority. This has indeed happened several times.

In the reverse case the high priest is subject to secular authority: witness the Roman Principate, China, the Caliphate, perhaps the Arian rulers, and certainly the Anglican, Lutheran, Russian and Greek-Catholic rulers, who in part still hold this power. Secular control over the church varies greatly, from mere administrative and judicial prerogatives (*Vogteirechte*) to the Byzantine monarch's influence on the formulation of church doctrine and to the ruler's preaching function, as in the Caliphate.

2. *Hierocracy, Theocracy and Caesaropapism*

At any rate, the relations between secular and ecclesiastic power differ greatly depending on whether we deal with 1) a ruler who is legitimated by priests, either as an incarnation or in the name of God, 2) a high priest who is also king—these are the two cases of hierocracy

—or, finally, 3) a secular, caesaropapist ruler who exercises supreme authority in ecclesiastic matters by virtue of his autonomous legitimacy. Wherever hierocracy in this sense occurred—theocracy proper is limited to the second case—, it had far-reaching effects on the administrative structure. Hierocracy must forestall the rise of secular powers capable of emancipating themselves. Wherever a coordinate or subordinate royal position exists, hierocracy seeks to prevent the king from securing independent resources; it impedes the accumulation of the *thesauros* which was indispensable to all kings of early history, and the strengthening of his bodyguard in order to vitiate the establishment of an independent royal army—witness the early case of Josiah in Judah. Furthermore, hierocracy checks as much as possible the rise of an autonomous and secular military nobility, since this would threaten its predominance, and therefore it frequently favors the (relatively) peaceful "bourgeoisie." The elective affinity between bourgeois and religious powers, which is typical of a certain stage in their development, may grow into a formal alliance against the feudal powers; this happened rather frequently in the Orient and also in Italy at the time of the struggle over lay investiture [11th century]. This opposition to political charisma has everywhere recommended hierocracy to conquerors as a means of domesticating a subject population. Thus, the Tibetan, the Jewish and the late Egyptian hierocracy were in part supported, and in part directly created, by foreign rulers, and according to all available historical clues the Greek temple priests, especially those at Delphi, would have been willing to play a similar role in the event of a Persian victory. It appears that the most significant features of Hellenism and Judaism are products, respectively, of the defense against Persian domination and of subjection to it. How effective domestication by hierocratic powers can be is demonstrated by the fate of the Mongols, who were almost completely pacified by Lamaism; time and again, during one and a half thousand years, they had invaded the neighboring pacified civilization and had endangered the very survival of culture.[1]

Everywhere state and society have been greatly influenced by the struggle between military and temple nobility, between royal and priestly following. This struggle did not always lead to an open conflict, but it produced distinctive features and differences, whether we refer to the relationship between the priestly and the warrior caste in India, the partly manifest and partly latent conflict between military nobility and priesthood in the oldest city-states of Mesopotamia, in Egypt and Palestine, or to the complete takeover of priestly positions by the secular nobility in the Hellenic polis and particularly in Rome. The clash of the two powers in medieval Europe and in the Islam resulted in the

greatest differences between the cultural development of the Orient and the Occident.

The extreme opposite of any kind of hierocracy, caesaropapism—the complete subordination of priestly to secular power—, can nowhere be found in its pure type. Caesaropapist powers are wielded not only by the Chinese, Russian, Turkish and Persian ruler but also by the English and German ruler, who is the head of the church (*summus episcopus*), yet these powers are everywhere limited by autonomous ecclesiastic charisma. The Byzantine *basileus*, like the pharaoh, Indian and Chinese monarchs, and also the Protestant *summi episcopi*, attempted repeatedly, and mostly without success, to impose religious beliefs and norms of their own making. Such attempts were always extremely dangerous for them. In general, the subjugation of religious to royal authority was most successful when religious qualification still functioned as a magical charisma of its bearers and had not yet been rationalized into a bureaucratic apparatus with its own doctrinal system—two usually related phenomena; subjugation was feasible especially when ethics or salvation were not yet dominant in religious thought or had been abandoned again. But wherever they prevail, hierocracy is often invincible, and secular authority must compromise with it. By contrast, magic-ritual forces were controlled most thoroughly in the ancient polis, rather well by the feudal powers in Japan and the patrimonial ones in China, and at least reasonably well by the bureaucratic state in Byzantium and Russia. But wherever religious charisma developed a doctrinal system and an organizational apparatus, the caesaropapist state, too, contained a strong hierocratic admixture.

As a rule, priestly charisma compromised with the secular power, most of the time tacitly but sometimes also through a concordat. Thus the spheres of control were mutually guaranteed, and each power was permitted to exert certain influences in the other's realm in order to minimize collisions of interest; the secular authorities, for example, participated in the appointment of certain clerical officials, and the priests influenced the educational institutions of the state. These compromises also committed the two powers to mutual assistance. Examples of this kind are found in the ecclesiastic and secular organizations of the predominantly caesaropapist Carolingian empire, in the Holy Roman empire, which had similar features under the Ottonian and early Salic rulers, and in the many Protestant countries that were largely caesaropapist. Under a different power distribution, such compromises also occurred in the areas of the Counter-Reformation, the Concordats and the Bulls of Circumscription.[2] The secular ruler makes available to the priests the external means of enforcement for the maintenance of their

power or at least for the collection of church taxes and other contributions. In return, the priests offer their religious sanctions in support of the ruler's legitimacy and for the domestication of the subjects. Powerful ecclesiastic reform movements, such as the Gregorian, attempted at times to negate completely the autonomous charisma of the political power, but they were not permanently successful. Similar to the [way in which the] doctrine of equal social rank [was adjusted by the nobility], the Catholic church today acknowledges the autonomy of political charisma by the very fact that it makes acceptance and submission a religious duty in the face of every government that indisputably holds *de facto* power, as long as such a regime does not despoil the church.

Some theocratic or caesaropapist elements tend to be present in every legitimate political power, since ultimately every charisma is akin to religious powers in that it claims at least some remnant of supernatural derivation; in one way or another, legitimate political power therefore always claims the "grace of God."

It should be clearly understood that the dominance of any of these systems does not depend upon the influence that religion in general exerts upon the life of a people. Hellenic, Roman or Japanese life was as much pervaded by religion as that of any hierocratic community; the ancient polis has even been interpreted—correctly, but with some exaggeration—as primarily a religious association; by and large, a historian like Tacitus related no fewer prodigies and miracles than did medieval folk literature, and the Russian peasant is immersed in religion as much as any Jew or Egyptian. Only the manner in which social domination is organized varies greatly, and this has consequences for the course of religious development.

Caesaropapist government treats ecclesiastic affairs simply as a branch of political administration. A rather pure type is found in the states of Occidental Antiquity, and regimes of lesser degrees of purity are found in the Byzantine Empire, the Oriental states, the states of the Eastern church, and in the era of "enlightened" despotism in Europe. Gods and saints are deities of the state, their worship is a state affair, and new gods, dogmas and cults are accepted or rejected at the ruler's discretion. If the political official does not fulfill these religious obligations himself, merely with the assistance of the priestly professionals, these technicalities will be put into the hands of a priesthood which is politically controlled. The state-maintained priesthood lacks economic autonomy, property and an independent administrative apparatus. All official priestly acts are supervised by the state. There is no specifically clerical way of life, apart from some technical training for ritual functions, and hence also no specifically priestly education.

Theology proper does not develop under these conditions, and this in turn prevents an autonomous hierocratic regulation of the laymen's way of life: Hierocratic charisma is degraded to the level of mere administrative technique. Moreover, a caesaropapist nobility transforms the high-ranking priestly positions into hereditary family property, exploitable as sources of income, prestige and power, and the lower-ranking ones into prebends which it fills like positions on its manorial dependencies; monastic and similar foundations become "welfare" benefices for unmarried daughters and younger sons, and compliance with the traditional ritual prescriptions becomes part of the aristocratic status ceremonial and status conventions. Whenever caesaropapism predominates in this fashion it is inevitable that the substance of religion is stereotyped in terms of the purely technical, ritualist manipulation of supernatural powers, and any development toward a religion of salvation is impeded.

3. *The Church*

Wherever hierocratic charisma is stronger than political authority it seeks to degrade it, if it does not appropriate it outright. Since political power claims a competing charisma of its own, it may be made to appear as the work of Satan; time and again the most consistent ethico-hierocratic trends in Christianity have tried to impose this viewpoint. Alternatively, since God has permitted the existence of political power, it may also be considered an inevitable concession to the sinfulness of the world; the believer should resign himself to political power, but he should avoid contact with it as much as possible; at any rate its specific form appears ethically irrelevant. This was the attitude of Christianity in its eschatological early period. Finally, political authority may be considered a God-given tool for the subjection of anti-ecclesiastic forces, and then it is expected to put itself at the disposal of the hierocratic authority. In practice, therefore, hierocracy seeks to turn the political ruler into a vassal and to deprive him of independent means of power, insofar as this is compatible with its own interests in the survival of the political structure. If the priests do not assume political powers directly, they legitimize the king through the oracle (as in the case of Judah), or by confirming, anointing and crowning him. They may prevent him from accumulating a *thesauros*, so that he cannot create a personal following and maintain his own mercenaries (witness again the characteristic case of Josiah in Judah). Hierocracy creates an autonomous administrative apparatus, a tax system (tithes) and legal forms (endow-

ments) for the protection of ecclesiastic landholdings. The charismatic administering of magic blessings, which is at first a freely chosen vocation and living, develops into the patrimonial office of royal or seigneurial benefice-holders, for whose maintenance a benefice—as an endowment —may be established with some temple, where it is to some extent protected from unholy powers. A case in point are the commensality of the Egyptian, Oriental and East Asian temple priests, and the prebends in kind deriving therefrom.

Four features characterize the emergence of a *church* out of a hierocracy: 1) the rise of a professional priesthood removed from the "world," with salaries, promotions, professional duties, and a distinctive way of life; 2) claims to universal domination; that means, hierocracy must at least have overcome household, sib and tribal ties, and of a church in the full sense of the word we speak only when ethnic and national barriers have been eliminated, hence after the levelling of all non-religious distinctions; 3) dogma and rites (*Kultus*) must have been rationalized, recorded in holy scriptures, provided with commentaries, and turned into objects of a systematic education, as distinct from mere training in technical skills; 4) all of these features must occur in some kind of compulsory organization. For the decisive fact is the separation of charisma from the *person* and its linkage with the institution and, particularly, with the *office*: from this fact derive all the above features, which we find developed in different degrees of typicality. Sociologically, the church differs from the sect by considering itself the trustee of a "trust fund" of eternal blessings that are offered to everyone; as a rule, it is not joined voluntarily, like an association, but its members are born into it; hence even those who lack religious qualification, who are heretical, are subject to its discipline. In one word, the church is the bearer and trustee of an office charisma, not a community of personally charismatic individuals, like the sect. In the full sense of the term, churches have arisen only in Islam and Lamaist Buddhism, apart from Christianity; in a more restricted sense—because of the national delimitation—churches were also created by Mahdism, Judaism and, apparently, the ancient Egyptian hierocracy.

4. *Hierocratic Reglementation of Conduct and Opposition to Personal Charisma*

The church advances its demands toward the political power on the basis of its claims to office charisma. This charisma is used for a radical elevation of its bearer's dignity. For its officials the church secures im-

munity from secular jurisdiction, exemption from taxation and all other public duties, and protection, through heavy penalties, against any show of disrespect. In particular, the church establishes a distinctive way of life for its officials. This requires a specific course of training and hence a regular hierocratic education. Once it has created the latter, it also gains control over lay education and, through it, provides the political authorities with officials and subjects who have been properly brought up in the hierocratic spirit.

By virtue of its power, the hierocratic church also establishes a comprehensive ethico-religious reglementation of all spheres of conduct; in principle, this system has never tolerated any substantive limitations, just as today Catholic doctrine cannot recognize any limits for its claims upon the *disciplina morum*. For the enforcement of its claims hierocracy disposes of very considerable means of power, even beyond the support of the political authorities. Excommunication, the exclusion from the church service, has the same effect as the strictest social boycott, and in one way or another all hierocracies resort to economic boycott by means of the injunction against social intercourse with those ostracized. Insofar as this reglementation of conduct is determined by hierocratic power interests—and that, after all, is true to a large extent—, it is directed against the rise of competing powers. This has several consequences: The "weak"—those subject to non-hierocratic power—are defended; hence slaves, serfs, women and children are championed against the arbitrariness of their master, and petty-bourgeois strata and peasants against usury; the rise of economic powers that cannot be controlled by hierocratic means is impeded, especially that of new powers alien to tradition, such as capitalism; in general, any threat to tradition and the belief in its sanctity is opposed, since this is the inner basis of hierocratic power; therefore, the established and traditional authorities are strongly supported.

In this manner hierocracy leads to typification just as much as its very opposite, especially in its most characteristic features. The rational organization for administering divine blessings is an institution (*Anstalt*), and charismatic sanctity is transferred to the institution as such; this is typical of every church. Hence fully developed office charisma inevitably becomes the most uncompromising foe of all genuinely personal charisma, which propagates and preaches its own way to God and is prophetic, mystic and ecstatic. Office charisma must oppose it, in order to preserve the dignity of the organization. Whoever works miracles on his own, without an office, is suspect as a heretic or magician. (An early example can be found in the inscriptions of the period of the Sutras, and one of the four deadly sins of the Buddhist monastic order

is the claim to personal supernatural powers.) The miracle is incorporated into the regular organization, as for example the miracle of the sacraments. Charismatic qualification is depersonalized; it adheres to the ordination as such and is, in principle, detached from the personal worthiness of the officeholder (*character indelebilis*)—this was the subject matter of the Donatist controversy. In accordance with the overall scheme, the incumbent is distinguished from the office; otherwise his unworthiness would compromise the office charisma. The position of the charismatic prophets and teachers in the old church declines as the church administration is bureaucratized in the hands of the bishops and presbyters, again in accordance with the familiar scheme of depersonalization. The structure of the apparatus is adapted, in technical and economic respects, to the conditions of everyday operations. This results in an office hierarchy with delimited jurisdictions, regular channels, reglementation, fees, benefices, a disciplinary order, rationalization of doctrine and of office-holding as a "vocation"—in fact, these features were first developed, at least in the Occident, by the church as the heir to ancient traditions, which in some respects probably originated in Egypt. This is not at all surprising, since the typically bureaucratic policy of distinguishing the unworthy incumbent from the holy office had to be carried through consistently as soon as the development toward the charisma of office had gotten under way.

5. *The Hierocratic Ambivalence Toward Asceticism and Monasticism*

Here arises one of the great problems of hierocracy. How is the official apparatus to cope with the emergence of a charismatic following of God, the monks, who adhere to the demands of the charismatic founder and therefore reject any compromise with mundane concerns? Monastic asceticism can have two very different meanings: (1) Individual salvation through finding a personal, direct path to God. This has been of primary importance in the religions of salvation, hence for Hindu, Buddhist, Islamic and Christian ascetics. The radical demands of the revolutionary and almost always eschatological charisma can never be realized within those religious organizations that insist upon compromises with the economic and other mundane power interests, and the withdrawal from the world—from marriage, occupation, office, property, political and any other community—is only the consequence of this state of affairs. Originally, in all religions the successful ascetic, accomplishing the extraordinary, acquires the charismatic ability of forcing God's hands and of working of miracles. Of course, such per-

sonal charisma is ultimately irreconcilable with the hierocratic claims of an institution of salvation (*Heilsanstalt*) that seeks to monopolize the way to God—*extra ecclesiam nulla salus* is the motto of all churches. This conflict is exacerbated when such saintly men form exclusive communities; such a step negates the universalist and levelling claims to domination which the church shares with every bureaucracy, as well as the exclusive significance of its office charisma. But each of the great churches was forced to compromise with monasticism. A monastic order is unknown only in Mahdism and Judaism, which in principle recognize no other path to salvation but the faithful observance of the law. There were perhaps monastic beginnings in the late Egyptian church. The Christian church, in particular, could not reject the consistent application of its scriptural principles. But it reinterpreted asceticism as a specific "vocation" within its own ranks. The *consilia evangelica* were the highest ideal, but considered too demanding for the average believer. Therefore, full adherence to them was treated as an extraordinary achievement to be utilized as a repository of blessings for the benefit of those deficient in charismatic gifts.

(2) Eventually, asceticism is completely reinterpreted into a means, not primarily of attaining individual salvation in one's own way, but of preparing the monk for work on behalf of the hierocratic authority—the foreign and home mission and the struggle against competing authorities. Buttressed by its own charisma, such innerworldly asceticism always remained dubious to ecclesiastic authority, which relied solely on office charisma. But the advantages prevailed. Asceticism thus leaves the monastic cell and seeks to dominate the world; through its competition it imposes its own way of life, in different degrees, upon the office-holding priesthood and partakes in the administration of the charisma of office vis-à-vis the subjects (laymen). However, the tensions always persist. The integration of ecstatic asceticism into the Islamic church, through the orders, can hardly be considered consistent, even though it was theologically facilitated by al-Ghazâlî's establishment of the orthodox dogma. Buddhism had the smoothest solution, since from the beginning it was a religion created by and for monks and propagated by them: the church was completely dominated by the monks, who constituted a charismatic aristocracy. Theologically, this solution was particularly easy in the case of Buddhism. The Eastern churches found an essentially mechanical solution by increasingly reserving all higher-ranking offices for the monks. On the one hand, irrational and individual asceticism was glorified, on the other there were institutionalized churches which had been bureaucratized by the state; in Russia the church did not even have its own monocratic leader. This inconsistency corresponded to a hierocratic development that was deflected by foreign

domination and caesaropapism. In Russia the reform movement of the Josephites [see n. 5 to ch. VI, sec. *vii* above] offered its services to caesaropapism as the strongest power, and therefore only useful instrument of reform, just as the Cluniac reformers found their support in Henry III [1039–56].

Friction and compromise can be observed most clearly in the Occidental church, whose internal history is largely made up of them. Eventually a consistent solution was found by integrating the monks into a bureaucratic organization; subject to a specific discipline and removed from everyday life by the vows of poverty and chastity, they became the troops of the monocratic head of the church. This development took the form of the ever recurrent founding of new orders. It is quite possible that Irish monasticism, which for a time was the trustee of a significant part of the cultural traditions of Antiquity, might have created a distinctively monastic church in the Occidental mission territories if it had not entered into close relations with the Holy See. By contrast, the Benedictine order established monastic manors once its charismatic period was over. Even the Cluniac Benedictines (and all the more so, the Premonstratensians) were seigneurial orders of notables, whose very moderate asceticism—witness their lenient dress regulations—was limited to what was compatible with their status. Here, too, interlocal organization existed only in the form of filiation. The significance of these orders consisted essentially in the re-emergence of monasticism as an instrument of hierocratic control. The Cistercian order combined the first strong interlocal organization with an ascetic organization of agricultural work which made possible its well-known achievements in colonization.

6. *The Religious-Charismatic and the Rational Achievements of Monasticism*

In its charismatic stage monasticism is anti-economic, and the ascetic is the anti-type of the acquisitive bourgeois as well as of the feudal lord who enjoys his wealth ostentatiously. He lives alone or in freely formed "herds"; he is unmarried and hence free of family responsibilities, unconcerned with political and other powers, he lives from gathered fruits or alms, and he has no abode in the "world." The original rule of the Buddhist monks required an itinerant way of life, except during the rain period, and limited the time which a monk could spend at any given location—for the sake of an asceticism that was wholly irrational in its goals and means, that is, oriented toward shedding the economic and physical shackles of earthly existence and toward gaining the union

with the Divine. In this form monasticism is indeed part of the specifically non-economic force of genuine charisma. The monks are the old charismatic disciples and followers, but instead of a visible hero, the prophet removed to the hereafter is their invisible leader. Yet this stage is not the last one. Rational economic considerations and luxury needs cannot compete with the achievements of religious charisma, which are "extraordinary," like charisma itself. This is also true of the achievements of hierocratic power in general. The pyramids appear preposterous unless we realize that the subjects firmly believed in the king as god incarnate. The Mormon achievements in the salt desert of Utah violate all rules of rational settlement. This is all the more typical of the monastic achievements, which almost always accomplish that which appears economically not feasible. In the midst of the Tibetan snow and sand deserts Lamaist monasticism produced economic and architectural wonders that in magnitude, and apparently also in quality, measure up to the largest and most famous artifacts of men: witness the *Potala* [Palace in Lhasa]. From an economic viewpoint, the monastic communities of the Occident were the first rationally administered manors and later the first rational work communities in agriculture and the crafts. The artistic achievements of the Buddhist monks had a tremendous impact on the Far East; this was as extraordinary as the almost unbelievable fact that remote Ireland, which today may seem condemned to eternal marginality, was for several centuries the bearer of the cultural traditions of Antiquity and that its missionaries had a decisive share in shaping the Occidental church, whose peculiar development was of such paramount historical importance. Furthermore, the fact that the Occident alone developed harmonic music,[3] as well as the distinctiveness of its scientific thought can be ascribed in large measure to Benedictine, Franciscan and Dominican monasticism.

At this point we focus on the rational achievements of monasticism, which appear irreconcilable with its charismatic anti-rational, specifically anti-economic, foundations. However, this phenomenon is similar to that of the routinization of charisma in general: Asceticism becomes the object of methodical practices as soon as the ecstatic or contemplative union with God is transformed, from a state that only some individuals can achieve through their charismatic endowments, into a goal that many can reach through identifiable ascetic means just as in the charismatic training of the guilds of magical priests. Everywhere the method was at first basically the same as that developed by the most ancient monasticism, the Indian, with the greatest consistency and variety. In its basic regulations the method of the Indian monks is very similar to that of the Christian monks, although perhaps it is there more physiologically refined (breathing control and similar techniques of the yogis and other

virtuosi) and here more psychologically (confessional, tests of obedience, the *exercitia spiritualia* of the Jesuits). Moreover, even though the crucially important treatment of work as an ascetic instrument was not confined to the Occident, it was here developed far more consistently and universally. Everywhere, however, the central concern of the monk is the achievement of complete control over his self and his natural drives, for these impede a union with God. This goal alone necessitates the ever further rationalization of conduct, and this has in fact occurred wherever monasticism established a strong organization. As a result of this development we find the usual forms of the charismatic and corporate novitiate, the hierarchy of ordinations and other positions, the abbot, eventually the merger of cloisters into a congregation or an order, but above all the cloister itself and the monastic rule that controls every detail of conduct.

Henceforth, however, monasticism must operate within the realm of economic life. It is no longer possible for the monks to maintain themselves permanently through purely anti-economic means, especially mendicancy, even though the principle may be retained as a fiction; on the contrary—as we will discuss later—rational, methodical self-control cannot but strongly influence economic behavior. The very fact that the monks were a community of ascetics accounts for the astonishing achievements that transcend those attainable through routine economic activities. Among the believers the monks are the elite troops of religious *virtuosi*. Just like feudalism, monasticism reaches its heroic age and its most consistent organization in hostile areas: the domestic and foreign mission territories. It is no accident that Buddhism evolved the Lamaist hierarchy, which corresponds even in the ceremonial details to the Occidental *curia*, not in India but in Tibet and Mongolia, where it was continuously threatened by the wildest barbarian peoples of the world. In the same manner, the Occidental mission produced the most typical form of Latin monasticism in barbarian countries.

We will not pursue this phenomenon further at this point and will turn instead to the relations between monasticism and the political and hierocratic powers.

7. *The Uses of Monasticism for Caesaropapism and Hierocracy*

Caesaropapism has various political reasons for favoring monasticism, foremost, the need of its own legitimation and of domesticating the subjects; these needs will be discussed below [sec. 8]. At the height

of his power Gengis Khan established relations with the Buddhist monks, as did the Tibetan and Chinese rulers. These relations had probably the same motivation as those of the Germanic, Russian and other rulers to the monastic movements, and as the friendly contacts of Frederick II of Prussia with the Jesuits which facilitated the order's survival despite the bull *Dominus ac redemptor noster* [1773]. As ascetics, the monks are the most methodical and, politically, the least dangerous teachers; at least initially, they are the cheapest instructors, and in fact they are the only available ones in an agricultural state. If the political ruler wants to create an apparatus of officials and a counterweight against the nobility, the natural opponent of such a patrimonial or bureaucratic rationalization, he cannot wish for a more reliable support than the influence of the monks on the masses. As long as this influence persists, the hierocratic control of conduct is usually as effective as in the case of hierocratic domination proper. However, the political authorities must pay a high price for this support. The monks readily place themselves at the disposal of the ruler's interest in rational church reform—whether he be Emperor Henry III or King Asoka—, but their charismatic religiosity rejects all caesaropapist intervention in religious affairs much more vigorously than does any regular priesthood, and their strict ascetic discipline permits them to establish a very strong power position. Once monasticism has gained strength, it will clash sooner or later with caesaropapist claims. Then the secular power may be expropriated, as it happened in Tibet, or monasticism may be completely destroyed, as in the course of the repeated persecutions in China.

Far more problematic are the relations between monasticism and hierocratic office charisma. On the surface, they are relatively smooth if there is no patriarch, as in genuine Buddhism; it is true that in ancient Indian Buddhism the highest-ranking dignitary was called a patriarch, but his position seems to have been very weak because of the caesaropapist policies of the rulers, who usurped a role similar to that of the Byzantine emperors. The relations between monasticism and hierocracy are also relatively easy if the patriarch is selected and controlled mainly by the monks, as in Lamaism, and governs almost exclusively with monastic officials. But even then the inherent tensions emerge, the more genuine monasticism is preserved or restored as a radical fulfillment of divine discipleship which disdains any compromise with the sinful world of power and property and which is independent of institutional charisma because its own charisma is immediate to God.

The institution of lay brotherhood, created to free the monks for purely spiritual duties, carried the aristocratic stratification into the cloister, but at the same time attenuated the latter's feudal basis even

further. In contrast to the agrarian Cistercians, the centralist mendicant orders were tied to urban residence, in line with their original, purely charismatic form of maintenance, and their activities—preaching, care of souls and charitable labors—were also primarily oriented to the needs of urban strata. These orders were the first to carry asceticism from the cloisters into the streets for the sake of systematic missionary efforts among laymen. The (at least formally) strict enforcement of the principle of poverty, and the abolition of the *stabilitas loci*, which turned charity operations into itinerant activities, increased the utility of these unconditionally available monks for the direct control of all urban strata; the latters' systematic affiliation through the tertiary orders carried the monastic ethos beyond the confines of monasticism. The Capuchins and similar younger orders were also increasingly oriented toward belaboring the masses, and the last great attempts, by the Carthusians and Trappists, to restore the original asocial idea of asceticism, individual salvation, could no longer reverse the overall development of monasticism toward social goals, that means, toward serving the church.

The gradual rationalization of asceticism into an exclusively disciplinary method reached its apex in the Jesuit order. Gone were the individual charismatic propagation and dispensation of salvation, whose elimination from the old orders, especially the Franciscan, had been so difficult for the church which was bound to view such efforts as a threat to its office charisma. Gone, too, was every irrational meaning of asceticism as an individual search for salvation—another dubious idea from the viewpoint of office charisma. Gone were all nonrational means, that is, practices the result of which is not calculable. The rational end becomes dominant (and "sanctifies" the means—a principle not only of Jesuit but of every relativist or teleologic ethic; this principle is here distinctive only because it accentuates the rational reglementation of life). With the aid of this bodyguard, which took a special oath of unconditional obedience to the Holy See, the bureaucratic rationalization of the church was carried through. Much earlier, the introduction of celibacy had represented a reception of monastic forms; accepted upon the insistence of the Cluniac movement, one of its major purposes during the conflict over lay investiture was the prevention of the feudalization of the church and the safeguarding of the office character of clerical positions. Even more important was the impact of the monastic spirit upon the principles of conduct in general. As the exemplary religious individual, the monk was the first *professional*, at least in those orders that practiced rationalized asceticism, most of all the Jesuit order. The monk lived in a methodical fashion, he scheduled his time, prac-

ticed continuous self-control, rejected all spontaneous enjoyments and all personal obligations that did not serve the purposes of his vocation. Thus he was predestined to serve as the principal tool of bureaucratic centralization and rationalization in the church and, through his influence as priest and educator, to spread corresponding attitudes among the religious laymen. For centuries the local church authorities (bishops, parish clergy) opposed this overwhelming monastic competition: As out-of-town, and therefore popular, father confessors, the monks could easily underbid the ethical demands of the local clergy, just as under conditions of free competition such celibate ascetics could underbid the secular teachers, who had to support their families. This struggle of the local authorities was at the same time directed against the bureaucratic centralization of the church.

Monasticism did not have such a great impact in any other church, with the exception of Buddhism, which, however, had a hierarchic head only in Lamaism. In the Eastern church monasticism was formally in control, since all higher-ranking positions were occupied by monks, but the caesaropapist subjection of the church destroyed the power of monasticism. In Islam the orders played a leading role only in the eschatological (methodist) movements. In Judaism monasticism was completely absent. No other church rationalized asceticism, and used it for hierocratic purposes, as the Occidental church has done, most consistently through the Jesuit order.

8. *Compromises Between Political and Hierocratic Power*

The antagonism of political and magic charisma is primeval. "Caesaropapist" as well as "hierocratic" rulers can be found in African villages no less than in big states. Even under the most primitive conditions, or rather especially under them, the gods or saints are in part regional, in part local. Particularly at the stage of the permanent settlement *par excellence*, the city, local deities are preeminent; this results in a considerable coincidence of religion or, better, of cult object and political territory. The city god or patron saint is indispensable for the founding and existence of every political community, and the polytheist concessions of all great monotheistic religions are inevitable, as long as the power of the city is the basis of the individual's political and economic existence. At this stage, every establishment of a great state is necessarily accompanied by a synoikism in the new capital of the gods and saints of the affiliated or conquered cities and government seats. This happened as late as the unification of the Moscovite empire when

the relics were transported to Moscow from the cathedrals of the other cities; there are other well-known examples. The "tolerance" of the Roman state was of a similar character: The state accepted the worship of all gods of affiliated states, if this was (qualitatively) at all feasible and, during the Empire, if they subordinated themselves in turn to the politically motivated cult of the emperor. Resistance came only from Judaism, which was tolerated for economic reasons, and from Christianity. The political boundaries and the geographical extension of a religion tend to coincide, as soon as this stage has been reached. It may be brought about by the political as well as the hierocratic power: The triumph of one's own god is the definite confirmation of the ruler's triumph, an effective guarantee of political obedience, and a means of turning allegiance away from other rulers; moreover, the religion of an autonomous priesthood finds its natural missionary object in the political subjects and is eager to proceed to the *coge intrare*, especially if it is a religion of salvation. It is true that Islam permitted an horizontal divide, the use of religion as an index of a status order, but this was connected with the economic privilegation of its adherents. Ideally at least, Occidental Christianity was a political community, and this had certain practical consequences.

It is very rare that the antagonism between political and hierocratic power claims finds a simple solution in the full victory of one side or the other. The history of all churches demonstrates that even the most powerful hierocracy is continuously forced to compromise with the economic and political realities; and in general, the caesaropapist ruler cannot afford to intervene into questions of dogma and even less, of sacred rites. For every change in the ritual endangers its magic efficacy, and thus mobilizes all the interests of the subjects against the ruler. From this perspective the great schisms in the Russian church—over whether one should cross oneself with two or three fingers and similar issues—appear readily understandable.[4]

Whether an individual compromise between political and hierocratic power tends more toward caesaropapism or hierocracy depends of course upon the power constellation of the status groups concerned, and to that extent indirectly upon economic codeterminants. However, no meaningful generalizations can be made on this score. Moreover, the compromise is strongly influenced by the specific character of the religion. Especially important is whether a religion has a divinely ordained ecclesiastic institution that is separate from the secular power. This is the case only indirectly in Buddhism outside Lamaism (through the prescription of the one and only right path to salvation); it is true to a limited extent of Islam and the Eastern church, not at all of Lutheran-

ism, but clearly of the Catholic church and Calvinism. Since Islam was linked from the very beginning to the expansionist interests of the Arabs and advocated the forcible subjugation of the infidels, the prestige of the caliph became so great that no serious attempt was made to subject him to hierocratic control. Even though the Persian Shiites reject this very role of the caliph and place their eschatological hopes in the *parousia* of the prophet's legitimate successor in Persia, the Shah's position is predominant; this is not changed by the fact that the mood of the local population is considered in the appointments of priests. The Catholic church has tenaciously resisted caesaropapist tendencies; in spite of some temporarily necessary concessions, it eventually succeeded, since it had its own administrative organization, which rests on Roman tradition and is *divini iuris* for the believers. Luther was completely indifferent toward the organization of the church as long as the Word could be spread in its purity. This indifference, deriving from the individualist nature of his piety and also from an eschatological streak in his personal faith, in effect surrendered his church to the caesaropapism of the secular power. This was facilitated by the political and economic conditions of the territories in which Lutheranism originated. For Calvinism the Biblical theocracy, in the presbyterian form, was divinely ordained. However, it could establish a theocracy only for a limited time and only in local areas: in Geneva and New England, incompletely among the Huguenots, and in the Netherlands.

A considerable degree of hierocratic development, especially the existence of an autonomous office hierarchy and education, is the normal precondition for the rise of systematic theological thought; conversely, the emergence of theology and of theological training is one of the strong buttresses of hierocratic power, compelling even the caesaropapist state to permit an hierocratic influence on the subjects. A fully developed ecclesiastic hierarchy, with an established body of dogmas and particularly a well-organized educational system, cannot be uprooted at all. Its power rests upon the principle that "God must be obeyed more than men," for the sake of spiritual welfare both in the here and the hereafter. This has been the most ancient check on all political power, the most effective one up to the great Puritan Revolution and the declarations of the Rights of Man.

As a rule, a compromise is concluded between the otherworldly and the thisworldly powers; this is indeed in their mutual interest. The political power can offer exceedingly valuable support to the hierocracy by providing the *brachium saeculare* for the annihilation of heretics and the exaction of taxes. In turn, two qualities of the hierocracy recommend an alliance to the political authorities. First of all, as a

legitimating power hierocracy is almost indispensable even (and especially) to the caesaropapist ruler, but also to the personally charismatic (for example, the plebiscitarian) ruler and all those strata whose privileges depend upon the "legitimacy" of the political system. Furthermore, hierocracy is the incomparable means of domesticating the subjects in things great and little. Just as in Italy the most anticlerical radical parliamentarian does not like to do without the domesticating influence of the convent schools on women, so the Hellenic *tyrannis* furthered the cult of Dionysus; most importantly, hierocracy has been used for the control of subjugated peoples. Lamaism pacified the Mongols and thus stopped forever the continually renewed barbarian invasions from the steppe into pacified, civilized areas. The Persian empire imposed the "law" and hierocratic domination upon the Jews, in order to render them harmless. The quasi-ecclesiastic development in Egypt also appears to have been advanced by the Persians. In Hellas all oracles of Orphic or other prophets expected and hoped for a Persian victory, in order to offer themselves for the same purpose. The battles of Marathon and Plataeae were also a decision in favor of the secular character of Hellenic civilization.

The domesticating role of hierocracy is even greater with regard to internal control. It is true that military or commercial notables resort to religion only in a strictly traditionalist fashion, since it creates a dangerous competing power based on the emotional needs of the masses; at any rate, they divest religion of any charismatic-emotional character. Thus the Hellenic aristocracies rejected, at least in the beginning, the cult of Dionysos, and the centuries-old rule of the Roman Senate systematically erased ecstasis in any form, degrading it to the level of *superstitio* (the liberal translation of the Greek ἔκστασις) and suppressing all its means, especially the dance. This happened even in the rites: the dance of the *salii* was a procession, and the *fratres Arvales*, significantly, performed their age-old dance behind closed doors. This has had the greatest consequences for the characteristic differences between Roman and Hellenic culture (for example, in music). In contrast to this rule by notables, the personal ruler everywhere seeks the support of religion. The resulting compromise between secular and religious power may vary greatly, and the actual distribution of power may shift without any formal modification of the compromise. Fateful events play a tremendous role: Perhaps a powerful hereditary monarchy would have turned the Western church into a similar direction as the Eastern, and without the Great Schism the decline of hierocratic power might never have occurred in the way it actually happened.

9. *The Social Preconditions of Hierocratic Domination and of Religiosity*

Since the outcome of the struggles between political and hierocratic power depends so largely upon historical "accidents," it is not easy to generalize about their determinants. In particular, these struggles are not determined by the general degree of religiosity among the people. Roman and, even more, Hellenic life was permeated by religion, and yet hierocracy did not succeed. If we wanted to stress the dualistic development of transcendentalism, which was absent there, we would have to say that it was also completely absent in Judaism at the time the hierocracy emerged; conversely, it may be said that the rise of transcendental speculation resulted at least in part from the rational development of the hierocratic system, as appears certain for Egypt and India.

Neither are some other presumptive determinants really decisive. The extent of dependence on natural conditions, on the one hand, and on one's own labor on the other does not provide a universal explanation. It is true that the inundations of the Nile were important for the development of hierocracy, but only insofar as they helped to link the parallel rational development of state and priesthood with astronomical observation and transcendental speculation. The rule of the alien Hyksos over Egypt [ca. 1650–1550 B.C.] apparently preserved the priesthood as the only guarantor of internal unity, just as in the West the tribes of the Teutonic Migration retained the bishops. The perpetual danger of earthquakes in Japan, for example, did not prevent the feudal clans from forestalling any extended hierocratic rule. "Natural" or economic factors were as unimportant for the rise of the Jewish hierocracy as for the relations between feudalism and Zoroastric hierocracy in the Sassanid empire or for the historic accident which provided Arabian expansionism with a great prophet.

Of course, there are many diverse connections between the history of hierocratic structures and the concrete socio-economic conditions under which they must operate. The few generalizations that may be ventured on this score refer to the hierocracy's relations to the "bourgeoisie," on the one hand, and to feudal powers on the other. Bourgeois strata protected hierocracy against imperialism and feudalism not only in medieval Italy—the Guelph support could have been due to a unique historical constellation—, but we know of comparable conditions from the earliest Mesopotamian inscriptions. In Greece the bourgeois strata were the main supporters of the cult of Dionysos; the ancient Christian church was a specifically urban institution. (In the Empire, *paganus*

denotes the "civilian" as well as the "heathen": the term encompasses everything that is socially despised, corresponding to our use of the term *Pisang*, which derives from *paysan*.) The church was urban for Thomas Aquinas, too, who ranked the peasants lowly. Finally, the Puritan hierocracy and almost all medieval sects, with the memorable exception of the Donatists, originated in the cities, just as in their day the most passionate supporters of the papacy.

This contrasts with the ancient aristocracy, above all, the early Hellenic urban nobility, which treated the gods with complete lack of respect in the Homeric epic—an attitude fateful for the whole development of Hellenic religion—; it also contrasts with the Cavaliers of the Puritan period and the feudal nobility of the early Middle Ages. After all, the feudal state arose on the basis of Charles Martel's secularization, which verged on robbery. It is true that the Crusades were by and large an exploit of French knights, but this is not indicative of hierocratic sympathies; the Crusades were undertaken largely with a view toward securing fiefs for descendants, an interest to which Pope Urban appealed explicitly in his well-known address. It should be clear that we do not deal here with the contrast between piety and impiety, but with the *type* of religiosity and the related emergence of a "church" in the technical sense.

The bourgeoisie depends economically on work which is continuous and rational (or at least empirically rationalized); such work contrasts with the seasonal character of agricultural work that is exposed to unusual and unknown natural forces; it makes the connection between means and ends, success and failure relatively transparent. The product of the potter, weaver, turner and carpenter is much less affected by unpredictable natural events, especially by organic reproduction that involves the mystery of "creation" for which only phantasy can provide an explanation. The resulting rationalization and intellectualization parallel the loss of the immediate relationship to the palpable and vital realities of nature, because the work is done largely within the house and is removed from the organically determined quest for food; perhaps it is also relevant that the largest muscles of the body are not used. The forces of nature become an intellectual problem as soon as they are no longer part of the immediate environment. This provokes the rationalist quest for the transcendental meaning of existence, a search that always leads to religious speculation. Ecstatic frenzy or dreaming are replaced by the paler forms of contemplative mysticism and of common-sense contemplation. At the same time, the steady professional nature of the artisan's work for his customers easily suggests the conception of duty and reward as the basis of conduct, and since the social context of his

work requires a relatively rational order, religiosity tends to be imbued with moralistic considerations.

By contrast, a feeling of sinfulness, which developed from the older idea of ritual purity, is incompatible with the feudal lord's sense of dignity, and for the peasant, "sin" is even today difficult to understand. These agricultural strata do not seek redemption, in fact, they do not quite know from what they should be redeemed. Their gods are strong beings, whose passions resemble those of man; they may be brave or treacherous, friendly or hostile to one another and to man; at any rate, like man they are completely amoral, amenable to bribery through sacrifices and subject to magic influences, which may make the human manipulator even stronger than they are. At this stage there are as yet no incentives to construe a theodicy or to pursue any type of ethical speculation about the cosmic order. In a directly utilitarian fashion, the priesthood and strict adherence to ritual prescriptions serve as means of magical control over nature, especially as a defense against demons whose ill will might bring bad weather, attacks by predatory animals and insects, diseases and animal epidemics. The internalization and rationalization of religiosity usually develops parallel to a certain degree of handicraft production, most of the time to that of the urban trades. This involves the projection of ethical criteria and commandments, and the transfiguration of gods into ethical powers which will reward good and punish evil; now the gods themselves must conform to moral expectations and the individual's sense of sinfulness and his desire for redemption can emerge. It is impossible to reduce this parallel development to an unambiguous relation of cause and effect: Religious rationalization has its own dynamics, which economic conditions merely channel; above all, it is linked to the emergence of priestly education. Although we do not know much about Mahdism, it appears that it lacked any economic basis. It is very doubtful that it was an hierocratic outgrowth of old Islamic religion, the work of the founder of a sect who was driven across the border into a remote region. However, it seems certain that the rational-moralistic evolution of the religion of Yahwe was influenced by the great centers of civilization; yet prophecy and, even more so, the older moralism arose when the city and the trades were still undeveloped, at any rate in comparison with contemporary Mesopotamia and Egypt. However, the hierocracy was established by the city priests of Jerusalem in their struggle with the countryside, and the elaboration of the Law and its imposition were the work of the exiles living in the city of Babylon. The ancient Mediterranean polis, on the other hand, did not rationalize religion, in part because of Homer's influence as the accepted means of literary education, but

primarily because of the absence of a priesthood that was hierocratically organized and clerically educated.

In spite of all these differences, it is quite clear that there is an elective affinity between priesthood and urban petty-bourgeois strata. Above all, the opponents are typically the same in Antiquity and the Middle Ages—the great feudal families; in their hands was both the political power and the usurious loan business. For this reason bourgeois strata have often tended to support every move of an hierocracy in the direction of autonomy and rationalization. Thus, the urban population in Sumeria, Babylonia, Phoenicia and Jerusalem supported the hierocratic claims, and the Pharisees (i.e., Puritans) drew their following against the Sadducaic patricians from the cities, just as all emotional cults of Mediterranean Antiquity had an urban base. The early Christian church was made up of petty-bourgeois congregations; the papal autonomy claims, just as the medieval Puritan sects found their strongest support in the cities; certain trades produced heretic movements as well as religious orders, such as the *Humiliati*—both tendencies border on one another. In the long run, ascetic Protestantism in the broadest sense of the term (Calvinist and Baptist Puritans, Mennonites, Methodists and Pietists) drew the core of its following from the middle and lower ranks of the bourgeoisie, just as the unshakable religious law-consciousness of Judaism began only with its urban entrenchment and depended on it.

This does not mean that religious movements have usually been class movements. Nothing is as wrong as the idea that Christianity, which for compelling political and cultural reasons had to be unacceptable to the ruling strata of Antiquity, was a "proletarian" movement. Buddhism was founded by a prince and imported into Japan with the active support of the nobility. Luther addressed the "Christian nobility" (i.e., the highest nobles, the princes). At the height of their great struggles, the French Huguenots and Scottish Calvinists were led by nobles, but the Puritan Revolution was successful because of the cavalry provided by the rural gentry. These examples show that, by and large, religious cleavage cuts vertically through all strata. This remains true for the period of enthusiastic devotion to transcendental interests, a devotion that almost always has an eschatological orientation.

In the long run, however, an elective affinity between spiritually prescribed conduct and the socially conditioned way of life of status groups and classes asserts itself as the eschatological expectations recede and the new religious beliefs are routinized. Horizontal stratification increasingly displaces vertical divisions. Thus, the Huguenot and Scottish nobility later stopped fighting for Calvinism, and everywhere the

further development of ascetic Protestantism became the concern of the bourgeois middle classes. We cannot pursue these problems in detail, but we can at least consider it certain that the evolution of hierocracy into a rational means of domination, and the related rational-ethical development of religious thought, usually finds strong support in the bourgeois classes, especially their lower strata, despite the conflicts between hierocracy and bourgeoisie with which we must deal in a different context [sec. 10].

In periods of manorial-feudal domination this rational (bureaucratic) apparatus is always threatened. The high-ranking functionaries of the church (the bishops) become great vassals by virtue of land and political rights granted to them, and the ordinary priests receive benefices from their manorial lord and thus become part of the patrimonial officialdom. Only in cities and in a monetary economy can the priests be maintained from church wealth administered by the bishop and donated by the believers. In a manorial natural economy the independence of the clerical apparatus can be secured only through monastic communal living; that means, the monks, combining a manorial setup with living in a completely, or almost, communist fashion, become the bodyguard of hierocracy. Monastic communal living made possible the extraordinary importance of the Irish and Benedictine monks and of the quasi-monastic chapters (which followed Chrodegang's rule) for the development of the Occidental church and of civilization in general; the same was true of the Lamaist monastic church in Tibet and Buddhist monasticism in feudal Japan.

10. *The Impact of Hierocracy on Economic Development*

A. THE ACCUMULATION OF CHURCH LANDS AND SECULAR OPPOSITION

Beyond the few remarks we have made here, it is difficult to generalize about the economic preconditions of hierocracy. They are, of course, always a co-determining factor, but it is easier to state the importance which hierocratic domination has had for economic development.

To begin with, the economic imperatives of hierocracy result in typical clashes with the economic interests of certain classes. The church attempts to secure its economic autonomy primarily through substantial endowments, preferably of real estate. Since the church is interested not in quick profit-making but in permanent, safe revenues and minimal friction with its retainers, it generally pursues a conservation

policy toward the peasants; in this it resembles the monarch as against the private manorial lords. Just as in modern history the large ecclesiastic holdings did not participate significantly in the practice of enlarging manorial estates at the expense of peasant land, so in Antiquity the emphyteutic and other clerical landholding rights resembling hereditary leases originated probably on temple land. Considering the rational character of asceticism, it is natural that in their own farming operations the monastic manors, especially those of the Cistercians, were among the first rational enterprises.

However, the increase of inalienable real estate (*mortmain*), which limits the supply of land, arouses the resistance of interested groups, first of all the secular nobility which views this as a threat to the availability of land for its descendants. The great secularization by Charles Martel was an act of church robbery in favor of the nobility; in the course of the Middle Ages the nobles, in their roles as vassals or bailiffs (*Vögte*) of ecclesiastic estates, persistently attempted to gain control of church lands; and the so-called amortization laws [i.e., laws against alienation in mortmain], enacted by modern states with a view toward limiting the increase of church-owned real estate, were initiated by nobles. It is well-known that eventually bourgeois land speculation became interested in church lands, and that the great confiscation during the French Revolution benefitted primarily the bourgeoisie. Finally, the royal power opposed the expansion of church and monastic lands partly because of its competition with the hierocracy and partly for mercantilist reasons, insofar as it was not guided by the same interests as the nobility; only in the early Middle Ages had the king viewed the enlargement of church land as a means of consolidating his power, as long as the ecclesiastic dignitaries were in fact his most reliable vassals because they were not interested in hereditary succession. Opposition by the political power was most severe and most successful in China, where the annihilation of monasticism and the confiscation of its substantial landholdings was explained with the argument that the monks detracted the people from work and directed them to idle and economically sterile contemplation.

Where the hierocratic accumulation of land proceeds freely, it may lead to a far-reaching elimination of land from the open market. Especially in the Orient during Byzantine and Islamic times, this accumulation often served the purpose of lending sacred protection to private landholdings. To refer to an earlier example [chapter XIII·10], a typical Byzantine monastic endowment of the 11th or 12th century may be established in the following way: A founder provides a large tract of land—in Constantinople, building land that will increase in value—

for a monastery; from this a fixed number of monks receive prebends, which sometimes may even be used outside the monastery; in return the monks must support, in a stipulated fashion, a fixed number of poor people and fulfill certain religious duties. However, for a certain time, not only the secular administration of the monastery is reserved to the founder's family, but also—and this is far more important—the surplus of the increasing revenues over the fixed expenditures. Thus, in reality an entailed estate (*fidei commissum*) has been created, but as church property it can no longer be seized by the secular powers without committing sacrilege. It appears that many Islamic *wakf* holdings, which through their size alone have played a very considerable role in all Oriental countries, came into being for similar reasons.

In the Occident, too, monasteries and other foundations were always exposed to aristocratic attempts at utilizing them for the maintenance of the younger nobles, and almost all of the numerous monastic reforms aimed at eliminating this aristocratic monopolization and alienation from hierocratic purposes.

B. HIEROCRATIC AND BOURGEOIS TRADING AND CRAFT INTERESTS

Hierocracy clashes directly with "bourgeois" interests through monastic trade and craft activities. Particularly in a natural economy, temples and cloisters accumulate great stocks of precious metals, in addition to agricultural products of many kinds. In Egypt and Mesopotamia the grain supplies of the temples seem to have been used to counteract rising prices, similar to the royal magazines. If the natural economy is clearly predominant, precious metals will be hoarded (as, for instance, in the Russian monasteries). But the sacred peace of the temples and cloisters, protected by the fear of Divine wrath, has always been the immune basis of international and interlocal trading; its tax proceeds, in addition to the gifts of the believers, filled the treasury. The much-talked-about institution of temple prostitution was apparently related to the needs of the commercial travelers (who have remained the largest contingent of visitors to the brothels). Everywhere, and on the largest scale in the Orient, did temples and cloisters participate in financial transactions, accept deposits, grant loans and diverse advances in kind or money against interest. They also seem to have acted as intermediaries of commercial transactions. The Hellenic temples functioned partly as a central bank (like the treasury of Athena—this had the advantage that in the democratic period at least some restraints were imposed on the raiding of the state treasury), and partly as depository and savings banks.[5] The Delphic Apollo provides a typical example for

the emancipation of slaves: The temple bought the slave's freedom from his master, of course, not with Apollo's means but with the deposits of the slave, who had no property rights in relation to his master, but whose savings were safe from seizure in the temple. The ancient temples and the medieval monasteries were the most trustworthy and safest depositories. The popularity of the church as debitor included in the Middle Ages—as Schulte has correctly emphasized—the bishop himself, since the sanction of excommunication threatened him no less than cashiering nowadays menaces the indebted lieutenant.[38a] Occasionally the lay merchants viewed these monetary transactions of the temples and cloisters as a competition. But it is also true that the extraordinary financial power of the church, especially of the pope and his tax-collectors, provided private business with the opportunity to make tremendous and often risk-free profits.

Matters were quite different especially with regard to the monastic crafts. Even though the older Benedictine rule seems to have viewed physical work primarily as a hygienic compensation for spiritual exercises, the consistent ascetic use of physical work and the disposition over a large number of lay brothers and serfs often created a major competition for the secular crafts. The cloister crafts were necessarily in a superior position since they could rely on man-power that was celibate and ascetic and considered work as a vocation (*Beruf*) for the sake of salvation; they also had a rational division of labor and benefitted from connections and patronage that guaranteed steady sales. Therefore, they were one of the substantial economic gravamina of the petty-bourgeois strata just before the Reformation, as are prison work and consumer co-operatives today. The secularization of the Reformation, and even more so of the French Revolution, later decimated the clerical enterprises.

In comparison with private capitalism, the economic operations of ecclesiastic institutions, whether they are undertaken directly, through agents, or in the form of participation, have lost much of their former importance. At present we cannot estimate their significance for church finance, since usually such participations are carefully masked. Today the monasteries produce only some specialties. The Curia has reportedly lost much money through participation in building-land speculation (in Rome), and doubtlessly even more through abortive bank foundations (in Bordeaux). Even today churches and cloisters prefer to acquire real estate as soon as the accumulation in mortmain is permitted. However, most of the funds are raised not through industrial and commercial activities but through enterprises such as Lourdes, through patronage,

endowments and mass contributions, insofar as they are not provided by state budgets, state donations, taxes and perquisites.

C. HIEROCRATIC AND CHARISMATIC ETHICS VERSUS NON-ETHICAL CAPITALISM

Through its structure of domination and its peculiar ethical regulation of conduct hierocracy affects the economic sphere much more than through its own economic activities. It is true that the great ecclesiastic religions differ greatly, especially during their early stages, in their structure of domination and their basic ethics, as it is expressed in rules of conduct. Thus, Islam developed out of a charismatic community of warriors led by the militant prophet and his successors; it accepted the commandment of the forcible subjection of the infidels, glorified heroism, and promised sensual pleasures in the here and the hereafter to the fighter for the true faith. Conversely, Buddhism grew out of a community of sages and ascetics who sought individual salvation not only from the sinful social order and individual sin but from life itself. Judaism developed out of an hierocratic and bourgeois community that was led by prophets, priests and, eventually, theologically trained intellectuals; it completely disregarded the hereafter, and strove for the reestablishment of its secular nation state, and also for bourgeois well-being through conformity with a casuist law. Finally, Christianity grew out of the community of participants in the mystical Christ cult of the Lord's Supper; initially, this community was filled with eschatological hopes for a divine universal kingdom, rejected all force and was indifferent to the social order, whose end appeared imminent; it was guided charismatically by prophets and hierocratically by officials. But these very different beginnings, which were bound to result in different attitudes toward the economic order, and the equally different historical fate of these religions did not prevent the hierocracies from exerting rather similar influences on social and economic life. These influences corresponded to the universally similar preconditions of hierocracy, which assert themselves once the charismatic heroic age of a religion has passed and the adaptation to everyday life has been made. However, we will see that there were certain important exceptions.

Hierocracy is the most important typifying power in existence. The *ius divinum*, the Islamic *shari'ah*, the Torah of the Jews are inviolable. On the other hand, in those areas not regulated by the *ius divinum* hierocracy is the least rationally predictable power: Charismatic justice in the form of the oracle, ordeal, *fetwa* of a *mufti* or judicature of an Islamic ecclesiastic court, is irrational and at best decides a given case

according to considerations of equity. These formal elements of adjudication, which we have mentioned several times before, had an anti-capitalist impact, but in addition hierocracy necessarily felt a deep antipathy toward the non-traditional power of capitalism, even though it occasionally collaborated with it. This antipathy is rooted in the natural community of interest with all traditionally sanctified authorities whose monopoly appears to be threatened by the domination of capital.

However, another reason for this antipathy is inherent in capitalism. It is true that only Occidental hierocracy, which was more rationalized than all the others, developed a rational trial procedure—in its own interest, to be sure—, in addition to a rational canon law; moreover, it threw its full weight to the side of the reception of a rational law: Roman law. Nevertheless, the intervention of the ecclesiastic courts has been barely tolerated, evaded or openly rejected by the capitalist bourgeoisie. [The reasons for this mutual antipathy must be sought in the fact that] the domination of capital is the only one which cannot be ethically regulated, because of its impersonal character. Most of the time this domination appears in such an indirect form that one cannot identify any concrete master and hence cannot make any ethical demands upon him. It is possible to advance ethical postulates and to attempt the imposition of substantive norms with regard to household head and servant, master and apprentice, manorial lord and dependents or officials, master and slave, or patriarchal ruler and subject, since their relationship is personal and since the expected services result therefrom. Within wide limits, personal, flexible interests are operative here, and purely personal intent and action can decisively change the relationship and the condition of the person involved. But for the director of a joint-stock company, who is obliged to represent the interests of the stockholders as the masters proper, it is very difficult to relate in this manner to the factory workers; it is even more difficult for the director of the bank that finances the joint-stock company, or for the mortgage holder in relation to the owner of property on which the bank granted a loan. Decisive are the need for competitive survival and the conditions of the labor, money and commodity markets; hence matter-of-fact considerations that are simply non-ethical determine individual behavior and interpose impersonal forces between the persons involved. From an ethical viewpoint, this "masterless slavery" to which capitalism subjects the worker or the mortgagee is questionable only as an institution. However, in principle, the behavior of any individual cannot be so questioned, since it is prescribed in all relevant respects by objective situations. The penalty for non-compliance is extinction, and this would

not be helpful in any way. More important is that such economic behavior has the quality of a *service* toward an *impersonal* purpose.

In all ethically rationalized religions, these conditions conflict perennially with the most elementary social postulates of the hierocracy. Every ethically oriented religiosity begins with eschatological hopes and hence rejects the world. These beginnings are directly anti-economic, also in the sense that they lack the notion of a specific dignity of work. However, insofar as the adherents of a religious community cannot live from patronage or begging, or do not live under warrior communism, as in the case of militant Islam, exemplary members live from their own work—Paulus as well as Saint Aegidius. This was recommended by the early Christian church as well as by Saint Francis, but not because work as such was esteemed. It is simply a fairy tale that work received any greater dignity in the New Testament. The exhortation "to abide in the same calling" [Corinth. 7:20] expresses complete eschatological indifference, just as the prescription "to render unto Caesar the things that are Caesar's" [Luke 20:25]. This is not, as it is often alleged today, an inculcation of duties toward the state, but the expression of absolute indifference toward anything that happens in the political sphere—this exactly constitutes the difference from the Judaic parties. Work attained dignity much later, beginning with the monastic orders who used it as an ascetic means. During the charismatic period of a religion, the perfect disciple must also reject landed property, and the mass of believers is expected to be indifferent toward it. An expression of this indifference is that attenuated form of the charismatic communism of love which apparently existed in the early Christian community of Jerusalem, where the members of the community owned property "as if they did not own it." Such unlimited, unrationalized sharing with needy brothers, which forced the missionaries, especially Paulus, to collect alms abroad for the anti-economic central community, is probably what lies behind that much-discussed tradition, not any allegedly "socialist" organization or communist "collective ownership." Once the eschatological expectations fade, charismatic communism in all its forms declines and retreats into monastic circles, where it becomes the special concern of the exemplary followers of God (*Gottesgefolgschaft*). But even there we always find the tendency toward prebendalization. It becomes necessary to advise against abandoning one's vocation and to warn against missionary parasites—Paulus' famous saying: "Whoever does not work shall not eat" [2 Thess. 3:10] is addressed only to them. The maintenance of the indigent and unemployed brothers becomes the task of a regular officer, the deacon. Some ecclesiastic revenues are set aside for them (in Islam as well as Christianity). For the rest, poor relief

becomes the concern of the monks. As a remnant of the charismatic communism of love, Islam, Buddhism and Christianity equally consider the giving of alms as pleasing to God, despite their greatly different origins.

However, the churches always retain some distinctive, more or less articulate attitude toward the economic order. It is true that they can no longer denounce it as a Satanic creation, since they must use it and ally themselves with it. Just like the state, the economic order appears either as a concession to the world's sinfulness, which God permitted to arise and hence must be accepted as inevitable, or even as a divinely ordained means for the subduing of sin, and then it is important to imbue the bearers of an economic order with an ethic that will make them use their power for this purpose. However, this attempt meets difficulties in all capitalist relationships, even in their most primitive forms. For *caritas*, brotherhood, and ethically imbued personal relations between master and servant remain the foundation of every ecclesiastic ethic, from Islam and Judaism to Buddhism and Christianity; they are the residues of the old ethos of love of the charismatic brotherhood. In the economic realm the rise of capitalism makes these ideas just as meaningless as the implicit pacifist ideals of early Christianity have always been in the political realm in which all domination ultimately rests on force. For under capitalism all patriarchal relationships are divested of their genuine character and become impersonal; in principles, a person can practice *caritas* and brotherhood only outside his vocational life.

D. THE BAN ON USURY, THE JUST PRICE AND THE DOWNGRADING OF SECULAR VOCATIONAL ETHICS[6]

All churches have viewed with deep distrust the rise of this alien, impersonal power, and most of them took a stand against it. We cannot follow here in detail the history of the two major moral demands: the injunction against usury and the commandment to demand and give the "just price" (*iustum pretium*) [cf. *supra*, ch. VI:*xii*:4] for commodities and labor. Both belong together and originate in the primeval ethic of the neighborhood, which knows barter only as the exchange of occasional surpluses or of products of one's own labor, work for others only as neighborly help, and loans only as help in need. Among "brothers" one does not haggle for the price but asks merely for the restitution of one's own cost (including the "living wage"), if an exchange takes place at all; mutual labor assistance is either provided without compensation or in return for a meal, and no gain, hut possibly reciprocity, is expected from the loan of dispensable goods. Interest is demanded by the ruler; profit by the tribal alien, not by a brother.

The debtor is (actually or potentially) a serf or—*a potiori*—a "liar."[7] Religious brotherliness demands the transfer of this primitive neighborhood ethic to economic relationships among members of the same religious group (for the commandment is originally limited to them, especially in Deuteronomy and still in early Christianity). Just as early trade is exclusively exchange of goods between different tribes, and the trader an alien, so in religious ethics he remains burdened with the odium of the non-ethical quality of his vocation: *Deo placere non potest.* However, despite these obvious connections, the injunctions against usury should not be deduced in too materialist a manner as "reflections" of a specific situation—the predominance of consumer credit. Interest-free producer's credit is known to Oriental law in the earliest extant contracts (as loan of seed-corn for a share in the yield).

The Christian absolute ban on usury derives, in the formulation of the Vulgate: *mutuum date nihil inde sperantes,* perhaps from the translation of an incorrect reading (μηδὲν ἀπελπίζοντες instead of μηδένα ἀπελπίζοντες, according to A. Merx).[8] Historically, it applied at first only to the clergy, and even there only in relation to brothers, not aliens. In the early Middle Ages, when the natural economy and consumers credit predominated, the ban was disregarded time and again by the clergy itself. However, it was taken seriously almost at the same moment when capitalist production credit (more correctly, commercial credit) became important, at first in the overseas trade. The ban was not a product, or a reflection, of economic situations, but rather the result of the growing internal strength and autonomy of the hierocracy, which now began to apply its ethics to the economic institutions; the efflorescence of theology provided a comprehensive casuistry for that purpose. The effect of the prohibition of usury cannot be described here, and at any rate, it cannot easily be summarized. For commerce the ban was tolerable at first because in the most important cases credit was taken up only against shares in profit and loss, in view of the great risks involved; it took a long time before fixed, at times publicly regulated, percentage rates became customary (as in the case of the *dare ad proficuum maris* in Pisa). At any rate, the formation of partnerships was the customary form for the procuring of production capital, and the purchase of annuities or perpetual rent (*Rentenkauf*) for the providing of mortgage credit. Nevertheless, the prohibition of usury strongly affected the legal forms of doing business and often greatly impeded economic transactions. The merchants protected themselves through blacklists against appeal to the ecclesiastic court (as the [German] Exchanges do nowadays against the invocation of the *Differenzeinwand* type of protest [which voids an illegal speculative contract by denouncing it to the courts]); some guilds (for example, the [Florentine] *Arte di Calimala*) periodically bought

a general absolution for the inevitable *usuraria pravitas;* at the end of his life, the individual merchant paid "conscience money," or stipulated it in his will, and the ingenuity of the lawyers exhausted itself in the invention of legal forms which circumvented the prohibition of usury in the capitalist interest. The church, in turn, established the *montes pietatis* ["mounts of piety": pawn shops] for emergency loans to the petty bourgeoisie.

However, the ban on usury was nowhere really successful in curbing the development of capitalism; increasingly it became a mere impediment of commercial life. Calvinism produced the first theoretical justification of interest, by Salmasius [*de usuris*, 1638]. In competition with Calvinism, the Jesuit ethic made all conceivable concessions before the church surrendered officially in the 18th and, completely, in the 19th century, despite the Vulgate passage and the *ex cathedra* decisions of the popes. This surrender occurred on the occasion of inquiries about the admissibility of subscribing to interest-bearing loans of the city of Verona: the Holy Office advised the *patres confessores* no longer to ask the communicants about this violation and to grant absolution, provided it appeared certain that the communicant would comply with a possible future decision of the Holy See to revert to the prohibition. With regard to the theory of the *iustum pretium* [teaching of the "just price"], late medieval doctrine had already made great concessions.

In general, it appears scarcely admissible to say that the church had an economic program. The church did not decisively influence basic institutions. In Antiquity as well as the Middle Ages, for example, it had no major share in the waning of such a fundamental institution as slavery. Insofar as it took a stand in modern history, it lagged behind the economic facts and later behind the protest of the Enlightenment. And insofar as religious influences were important, they emanated from the sects, especially the Quakers, although in practice even they often ignored their hostility to slavery.[8] In all other respects, too, the church endorsed, if it intervened at all, the traditionalist and "minimum subsistence" measures of the cities and princes. Nevertheless, the influence of the medieval church was not insignificant but extraordinarily great. But it did not make or unmake institutions as much as it molded attitudes, and even then its influence was essentially negative. Against the forces of capitalism, the church has reinforced all personal patriarchal authority and all peasant and petty-bourgeois traditionalist interests—fully in accordance with the rationale of all hierocracy. The mentality furthered by the church is non-capitalist, and partly anti-capitalist. The church does not condemn the acquisitive drive (*Erwerbstrieb*—a concept, by the way, which is wholly imprecise and better not used at

all); instead, the church condones it, as it does all worldly things, in those who do not have the charisma necessary for adhering to the *consilia evangelica*. However, the church cannot bridge the gap between its highest ethical ideals and a rational, methodical orientation toward the capitalist enterprise which treats profit as the ultimate goal of a vocation and—this is the main point—regards it as a measure of personal virtue. The church outbids secular morality in marriage, state, vocation and business through the monastic ethic as the higher principle, and thus reduces everyday life, especially in the economic sphere, to an ethically inferior level. Only for the monk did the church create a methodical ascetic way of life oriented toward a unified goal. This applies to the church of the Occident just as much as to Buddhism, which in its beginnings was a religion purely for monks. The church looks at the layman's doings with a certain tolerance if he bows to its authority and, in Buddhism, presents it with gifts. Most importantly, the church lets the layman periodically relieve himself of his sins in the aural confession, the clergy's most impressive power instrument, which only in the Occidental Christian church was developed with full consistency. But through the confession, and by stressing to the layman its own role as a charismatic institution of salvation, the church inevitably weakens the believer's motivation for living his worldly and occupational life methodically and exclusively on his own responsibility: The highest religious ideals could not be followed in this manner anyway, for they are not of this world.

It is true that, all in all, the conduct of the medieval Catholic in his secular vocation was much less bound by tradition and law than that of the Jew about whom we will have to say more below [sec. 13], and in some respects even that of the Mohammedan or Buddhist. Yet whatever seemed to be gained thereby for capitalist development was lost again because of the lack of incentives for the methodical fulfillment of a secular vocation, especially in business. There was no psychic premium on work in one's secular vocation. *Deo placere non potest* remained, in spite of all attenuation, the last word for the believer with regard to the idea that his economic conduct should serve a rational, impersonal, profit-oriented enterprise. Thus persists the dualism between the "world" and ascetic ideals that can be realized only by leaving it. Buddhism is even less familiar with a secular vocational ethic, since it is a monastic religion and also because of the whole trend of its idea of salvation. In Islam, the naive exaltation of worldly goods and enjoyment, which is a remnant of its origin as a warrior religion, is not at all conducive to a vocational ethic in our sense; not even the rudiments of such a development can be found. The caesaropapist Eastern church never arrived at a clear position.

HIEROCRATIC RATIONALIZATION AND THE UNIQUENESS OF OCCIDENTAL CULTURE

The more favorable constellation for capitalist development that Occidental Catholicism offered (in comparison with these Oriental religions) was primarily due to the rationalization of hierocratic domination undertaken in continuation of ancient Roman traditions. This refers especially to the manner in which science and jurisprudence were developed. The Oriental religions preserved the unrationalized charismatic character of religiosity more than did the Occidental church; in part at least, this was a consequence of the purely historical fact that not they but the secular powers, whose paths they crossed, were the carriers of spiritual and social culture, and that they always remained subject to caesaropapist control, Buddhism excepted. The Eastern church lacks an hierocratic apparatus with a monocratic head. Since the catastrophe of Patriarch Nikon and the abolition of the patriarchal position during the reign of Peter the Great, the *Oberprokuror* has been the dominant figure of the Russian Holy Synod, a purely bureaucratic organization of state-appointed clerical dignitaries. The Byzantine patriarchs were never capable of claiming a monocratic position. The Sheik ul-Islam, theoretically the superior of the caliph, a layman, was yet appointed by him; moreover, just like the Byzantine *basileus*, the caliph had religious authority of his own, even though it was unstable. Buddhism has a monocratic head only in Lamaism, but he is a Chinese vassal and, moreover, "insulated" as an incarnation in the sense discussed above [ch. XV:1 and ch. XIV:iii:2]. Hence, there is no infallible doctrinal authority. In Islam, Buddhism and the Eastern church the sole source of new knowledge is the *consensus ecclesiae;* in the two former cases this brought about considerable flexibility and growth potential, but also greatly impeded the rise of rational philosophical thought evolving out of theology. Finally, there was no rational judicial system of the kind established by the Occidental ecclesiastic apparatus. The church created a trial procedure—inquisition—in order to obtain evidence in a rational manner, primarily for its own purposes; this, in turn, strongly affected the development of secular justice. There was also no continuous lawmaking on the basis of rational jurisprudence, such as the Occidental church developed on the model of Roman law, or encouraged through its example.

All in all, the specific roots of Occidental culture must be sought in the tension and peculiar balance, on the one hand, between office charisma and monasticism, and on the other between the contractual character of the feudal state and the autonomous, bureaucratic hiero-

cracy. At least from a sociological viewpoint, the Occidental Middle Ages were much less of a ***unified culture*** (*Einheitskultur*) than the Egyptian, Tibetan and Jewish cultures after the hierocracy's victory, or than China since the triumph of Confucianism, Japan—if we disregard Buddhism—since the victory of feudalism, Russia since the rise of caesaropapism and state bureaucracy, and Islam since the definite establishment of the caliphate and the prebendalization of domination; finally, even Hellenic and Roman culture were more unified than medieval Europe. This generalization appears to be largely correct even though all these cultures were unified in a different sense. The alliance between political and hierocratic power reached two high points in the Occident: The first time in the Carolingian empire and during certain periods in which the Holy Roman Empire attained the height of its power; the second time in the few cases of Calvinist theocracy and, in strongly caesaropapist form, in the states of the Lutheran and Anglican Reformation and in the great unified states of the Counter-Reformation: Spain and Bossuet's France. But even during these periods of co-operation Occidental hierocracy lived in a state of tension with the political power and constituted its major restraint; this contrasted with the purely caesaropapist or purely theocratic structures of Antiquity and the Orient. In the Occident authority was set against authority, legitimacy against legitimacy, one office charisma against the other, yet in the minds of rulers and ruled the ideal remained the unification of both political and hierocratic power. The individual, however, did not have any legitimate sphere of his own against these two types of legitimate domination, with the exception of the independent family charisma in the clan state or the contractually guaranteed, direct or derived autonomy of the vassal. The extent to which the state of Antiquity, hierocracy, the patrimonial state or caesaropapism assert their power over the individual has already been discussed in passing or remains to be treated; at any rate, this is a purely factual question, the answer to which depends primarily upon the survival interests of the ruling group and its form of organization. The point is that a legitimate limitation of authority in favor of the individual as such does not exist.

11. *Hierocracy in the Age of Capitalism and of Bourgeois Democracy*

The rise of modern bourgeois democracy and of capitalism has greatly changed the preconditions of hierocratic domination. At first sight it appears that hierocracy did not benefit from this development.

Capitalism advanced triumphantly in spite of the protest and frequently the direct resistance of the clergy. The *grande bourgeoisie* increasingly outgrew the historical connections between bourgeoisie and hierocracy. The carriers of magic gifts of grace and, in particular, those hierocratic claims that were most authoritarian and backed the traditional authorities, suffered from their own attempts to regulate social conduct and from their own objections to modern science, the technical basis of capitalism; they were also adversely affected by the growing rationalism that made social life less opaque and more amenable to reconstruction. It would be wrong to assume that anti-ethical or non-ethical, libertarian tendencies of the rising bourgeois strata played a major role in this process; after all, by means of the confessional, the church went far to compromise with the kind of ethical laxity that has always been characteristic of entrenched feudal strata. Rather, it is the rigoristic ethics of bourgeois rationalism that is ultimately bound to clash with the hierocratic claims, for it endangers the ecclesiastic Power of the Keys and the value of dispensing grace and absolution. Therefore, the hierocracy has always treated such rigoristic ethics as a stepping stone to heresy if it did not conform to clerically controlled asceticism.

As capitalism and the bourgeoisie advanced, all traditionalist strata sought the protection of the church: the petty-bourgeoisie, the nobility, and even the monarchy, after the age of alliance between securely established princes and capitalism had passed and the political aspirations of the bourgeoisie had become dangerous. The bourgeoisie has done the same, wherever its position has been endangered by the assault of the working class. But the church, too, accommodates itself to established capitalism; this can easily be demonstrated by looking at the development of the German Center Party from Bishop Ketteler [1811–1877] up to the present. It is true that for a time the hierocracy put economical eschatological hopes into "Christian," that means, hierocratically dominated "socialism," by which diverse, mostly petty-bourgeois utopias were understood; it is also true that the hierocracy helped undermine the belief in the bourgeois economic system, but the typical and almost inevitable hostility of the labor movement to authority changed its attitude. The modern proletarian is not a petty-bourgeois. He is threatened not by demons and natural forces that must be magically checked, but by social conditions that can be rationally understood. The economically strongest strata of the working class often reject any guidance by the hierocracy or accept it merely as a gratuitous interest representation—provided the hierocracy actually represents their interest. The more certain the indestructibility of the capitalist order becomes, the more do hierocratic interests require compromises with the new authorities. In

accordance wi h its natural ethical in erests, hierocracy endeavors to transform the capitalist dependency of the working class into a personal authoritarian subordination amenable to *caritas;* in particular, the hierocracy recommends those "welfare institutions" which restrict the workers' anti-authoritarian freedom of mobility; it also furthers as much as possible the home industry, which seemingly favors family bonds and patriarchal work relations, as against the concentration of the workers in factories, which promotes anti-au horitarian class consciousness. Wi h deep distrust the hierocracy views an an i-authoritarian weapon such as the strike and all organizations which facilitate it; it opposes these most when they hrea en to result in interdenominational solidarity.

The conditions of hierocratic rule are also transformed by democracy itself. The strength of the hierocracy vis-à-vis the political powers and hostile social forces comes to depend upon the number of deputies pledged to its will. Hierocracy has no choice but to establish a party organization and to use demagogic means, just like all other parties. This necessity reinforces the bureaucratic tendencies, since the hierocractic apparatus must be equal to he tasks of a party bureaucracy. The strength of the central authorties and of the agencies required for the political struggle and for public manipulation grows at the expense of the old local powers (i.e., the bishops and parish priests); this is typical of every large group hat is engaged in a struggle. The means employed are similar to hose of the other mass parties—apart from the highly emotive devotional means that were created by the Counter-Reformation for the purpose of mass agita ion. They comprise the establishment of co-operatives, which are controlled by the hierocracy; for example, the granting of loans may depend outright upon written proof of confession or, at least, credit worthiness may be identified wi h religious conduct. Other means are workingmen's associations, youth groups and, especially, the control of education. If education is public, the hierocracy demands control over instruction or tries to underbid the public schools with convent schools. Wherever possible, the traditional compromise with the state will be retained, assuring privileges under criminal and civil law as well as economic subsidies to he churches and their missions. The subordination of the state in all ecclesiastically regulated spheres of life remains he real will of God. However, in a democracy where power is vested in the hands of elected deputies, the hierocracy can tolerate the "separa ion of church and sta e." This formula can denote many things; for example, the resulting flexibility and freedom from state control may provide the hierocracy with so much power hat it can overcome the loss of its formal privileges. One could have surmised that the elimination of the budget for religious affairs would

gravely affect the hierocracy, but in the country with the strictest constitutional separation of church and state—the United States—, municipal councils with a Catholic majority can subsidize parochial schools and thus reintroduce a latent subsidy that is much more convenient for the hierocracy than an official one.[8] If, furthermore, restrictions on the accumulation of real estate and property are removed, the perhaps slow but irresistible growth of inalienable church property is today as certain as it was in earlier times.

The cohesion of the hierocratic partisans is naturally greatest in countries with a denominationally mixed population, as in Germany amongst opponents, or in countries like Belgium where the agrarian and petty-bourgeois strata are geographically separate from the industrial population. In such countries the hierocracy throws its weight usually against any predominance of the two "capitalist" classes, the bourgeoisie and, especially, the working class.

12. *The Reformation and Its Impact on Economic Life*

A. THE POLITICAL AND RELIGIOUS CAUSES OF THE RELIGIOUS SPLIT

The Reformation, which greatly changed the position of hierocracy, was certainly codetermined by economic factors. On the whole, however, their influence was indirect. To be sure, the peasants were interested in the new doctrine primarily because they wanted their land to be freed from the payments in kind and the services that were not justified by the Bible, just as is true today of the Russian peasants. But the immediate interests of the bourgeoisie clashed only with the monastic crafts; everything else was secondary. Nowhere is the prohibition of usury mentioned as an issue. Decisive for the transformation was the weakening of papal authority through the Great Schism [1378–1417], which in turn had political reasons, and through the resulting conciliar movement, which further reduced papal authority in the remote Northern countries where it had been less strong than in the South. Papal authority was also diminished by the persistent and successful struggle of the princes and Estates against its interference with the granting of domestic benefices and against its tax and fee system; it lost ground because of the caesaropapist inclinations and secularizing tendencies of the princes who had strengthened their power tremendously through administrative rationalization, and after the ecclesiastic tradition became discredited in the eyes of the intellectual circles and the noble and bourgeois strata.

However, these tendencies toward emancipation were almost completely unrelated to any desires for an emancipation from a religious way of life, and connected only slightly with a desire for diminishing the hierocratic restraints. It would be completely wrong to assume that a society longing for an affirmation of worldly life, "freedom of the individual," or even beauty and sensual enjoyment felt fettered by ecclesiastic hostility to these aspirations. In practice, the church left nothing to be desired in this respect. The very opposite is true: The reformers believed that the religious penetration of worldly life through the hierocracy did *not go far enough*, and this was believed especially by bourgeois groups. The church never dared to demand the self-control, asceticism and ecclesiastic discipline that the great ideological opponents of the papacy, the Anabaptists and related sects, imposed upon themselves, to a degree sheerly incomprehensible for us today. It was precisely the unavoidable compromise of the hierocracy with the secular powers and with sin which provoked them. The ascetic varieties of Protestantism have prevailed wherever the bourgeoisie was a social power, and the least ascetic churches of the Reformation, Anglicanism and Lutheranism, wherever the nobility or the princes had the upper hand. It was the peculiar piety of the intensely religious bourgeois strata that made them side with the reformist preachers against the traditional ecclesiastic apparatus, just as they had sided earlier with the hierocracy against the Empire and with the mendicant orders against the secular clergy; their piety was characterized by a relatively rational ethics, by the nature of bourgeois occupations and by a relatively strong preoccupation with self-justification before God, features which corresponded to a mode of life that was less determined by organic natural events than peasant life. These strata would have much preferred an internal reform of the church to an ecclesiastic revolution, if the former would have satisfied their ethical demands. However, the hierocracy was confronted with certain difficulties that it could not resolve in time, since they were rooted in the historical legacies of its organization and connected with concrete power interests. The massive impact of specific economic and, especially, political constellations on the course of the religious split is well-known, but must not be allowed to blur the great importance of the ultimately religious motives.

B. LUTHERANISM

The Reformation in turn strongly affected economic development, but its impact varied with the peculiarities of the new creeds. The attitude of the Lutheran churches toward the two capitalist classes, bour-

geoisie and proletariat, differs from the Catholic only in degree. Luther's views on economic affairs were strictly traditional and far less "modern" than those of the Florentine theoreticians.[10] His church was founded explicitly upon the office charisma of the minister, whose calling was the preaching of the Gospel; his church was bluntly hostile to any rebellion against the God-given authorities. The most important innovation, also in economic respects, was the elimination of the *consilia evangelica*, which had surpassed the standards of secular morality and social order; thus, the monasteries and monastic asceticism were abolished as a useless and dangerous expression of seeking salvation through good works—a measure to which at first Luther was not at all committed. Henceforth, the Christian virtues could be pursued only within the secular social order, in marriage, state and vocation. The duty of safeguarding the primary task, the propagation of the pure Gospel, fell in Lutheranism to the political power, since the hierocracy as well as the attempt at forming autonomous religious communes had failed—the latter, of course, in part for political and economic reasons—and since the office charisma of the church, as a redemptory institution for the obligatory preaching of the word, was retained. The resulting caesaropapism was tremendously strengthened through the great secularizations of the Reformation period.

c. ETHICS AND CHURCH IN CALVINISM

An anti-capitalist ethos and welfare orientation is, in effect, a common characteristic of all religions that promise salvation. However, there are two exceptions, differing from one another: *Puritanism* and *Judaism*. Only one of the Puritan communities (in the broad sense that comprises all essentially ascetic Protestant groups) is not a sect, but a church in the sociological meaning used here, that means, an hierocratic institution: *Calvinism*.

The character of the Calvinist church differs from that of all other churches, Catholic, Lutheran and Islamic. In view of the limited space available to us, we will, perforce, summarize our theory of Calvinism in a purposively accentuated manner.[11] The basic dogma of strict Calvinism, the doctrine of predestination, makes it impossible for the church to administer sacraments whose reception can have any significance for eternal salvation. Moreover, the actual behavior of the believer is irrelevant to his fate, which has been determined from eternity through God's inscrutable and immutable will. The elect need no church for their own sake. Its very existence, and largely also its organization, rests exclusively upon God's commandment, just like all other political and

social institutions and all social duties of the believers. The reasons for this commandment are unknown to the believers, but it has been definitively revealed in the Bible; its details can be supplemented and interpreted by human reason, which exists for this purpose. By no means does the church exist for the salvation of souls and the sinners' community of love; its sole purpose is the augmentation of God's glory and honor, thus a cold Divine *raison d'état*. The church exists not only for the blessed but also the condemned, so that, for the greater glory of God, it can suppress sinfulness, which is common to all men and separates all beings irremediably from God: The church is a scourge and not a vehicle of salvation. Every attempt at resorting to magic sacraments is a foolish infringement on God's established order; the church does not dispose of such means. Thus the church has here been completely divested of its charismatic character and has become a mere social institution. However, its establishment is a duty *divini iuris;* its dignity surpasses that of all other institutions and its form of organization is the only one prescribed by God. Yet apart from this feature, the duty to maintain the church is ultimately not different from the social obligation to support the equally God-willed state and from the duties in a worldly calling. In contrast to all other churches, these duties cannot consist in the endeavor to attain a specific state of grace, in the manner of the monks, by surpassing secular morality, for such attempts are meaningless in the face of predestination; rather, these duties consist in serving God's glory within the given order and within a "calling."

The notion of a "calling" derives in all Protestant countries from the Bible translations, and among the Calvinists it explicitly includes the legal profit from capitalist enterprises. With the consistent development of Calvinism—which is not identical with Calvin's own attitudes—such profit and the rational means of its realization received an ever more positive evaluation. The inscrutability of predestination to either salvation or damnation was naturally intolerable to the believer, he searched for the *certitudo salutis,* for an indication that he belonged to the elect. Since otherworldly ascetism had been rejected, he could find this certainty, on the one hand, in the conviction that he was acting according to the letter of the law and according to reason, repressing all animal drives; on the other, he could find it in visible proofs that God blessed his work. "Good works" of the Catholic variety were meaningless in the face of God's unchangeable decree; however, for the believer and his community, his own ethical conduct and fate in the secular social order became supremely important as an indication of his state of grace. A person was judged elect or condemned as an entity; no confession and absolution could relieve him and change his position

before God and, in contrast to Catholicism, no individual "good deed" could compensate for his sins. Therefore, the individual could only be sure of his state of grace if he felt reason to believe that, by adhering to a principle of methodical conduct, he pursued the sole correct path in all his action—that he worked for God's glory. Methodical conduct, the rational form of asceticism, is thus carried from the monastery into the world. The ascetic means are in principle identical: Rejected are all vain glorification of the self and of all other things of the flesh, feudal pride, the spontaneous enjoyment of art and life, "levity," all waste of money and time, eroticism, or any other activity that detracts from the rational work in one's private vocation and within the God-willed social order. The curtailment of all feudal ostentation and of all irrational consumption facilitates capital accumulation and the ever-renewed utilization of property for productive purposes; this-worldly asceticism as a whole favors the breeding and exaltation of the professionalism needed by capitalism and bureaucracy. Life is focused not on persons but on impersonal rational goals. Charity becomes an impersonal operation of poor-relief for the greater glory of God. And since the success of work is the surest symptom that it pleases God, capitalist profit is one of the most important criteria for establishing that God's blessing rests on the enterprise.

It is clear that this style of life is very closely related to the self-justification that is customary for bourgeois acquisition: profit and property appear not as ends in themselves but as indications of personal ability. Here has been attained the union of religious postulate and bourgeois style of life that promotes capitalism. Of course, this was not the purpose of the Puritan ethic, especially not the encouragement of money making; on the contrary, as in all Christian denominations, wealth was regarded as dangerous and full of temptation. However, just as the monasteries time and again brought this temptation on themselves by virtue of the ascetic rational work and conduct of their members, so did now the pious bourgeois who lived and worked ascetically.

13. *Hierocracy and Economic Ethos in Judaism*

Judaism must be formally classified as a church, since it is an institution into which a person is born, not an association of persons with specific religious qualifications. However, it differs even more from other hierocracies than Calvinism. Like the latter, Judaism does not know magic charisma, institutional gifts of grace and monasticism. In-

dividual mysticism is simply one of several religious activities that please God and bring the believer nearer to him; hence it does not produce the strong tensions in relation to office charisma that occurred in Christianity. Since the destruction of the Temple there existed neither priests nor a worship (*Kultus*) in the genuine meaning of the term that ancient Judaism shared with other religions: an institutional *hierurgy* [religious service for the believers]; rather, there are only assemblies for the purpose of preaching, praying, singing and the reading and interpretation of the Scripture. The individual, not the institution, must perform the decisive religious act by strictly adhering to the Law. Everything else is secondary. Adherence to the Law is not, as among the Puritans, the cognitive basis for gaining God's blessings, but their direct cause, from which the individual's this-worldly life, his descendants and his people will benefit. The belief in individual immortality, however, Judaism accepted only late, and its eschatological expectations are this-worldly.

For the economic ethos, insofar as it was codetermined by religious factors, these this-worldly expectations of salvation have been of great significance; just like in Puritanism, God's blessings are recognized in the economic success of the individual. Also very important was the highly rational character of conduct, which at the least was strongly influenced by the nature of religious instruction. In this respect, too, Judaism and Protestantism are similar. For the Catholic, the detailed knowledge of dogmas and sacred texts is dispensable, since the church, as an agency of salvation, intervenes for him; it is sufficient if he trusts its authority by believing its prescriptions as a whole (*fides implicita*). Faith is here a form of obedience toward the church, whose authority does not rest upon sacred texts; rather, the church gurantees their sanctity, which the believer himself cannot verify. By contrast, for Jews and Puritans the Holy Scripture is a binding law, which the individual must know and interpret correctly. One result is the tremendously intensive Jewish instruction in the Torah and its casuist interpretation, another the Protestant zeal for founding elementary schools; characteristically, the Protestant Pietists had a strong preference for the teaching of "practical" knowledge (*Realien*). The resulting disciplining of thought has no doubt been beneficial to the rational economic ethos and, among the Jews, to their typical dialectical rationalism. As against this, the Second Commandment led to the complete atrophy of the plastic arts, diminished the artistic sublimation of sensuality and facilitated the latter's naturalist and rational treatment. The same happened under ascetic Protestantism, which made even smaller concessions to the realities of sensuality. In both cases the strict rejection of all things of the flesh had a rationalizing

impact by promoting the bourgeois style of life and by opposing all concessions to feudal "wastefulness." The positive evaluation of bourgeois acquisition was already established in the Mishna. The specifically urban, yet unassimilable and international character of Judaism, which was the same in ancient and in later times, has two causes. On the one hand, there are ritual motives: circumcision is retained in an environment which does not practice it, and the Jewish butcher is indispensable because of the food regulations; even today this precludes an individual dispersion of orthodox Jews. On the other hand, the hierocracy was completely destroyed, yet messianic hopes persisted.

To that extent Jewish religiosity may have shaped the Jewish economic ethos. It is difficult to say whether its impact went even further. For the rest, the peculiarity of this unique pariah people should be explained primarily in terms of its historical legacies and its special situation, since here too "racial" codeterminants are nowhere demonstrable, although they probably exist in one sense or another.

(A) EXCURSUS ON INTERPRETATIONS OF THE JUDAIC ECONOMIC ETHOS. However, an historical explanation too must proceed cautiously. The Israelites were probably never a "desert people" in the sense that their law had Bedouin origins, as Merx has maintained, or that they were shaped by desert conditions, as Sombart believed.[12] At the time that they might have been a nomad people, neither camel nor horse existed in the Arabian desert. Their oldest historical document, the Song of Deborah, just like their later tradition, shows them as a sworn confederacy of mountain tribes which time and again defended its independence against the urban patriciate of the Canaanite and Philistine cities, fighting their charioteers with foot soldiers; and just like the Swiss and, for a time, the Samnites, they eventually subjected some of the nearby cities. Thus they gained control of the trade route from Egypt to Mesopotamia, just as the Swiss controlled the Alpine passes and the Samnites those of the Apennines. For a God like Yahwe who is worshipped on mountains, Mount Sinai appears the proper seat because it has the highest elevation. If the migration from Egypt is not historical (as it appears possible to me), the release from "Egyptian serfdom" may have referred to the "liberation" from the Jerusalemite monarchy, which had followed the Egyptian example of imposing compulsory services and had been condemned by the priesthood.

The rise of the hierocracy, especially during the period of alien domination, shaped the further course of events and led in particular to the absolute segregation from all who were not of the same blood. The increasing concentration upon the financial trades and, secondarily, upon commerce is an early result of the Diaspora; equally ancient is its

indispensability for the alien environment. In all essentials, the Jews held a similar position in the Roman Empire as they did during the Middle Ages—note the dispensation from the cult of the Emperor, to which the Christians were forced. Jewish crafts existed in Arabian Spain and do exist in the Orient and—from sheer necessity—in Russia. For a time a Jewish knighthood existed in Syria during the Crusades. Hence the economic specialization of the Jews seems to increase with the growing differentiation from the environment; even so all of these cases are exceptional. It appears to me unprovable that Jewish law greatly facilitated the development of modern forms of securities, as Sombart has assumed;[13] rather, it appears likely that Jewish commercial law was strongly influenced by Byzantine law (and through it perhaps in a generally Oriental manner).

(B) JUDAISM AND CAPITALISM. Wherever the Jews appeared, they were the agents of the money economy, especially, and in the High Middle Ages exclusively, of the loan business, but they also engaged widely in commerce. For the development of cities they were as indispensable to German bishops as to Polish nobles. Their prominent, and often dominant, participation is established with regard to the purveying and loan transactions of the early modern states, the founding of colonial companies, the colonial and slave trade, trade in cattle and agricultural goods, and in particular for the modern stock market trade in securities and for the floating of new issues.

It is a different question whether the Jews can be assigned a major role in the development of modern capitalism. The following must be considered: Capitalism living from loan usury, or from the state, its credit and supply needs, and from colonial exploitation, is nothing specifically modern. These are features which modern Occidental capitalism has in common with the capitalism of Antiquity, the Middle Ages and the modern Orient. In comparison with Antiquity (and the Near East and Far East) modern capitalism is characterized by the capitalist organization of *production*, and here the Jews have not had a decisive influence. Moreover, the mentality of the unscrupulous big financier and speculator can be found at the time of the prophets no less than during Antiquity and the Middle Ages. The decisive institutions of modern trade: the legal and economic forms of securities as well as the stock markets have a Romanic and Germanic origin. However, the Jews contributed to giving the Exchange its present importance.

Finally, the typical Jewish commercial spirit, insofar as one can speak of it concretely, has general Oriental characteristics, in part even petty-bourgeois features that are peculiar to the precapitalist age. With the Puritans the Jews have in common the purposive legitimation of

formally legal profit, which is considered a sign of Divine blessings, and the idea of the calling, although it does not have as strong a religious foundation as in Puritanism. The most important influence of the Jewish Law upon the modern capitalist ethic was perhaps the fact that its legalistic ethic was absorbed by the Puritan ethic and thus put into the context of modern-bourgeois economic morality.

14. *Sect, Church and Democracy*[14]

A sect in the sociological sense of the word is not a *small* group: The Baptists, one of the most typical sects, are one of the largest Protestant denominations in the world. Moreover, the sect is not a group that is split off from another that does not recognize it or persecutes it and condemns it as heretical. Rather, the sect is a group whose very nature and purpose precludes universality and requires the free consensus of its members, since it aims at being an aristocratic group, an association of persons with full religious qualification. The sect does not want to be an institution dispensing grace, like a church, which includes the righteous and the unrighteous and is especially concerned with subjecting the sinner to Divine law. The sect adheres to the ideal of the *ecclesia pura* (hence the name "Puritans"), the *visible* community of saints, from whose midst the black sheep are removed so that they will not offend God's eyes. The typical sect rejects institutionalized salvation and office charisma. (The term "sect" must, of course, be carefully freed from all connotations due to ecclesiastic calumniations.)

The individual may be qualified as a member in various ways: by virtue of divine predestination, as in the case of the Particular Baptists, the elite troops of Cromwell's Independents; by virtue of the "inner light" or of the pneumatic ability to experience ecstasis; by virtue of the "struggle for penitence" (*Busskampf*) and the resulting "breakthrough" (*Durchbruch*), as in the case of the old Pietists; at any rate, qualification derives either from specific "pneumatic" abilities [i.e., susceptibility to the Holy Spirit], as in the case of all predecessors of the Quakers, the Quakers themselves and the majority of "pneumatic" sects, or from other kinds of given or acquired charisma. The metaphysical reasons for establishing a sect may be most diverse. Sociologically important is the fact that the community functions as a selection apparatus for separating the qualified from the unqualified. At least in the pure case, the elect or the qualified must avoid contact with the condemned. During its rigorous periods, every church, including the Lutheran and, of course, Judaism has employed the power of excommunication against

those who were persistently disobedient and unbelieving. Excommunication usually implied an economic boycott, especially in the early periods of a church. Some churches would prohibit any physical contact, sexual or economic, with the outsiders: for example, the Zoroastric church and the Shiites, but most of the time only caste religions such as Brahminism went so far. Most sects, too, were not so radical, but such a step is as consistent for them as for monasticism. At least those persons expelled for their lack of qualification were subjected to the strictest boycott. Their admission to the service, especially to the Lord's Supper, would have evoked God's wrath and have dishonored him. The idea that the elimination of those visibly condemned by God is the task of every member strongly reinforced the importance of the congregation vis-à-vis any office. This can be observed already in Calvinism, which resembles the sects by virtue of its aristocratic charismatic principle of predestination and the degradation of office charisma. An example is the ecclesiastic revolution of the strict Calvinists in the Netherlands during the 1880's; the revolution, which was led by Kuyper[15] and which had such great political consequences, occurred because the higher bodies of the national church demanded that the individual congregations admit confirmees of lax predicants to the Lord's Supper. Consistent sects subscribe to the principle of the absolute sovereignty of the congregation, since only those who know one another personally and in everyday life can judge each other's religious qualifications. For this reason, when individual congregations of the same creed unite and form a larger community, they establish a merely instrumental association and retain the ultimate decisions for themselves. The individual congregation is primary and inevitably has "sovereignty," if we may apply this term at all. For the same reason [i.e., the requirement of personal acquaintance] it is always the *small* congregation, the *ecclesiola* of the Pietists, which is most suited for these functions. This is the negative side of the congregational principle, which culminates in the rejection of the expansive universalist charisma of office. For the individual, this basic nature of a congregation formed by selective admission has the practical significance of legitimating his personal qualification. Anyone admitted as a member can thereby demonstrate to the world that he has measured up to the congregation's religious and moral standards after a thorough examination. This may have the greatest consequences for him, also in economic respects, if the examination is regarded as strict and as including economically relevant qualities. A few illustrations may be given: In the writings of the Quakers and Baptists of some two hundred years ago we find jubilation over the fact that the Godless deposit or invest their money not with their own ilk but with the pious brethren, whose no-

torious honesty and reliability appear as more valuable than a security, they also note that the clientele of their retail stores is growing since the Godless know that even their children and servants will be charged nothing but the fixed and fair price and will receive only priceworthy goods. Quakers and Baptists compete for the honor of having replaced "Oriental" bargaining with the system of fixed prices in the retail trade —a system that is important for capitalist calculation in all fields. Matters are not different today, especially in the major domicile of the sects, the United States. As a traveling salesman, the typical sect member, just like the Freemason, prevails over any competition, even outside his own group, since the customers are convinced that his prices are fair. A person who wants to open a bank joins the Baptists or Methodists, for everybody knows that baptism, respectively admission, is preceded by an *examen rigorosum* which inquires about blemishes in his past conduct: frequenting an inn, sexual life, cardplaying, making debts, other levities, insincerity, etc.; if the result of the inquiry is positive, credit-worthiness is guaranteed, and in countries like the United States personal credit is almost unthinkable on any other basis. The ascetic demands upon the true Christian happen to be the same as those that capitalism makes upon its novices, at least where the maxim "Honesty is the best policy" is valid. A sect member of this kind is preferred in all responsible positions of the capitalist apparatus: as board member, director, promoter or foreman. Wherever he goes, the member finds a small congregation of fellow-believers which receives him as a brother, upon recommendation from his previous congregation, and legitimates and recommends him—a practice that is still current in the United States, and an advantage shared by all diaspora religions, such as Judaism. He will soon gain an economic foothold in a way which is denied to the outsider. The member's reputation largely corresponds to his actual qualities, for the intensity of indoctrination and the impact of exclusion are much more effective than any authoritarian ecclesiastic discipline can be.

The Old Methodist confession in the weekly meetings of the small groups set up for this purpose, the class meetings and the mutual control and admonition of the Pietists and Quakers contrast with the Catholic's auricular confession, which in this sense is uncontrolled and serves the sinner's relief but rarely aims at changing his mind. More important than any other factor is the fact that a man must hold his own under the watchful eyes of his peers. This basis of self-esteem spread with increasing secularization from the sects into all walks of American life, by virtue of the numerous associations and clubs, most of which recruit their members through balloting; these associations exist for all con-

ceivable purposes and extend down to the level of the boys' clubs in the schools. Even today the middle-class "gentleman" is legitimated by the badge of some association. Even though many of these traditions are disintegrating, it is still true that American democracy is not a sand-pile of unrelated individuals but a maze of highly exclusive, yet absolutely voluntary sects, associations and clubs, which provide the center of the individual's social life. American students may even consider it a cause for committing suicide if they fail to be elected into an exclusive club. Of course, analogies can be found in many voluntary associations, for the question of being joined by other individuals is considered frequently —and in non-economic associations predominantly—not merely from the functional viewpoint of the group's manifest purpose; rather, membership in exclusive clubs is everywhere regarded as a status elevation. Nowhere was this as true as in America's classic era: The sect and its derivations are one of her unwritten but vital constitutional elements, since they shape the individual more than any other influence.

By virtue of the dictum that "We must obey God rather than men" [Acts 5:29], hierocracy claimed an autonomous charisma and law of its own, secured obedience and firmly restrained the political power. With its office charisma, hierocracy protects those over whom it claims domination against encroachment from other authorities, whether the interfering person be the political ruler, the husband or the father. Since both the mature political and hierocratic power raise universalist demands, that is, since they both want to define the extent of their control over the individual, their adequate relation is a compromise or an alliance for the sake of joint domination in which their spheres of influence are mutually delimited. The formula of the separation of church and state is feasible only if either of the two powers has in fact abandoned its claim to control completely those areas of life that are in principle accessible to it.

In contrast to hierocracy, the sect opposes the charisma of office. The individual can exercise hierocratic powers only by virtue of his personal charisma, just as he can become a member only by virtue of a publicly established qualification, the most unambiguous symbol of which is the "rebaptism" of the Baptists, in reality, the baptizing of qualified adults. The services of the Quakers are a silent waiting in order to see whether the Divine spirit will overcome a member on this day. Only he will speak up to preach or pray. It is already a concession to the need for regulation and order if those who have proven their qualification to preach the Word of God are put on special seats and are now compelled to help along the coming of the spirit hy preparing sermons; this is done in most Quaker congregations. However, in contrast to all consistent

churches, all rigorous sects adhere to the principle of lay preaching and of every member's priesthood, even if they establish regular offices for economic and pedagogic reasons.

Moreover, pure sects also insist upon "direct democratic administration" by the congregation and upon treating the clerical officials as servants of the congregation. These very structural features demonstrate the elective affinity between the sect and political democracy. They also account for its peculiar and highly important relationship to the political power. The sect is a specifically antipolitical or at least apolitical group. Since it must not raise universal demands and endeavors to exist as a voluntary association of qualified believers, it cannot enter into an alliance with the political power. If it concludes such an alliance, as the Independents did in New England, the result is an aristocratic rule by the ecclesiastically qualified; this leads to compromises and to the loss of the sect character—witness the so-called Halfway Covenant [of the Congregational churches in 1662]. The greatest experiment of this kind was the abortive rule by Cromwell's Parliament of Saints. The pure sect must advocate "tolerance" and "separation of church and state" for several reasons: because it is in fact *not* a universalist redemptory institution for the repression of sin and can bear political as little as hierocratic reglementation; because no official power can dispense grace to unqualified persons and, hence, all use of political force in religious matters must appear senseless or outright diabolical; because the sect is simply not concerned with outsiders; because, taking all this together, the sect just cannot be anything but an absolutely voluntary association if it wants to retain its true religious identity and its effectiveness. Therefore, consistent sects have always taken this position and have been the most genuine advocates of "freedom of conscience."

Other communities, too, have favored freedom of conscience, but in a different sense. It is possible to speak of this freedom and of tolerance under the caesaropapist regimes of Rome, China, India and Japan, since the most diverse cults of subjected or affiliated states were permitted and since no religious compulsion existed; however, in principle this is limited by the official cult of the political power, the cult of the emperor in Rome, the religious veneration of the emperor in Japan, and probably also the emperor's cult of Heaven in China. Moreover, this tolerance had political, not religious reasons, as did that of King William the Silent or, much earlier, Emperor Frederick II, or manorial lords who used sect members as skilled labor, and in the city of Amsterdam, where the sectarians were major agents of commercial life. Thus, economic motives played an important role. But the genuine sect must demand the nonintervention of the political power and freedom of conscience for spe-

cifically religious reasons—there are transitional forms, but we leave them aside deliberately.

A fully developed church—advancing universalist claims—cannot concede freedom of conscience; wherever it pleads for this freedom, it is because it finds itself in a minority position and demands something which, in principle, it cannot grant to others. "The Catholic's freedom of conscience," Mallinckrodt said in the Reichstag "consists in being free to obey the pope," that means, in following *his own* conscience. However, if they are strong enough, neither the Catholic nor the (old) Lutheran Church and, all the more so, the Calvinist and Baptist old church recognize freedom of conscience for *others*. These churches cannot act differently in view of their institutional commitment to safeguard the salvation of the soul or, in the case of the Calvinists, to protect the glory of God. By contrast, the consistent Quaker applies the principle of the freedom of conscience not only to himself but also to others, and rejects any attempt to compel those who are not Quakers or Baptists to act as if they belonged to his group. Thus the consistent sect gives rise to an inalienable personal right of the governed as against any power, whether political, hierocratic or patriarchal. Such freedom of conscience may be the oldest Right of Man—as Jellinek has argued convincingly;[16] at any rate, it is the most basic Right of Man because it comprises all ethically conditioned action and guarantees freedom from compulsion, especially from the power of the state. In this sense the concept was as unknown to Antiquity and the Middle Ages as it was to Rousseau's social contract with its power of religious compulsion. The other Rights of Man or civil rights were joined to this basic right, especially the right to pursue one's own economic interests, which includes the inviolability of individual property, the freedom of contract, and vocational choice. This economic right exists within the limits of a system of guaranteed abstract rules that apply to everybody alike. All of these rights find their ultimate justification in the belief of the Enlightenment in the workings of individual reason which, if unimpeded, would result in the at least relatively best of all worlds, by virtue of Divine providence and because the individual is best qualified to know his own interests. This charismatic glorification of "Reason," which found a characteristic expression in its apotheosis by Robespierre, is the last form that charisma has adopted in its fateful historical course. It is clear that these postulates of formal legal equality and economic mobility paved the way for the destruction of all patrimonial and feudal law in favor of abstract norms and hence indirectly of bureaucratization. It is also clear that they facilitated the expansion of capitalism. The basic Rights of Man made it possible for the capitalist to use things and men freely, just as the this-worldly

asceticism—adopted with some dogmatic variations—and the specific discipline of the sects bred the capitalist spirit and the rational "professional" (*Berufsmensch*) who was needed by capitalism.

NOTES

Unless otherwise indicated, all notes and emendations are by Roth.

1. Cf. sec. 8 below.—For a flat rejection of the view that Lamaism had the effect of pacifying the Mongols, see Owen Lattimore, *Inner Asian Frontier of China*. New York: American Geographical Society, 1951 (first published in 1940), 86f. In Tibet, Buddhism was received in the 7th century, but the Lamaist church served at first as an instrument of the secular kings before establishing its own supremacy. The great Mongol conqueror Kublai Khan (13th century) favored Lamaism, but in the next century it disappeared in Mongolia in the wake of China's resurgence. In the 16th century Lamaism was adopted again by Altan Khan as an integrative instrument of secular rule. Subsequently, however, the Manchu empire brought about a stalemate between state and church in Mongolia, whereas the Tibetan church maintained its supremacy by allying itself with the Manchu interests (cf. Lattimore, 216–221). Hence, Lama-Buddhism seems to illustrate at least Weber's generalization that in its competition with secular authority a hierocracy may seek the support, or be the tool, of foreign powers. For a more recent discussion of Lamaist government with its mixture of feudal and bureaucratic features, and on the Chinese influence, see Pedro Carrasco, *Land and Polity in Tibet* (Seattle: University of Washington Press, 1959), esp. 207, 217, 224–8.

2. Bulls of Circumscription: papal decrees establishing the ecclesiastic districts in a non-Catholic country after prior agreement with the secular authorities.

3. See Weber, *The Rational and Social Foundations of Music*, Don Martindale, trans. (Carbondale: The Southern Illinois Press, 1958).

4. This refers to the "Greek" reform movement under Patriarch Nikon (see sec. 10:E) in the 1650's, which tried to bring the Russian liturgy in line with the older Greek practices. No dogmatic issues were involved, but in view of the magic efficacy of the traditional Russian rituals, a large part of the clergy and of the population—who came to be called the Old Believers—resisted the reforms at the risk, and often the price, of annihilation. The Old Believers continued to make the cross with two fingers, instead of three as the reformers decreed. An epidemic of self-burning seized Russia for fifteen years in the wake of the Nikonian reforms. See Herbert Ellison, *History of Russia* (New York: Holt, Rinehart and Winston, 1964), 78.

5. Cf. Weber, *Economic History*, 193.

5a. Cf. Aloys Schulte, *Geschichte des mittelalterlichen Handel und Verkehr zwischen Westdeutschland und Italien mit Ausschluss Venedigs* (Leipzig: Duncker & Humblot, 1900), I, 263–272.

6. On usury, see above, *Soc. of Religion*, ch. VI:xii:4.

7. "Liar"—because he has broken his word; cf. ch. VI:xii:4, at n. 2.

7a. See above, ch. VI:xi, n. 1.

8. See Stephen Beauregard Weeks, *Southern Quakers and Slavery*. A Study in Institutional History. (Baltimore: Johns Hopkins, 1896), 242ff. Cf. Weber, *Economic History*, 275.

9. On this important, but relatively unknown phenomenon, see John W.

Pratt, "Boss Tweed's Public Welfare Program," *The New York Historical Society Quarterly*, XLV:4, Oct. 1961, 396–411.

10. On St. Antoninus of Florence, see Carl Ilgner, *Die volkswirtschaftlichen Anschauungen Antonins von Florenz* (1384–1459) (Paderborn: Schöningh, 1904); Bede Harret, S. *Antonino and Medieval Economics* (London 1914). Cf. also Weber, *ProtestantEthic*, 83, 197, 201ff.

11. Cf. *supra*, esp. ch. VI, secs. x:1, xi:3, and xv:4; see also Weber, *Protestant Ethic, passim.*

12. See Adalbert Merx, *Die Bücher Moses und Josua* (Tübingen 1907), and Werner Sombart, *The Jews and Modern Capitalism* (London 1913; first German ed. 1911), 324. Cf. also Weber's more extensive discussion in his "Agrarverhältnisse im Altertum" (1909), repr. in *GAzSW*, esp. 83–93.

13. See Sombart, *op. cit.*, ch. 6.

14. This section contains some materials that Weber elaborated in "The Protestant Sects and the Spirit of Capitalism," *GAzRS*, vol. I, 207–36, also Gerth and Mills, eds., *op. cit.*, 302–22 and 450–9 (extensive footnotes). An earlier (1906) and shorter version of this essay preceded the writing of the present section.

15. On Abraham Kuyper, later Dutch Minister of the Interior (1901–05), see Weber, "The Protestant Sects . . ." in Gerth and Mills, *op. cit.*, 452f.

16. Cf. Georg Jellinek, *Die Erklärung der Menschen- und Bürgerrechte* (Leipzig: Duncker und Humblot, 1904), 2nd ed.

CHAPTER XVI

THE CITY (NON-LEGITIMATE DOMINATION)[1]

i

Concepts and Categories of the City

1. *The Economic Concept of the City: The Market Settlement*

The notion of the "city" can be defined in many different ways. The only element which all these definitions have in common is the following: the city is a relatively closed settlement, and not simply a collection of a number of separate dwellings. As a rule the houses in cities—but not only in them—are built very close to each other, today normally wall-to-wall. The common concept further associates with the word "city" a purely quantitative aspect: it is a *large* locality. In itself, this is not imprecise. Sociologically speaking, this would mean: the city is a settlement of closely spaced dwellings which form a colony so extensive that the reciprocal personal acquaintance of the inhabitants, elsewhere characteristic of the neighborhood, is lacking. But on this definition only very large localities would qualify as cities, and the special conditions of various cultures would have to determine at which size the absence of personal acquaintance would be characteristic. Many localities which in the past had the *legal* character of cities were not marked by this

feature. Conversely, in present-day Russia there are "villages" which, with many thousands of inhabitants, are much larger than many of the old "cities"—for example, in the Polish settlement area of the German East—with only a few hundred inhabitants. Size alone, certainly, cannot be decisive.

If we were to attempt a definition in purely economic terms, the city would be a settlement whose inhabitants live primarily from commerce and the trades rather than from agriculture. It would not be expedient, however, to call all localities of this type "cities." For this would include in the concept settlements of kinship groups practicing a single, practically hereditary trade such as the "craft villages" of Asia and Russia. A further characteristic, hence, might have to be a certain multiplicity of the trades practiced. But even this would, by itself, not appear suitable as a decisive characteristic. Economic diversity can be called forth in two ways: by the presence of a court, or by that of a market. A feudal, and, especially, a princely court constitutes a center whose economic or political needs evoke specialization of craft production and exchange of goods. However, a seigneurial or princely *oikos* with an attached settlement of artisans and small merchants encumbered with tribute and service obligations, even if it be of large size, we would not usually call a "city," though it is true that a large proportion of important cities have their historical origin in such settlements and that the production for a prince's court remained a highly important, if not the chief, source of income for the inhabitants of such "princely towns" for a long time. A further characteristic is required for us to speak of a "city": the existence of a regular, and not only occasional, exchange of goods in the settlement itself, an exchange which constitutes an essential component of the livelihood and the satisfaction of needs of the settlers—in other words: a market. But again: not every "market" converts the locality in which it is conducted into a "city." The periodic fairs and markets for the long-distance trade, at which travelling merchants gathered at fixed times in order to sell their wares in large or small lots to each other or to consumers, very often took place in localities which we would call "villages."

Accordingly, we shall speak of a "city" in the economic sense of the word only if the local population satisfies an economically significant part of its everyday requirements in the local market, and if a significant part of the products bought there were acquired or produced specifically for sale on the market by the local population or that of the immediate hinterland. A city, then, is always a market center. It has a local market which forms the economic center of the settlement and on which both the non-urban population and the townsmen satisfy their wants for

craft products or trade articles by means of exchange on the basis of an existing specialization in production. It was originally quite normal for the city, wherever it was structurally differentiated from the countryside, to be both a seigneurial or princely residence *and* a market place and thus to possess economic centers of both types, *oikos* and market. Frequently, in addition to the regular local market, it might also have periodical fairs for the long-distance trade of travelling merchants. But the city, as we use the word here, is essentially a "market settlement."

The existence of the market is often based on concessions and guarantees of protection by the lord or prince. On the one hand these political masters are interested in a regular supply of foreign articles and craft products on the long-distance market, and in the tolls, the escort moneys and the other protection fees, the market taxes and the fees from law suits which the fairs give rise to. On the other hand, they might also hope to profit from the local settlemen. of taxable tradesmen and merchants and, once a settlement rises around the market, from the ground rents which this produces. Such opportunities gain in significance by the fact that these are monetary revenues which augment the seigneurs' hoards of precious metals.

It also occurs that a city has no attachment whatsoever, not even physical proximity, to a seigneurial or princely residence. Such a city might originate as a pure market settlement at some suitable transshipment point, either on the basis of a charter granted by a non-resident seigneur or prince, or on the basis of usurpation of urban rights by the interested parties themselves. A settlement entrepreneur might be given a charter to found a market and to recruit settlers for it, as was the case frequently during the Middle Ages, especially in the East-, North- and Central-European territories where towns were created by deliberate acts of foundation, and occasionally in many other places and periods. But cities could also arise without either attachment to the court of a prince or charter grant by a prince, namely through an association of foreign invaders, of sea-faring warriors or of merchant settlers or, finally, of domestic groups with an interest in the middleman's position; in early Antiquity this occurred frequently on the Mediterranean littoral, and sometimes also in the early Middle Ages. Such a city could be a pure market place. However, the coexistence of the two institutions, large princely or seigneurial patrimonial households on the one hand, and a market on the other, is found much more often. The lordly court, as one economic center of the city, could in this case satisfy its wants either primarily in the ways of a natural economy, through *corvées*, taxes in kind and service obligations placed upon the local dependent artisans and tradesmen, or it could supply itself to a greater

or lesser extent through exchange on the urban market whose most important client it was. The more pronounced the latter relation, the more strongly the market aspect of the city came to the fore; it then ceased to be a mere appendage—albeit with a market—of the *oikos* and turned into a market city. As a rule the quantitative expansion of cities which had originated as "princely cities" and the growth of their economic significance went hand in hand with an increase in the market-orientation of the satisfaction of wants by the princely court and the large urban households of vassals and major officials attached to it.

2. *Three Types: The "Consumer City," the "Producer City," the "Merchant City"*

The "princely city," that is, one whose inhabitants are directly or indirectly dependent on the purchasing power of the court and the other large households, is similar in type to other cities in which the purchasing power of other large consumers—and that means: of *rentiers*—determines the economic opportunities of the resident artisans and traders. These large consumers can be of very different types, depending upon the kind and sources of their incomes. They may be officials spending their legal or illegal revenues, or manorial lords and political power holders consuming their non-urban ground rents or other more politically determined incomes in the city. In both cases the city is very similar to the type of the "princely city" in that it depends upon patrimonial and political revenues which supply the purchasing power of the larger consumers. An example for a city of officials might be Peking, for a city of land-rent consumers Moscow before the abolition of serfdom.

From these cases we must differentiate the only apparently similar case in which *urban* land-rents, based on the "monopoly of location" of urban land lots, are concentrated in the hands of a city aristocracy. Here the source of the spending power is the urban trade and commerce itself. This city type has been ubiquitous, especially in Antiquity from the beginnings up to the Byzantine period and also in the Middle Ages. The city is in that case economically not of a *rentier* type, but rather, depending upon the circumstances, a merchant or producer city, and those rents are a tribute exacted by the real-estate owners from the economically active population. But the conceptual differentiation of this case from that in which the rents stem from extra-urban sources should not cause us to overlook the historical interrelation of the two forms.

Finally, the large consumers can also be *rentiers* consuming business incomes in the city—today mainly interest on bonds, royalties or dividends on shares; the purchasing power then rests primarily on revenue sources based on the (capitalistic) money economy. An example would be the city of Arnhem. Or it is based on state pensions and interest on government bonds, as in a "pensionopolis" like Wiesbaden. In these and many other similar cases one may speak of a "consumer city," for the residence of these various types of large consumers is of decisive importance for the economic opportunities of the local producers and merchants.

Conversely, the city may be a "producer city." The population expansion and the purchasing power of this population would then depend, as in Esssen or Bochum, on the location there of factories, manufactures or putting-out industries which supply outside territories. This is the modern type. In the Asian, ancient, and medieval type, it would depend on the existence of local crafts which ship their goods to outside markets. The large consumers on the local market are the entrepreneurs, if they are locally resident—which is not always the case—, and the mass consumers are the workers and craftsmen. Another set of large consumers may be formed by the merchants and local landowners who are indirectly maintained by the city's productive activity.

Besides a "consumer city" and a "producer city," we can also distinguish a "merchant city," a type in which the purchasing power of the large consumers rests on the profits derived either from the retailing of foreign products on the local market (as in the case of the woolen drapers of the Middle Ages), or from the sale abroad of domestic products or at least of products obtained by domestic producers (as the herring of the Hanseatic towns), or finally from the purchase of foreign products and their resale abroad with or without local stapling ("*entrepôt* cities"). Very often all these activities are combined: the essence of the *commenda* and *societas maris* contracts of the Mediterranean countries[2] was that a *tractator* (travelling partner) carried to the Levantine markets domestic products purchased entirely or in part with capital entrusted to him by local capitalists—although often he may have journeyed entirely in ballast—and after the sale of these products returned with Oriental articles for sale on the domestic market; the profits were to be divided between *tractator* and capital-supplier according to a formula set in the contract. Thus the purchasing power and tax yield of the merchant city, like that of the producer city, and in contrast to that of the consumer city, rest on the local economic enterprises. The economic opportunities of the shipping and transport trades and of numerous small and large secondary activities are tied

up with those of the merchants, although only in the case of local retail sales do these benefits materialize entirely on the local market, while in long-distance trade a considerable part is realized abroad. A similar state of affairs prevails in a modern city which is the seat of the national or international financiers or of the giant banks (London, Paris, Berlin), or of large joint stock companies and cartels (Düsseldorf). Today, of course, it happens more than ever before that the larger part of the profits of an enterprise flows to localities other than that in which the producing plant is situated. Moreover, an ever increasing part of the gains is consumed by the recipients not at the metropolitan seat of the business headquarters, but in the suburbs, and increasingly even more in rural summer homes and international hotels. Parallel to these developments, the town centers tend to atrophy to mere business sections, to "The City."

It is not our intention here to produce the further casuistic distinctions and specialization of concepts which would be required for a strictly economic theory of the city. Nor do we need to stress that actual cities almost always represent mixed types and hence can be classified only in terms of their respective predominant economic components.

3. *Relation of the City to Agriculture*

Historically, the relation of the city to agriculture has in no way been unambiguous and simple. There were and are "agrarian cities" (*Ackerbürgerstädte*), which as market centers and seats of the typically urban trades are sharply differentiated from the average village, but in which a broad stratum of the burghers produces food for their own consumption and even for the market. Normally, to be sure, it would be true that the larger a city, the less likely it is that its inhabitants would dispose of farmland sufficient for their food needs—nor would they have the pasturage and forest utilization rights typical of the "village." The largest German city of the Middle Ages, Cologne, apparently from the very beginning almost completely lacked the *Allmende* (commons) which at that time was part of every normal village. But other German and foreign medieval cities owned, at the least, considerable pastures and woods which stood at the disposal of their burghers. And the further to the south or back toward Antiquity one turns, the more frequent becomes the presence of large amounts of farmland within the territory (*Weichbild*) of the towns. If today we are quite correct in regarding the typical "townsman" as a man who does not grow his own food, the

contrary was originally true for the majority of typical cities (*poleis*) of Antiquity. We shall see that the urban "citizen" with full rights was in Antiquity, in contrast to the Middle Ages, identified precisely by the fact that he owned a *kleros* or *fundus* (in Israel: *helek*): a full lot of arable land, which fed him.[3] The "citizens" of Antiquity were "agrarian burghers."

Agricultural holdings in the hands of the large merchants were even more frequent both in the Middle Ages, when they were found more often in the south than in the north of Europe, and in Antiquity. In both medieval and ancient city states large land holdings are found, occasionally of quite exorbitant size, which might be under the political rule—or even the seigneurial property—of the municipal authorities of powerful cities in their official capacity, or the seigneurial possession of individual eminent citizens. As examples we might take the *seigneurie* of Miltiades on the Chersonese, or the political and seigneurial possessions of medieval urban aristocratic families such as those of the Genoese Grimaldi in Provence and across the sea.[4] As a general rule, however, these foreign estates and seigneurial rights of individual citizens were not the objects of the city state's economic policy, although a curiously mixed situation in which such properties were *de facto* guaranteed to the individuals by the city was bound to arise whenever the owners belonged to the most powerful patrician groups and had actually obtained these properties and held on to them only with the indirect help of the state power. The ruling group, in turn, might in that case share in the economic and political usufruct of such holdings. Such cases were quite frequent in the past.

4. *The "Urban Economy" as a Stage of Economic Development*

The relation of the city as the carrier of the craft and trading activities to the countryside as the supplier of food forms one aspect of that complex of phenomena which has been called the "urban economy" (*Stadtwirtschaft*), juxtaposed, as a special economic stage, to the "household economy" (*Eigenwirtschaft*), on the one hand and the "national economy" (*Volkswirtschaft*) on the other (or to a multiplicity of similar conceptual "stages").[5] In this concept, however, categories relevant to measures of economic *policy* are fused with purely economic categories. The reason for this is that the mere facts of the crowding together of merchants and tradesmen and of the satisfaction of everyday

wants on a regular basis in the market do not by themselves exhaust the concept of the "city." If closed settlements are differentiated [from the countryside] *only* by the degree to which they supply themselves with agricultural goods or—which is not the same thing—by the relationship of agricultural production to non-agricultural earnings, and by the presence of markets, then we shall speak of artisan- or merchant-localities and of market hamlets, but not of "cities." Nor can the city be differentiated from the village by the fact that, beside being an agglomeration of habitations, it is in addition an economic organization (*Wirtschaftsverband*) with its own landed property and a budget of revenues and expenditures, for the same is true also of the village, however great the qualitative difference may be. Finally, it was not a characteristic peculiar to the city alone that it, at least in the past, was both an economic organization and an organization regulating the economy (*wirtschaftsregulierender Verband*). In the village, too, we find economic regulations: cultivation under compulsory common rules (*Flurzwang*), pasture regulations, export prohibitions for wood and straw, all of which constitute an economic *policy* of the organization as such.

It is not the mere fact of regulation which differentiated the cities of the past from other types of settlements, but the kinds of regulations: the objects of regulatory economic policy, and the range of measures which were characteristic for it. The bulk of the measures of "urban economic policy" (*Stadtwirtschaftspolitik*) were based on the fact that, under the transportation conditions of the past, the majority of all inland cities were dependent upon the agricultural resources of the immediate hinterland (a statement which, of course, does not hold for maritime cities—as shown by the grain policies of Athens and Rome), that the hinterland provided the natural marketing area for the majority of the urban trades, and finally that for this natural local process of exchange the urban market place provided, if not the only, then at least the normal locality, especially in the case of foods. This policy further took account of the fact that the predominant part of non-agricultural production was performed with craft technology, organized with little or no capital in small shops employing strictly limited numbers of journeymen trained in long apprenticeship, and that, in economic terminology, it took the form of "wage work" or of "price work" for customers,[8] just as the sales of the local retailers were largely on custom orders. It was these naturally given conditions of the urban economy which the specifically "urban" economic policy attempted to stabilize by means of economic regulations in the interest of permanency and cheapness of the food supply and of stability of the

economic opportunities of artisans and merchants. However, as we shall see, economic regulation was not the sole object of the urban economic policy, nor did it always exist in those places where we find it in certain historical periods. In its full development it emerges only in periods of political domination by the craft guilds. Finally, it cannot be proved to be a transitional stage in the development of all cities. In any case, this economic *policy* does not represent a universal stage in the development of the *economy*. What can be stated is the following: The urban local market with its exchange between agricultural and non-agricultural producers and local traders, its personal customer relationships, and its low-capital small shops, represents a kind of "exchange-economy" counterpart to the "exchangeless" internal economy of the *oikos*, which draws on systematically allocated service prestations and commodity deliveries of dependent specialized production units and integrates these activities from the manor. The *regulation* of the exchange and production conditions in the city represents the counterpart to the *coordination* of activities of the units combined in the economy of the *oikos*.

5. *The Politico-Administrative Concept of the City*

The very fact that in these observations we had to employ categories such as "urban economic policy," "urban territory" and "urban authority" indicates that the concept of the "city" can and must also be analyzed in terms of a series of categories other than the purely economic ones hitherto discussed, namely, in terms of political categories. It is quite true that the initiator of the urban economic policy may be a prince in whose political territory the city and its inhabitants belong. In this case, whenever a specifically urban economic policy exists at all, it is determined *for* the city and its inhabitants and not *by* it. However, this does not have to be the case, and even if it is, the city must still to some extent be a partially autonomous organization, a "community" (*Gemeinde*) with special administrative and political institutions.

The economic concept of the city previously discussed must, at any rate, be clearly differentiated from the political-administrative concept. Only in the latter sense may a special urban *territory* be associated with it. A locality can be thought of as a city in the political-administrative sense even though it could not claim this name in the economic sense. The inhabitants of some medieval settlements with the legal status of "cities" derived nine-tenths or more of their livelihood from agriculture, a far larger fraction than those of many places with the legal status of "villages." Naturally, the dividing lines between such

"agrarian cities" and the "consumer," "producer," and "merchant" cities are completely fluid. But in all settlements which are differentiated administratively from the village and are treated as "cities," one point, namely the nature of land ownership, is as a rule quite different from that prevailing in the countryside. Economically speaking, this is due to the specific basis of the earning capacity of urban real estate: house ownership, to which land ownership is merely accessory. But from the administrative point of view, the special position of urban real estate is connected above all with divergent principles of taxation; at the same time, however, it is closely connected with another trait which is decisive for the political-administrative concept of the city and which stands entirely outside the purely economic analysis, namely, the fact that the city in the past, in Antiquity and in the Middle Ages, outside as well as within Europe, was also a special kind of a *fortress* and a *garrison*. At present this feature of the city has been entirely lost, and even in the past it was not universal. In Japan, for example, it was not the rule. One might, therefore, with Rathgen,[7] doubt the existence there of "cities" in the administrative sense. In China, by contrast, every city was surrounded with rings of gigantic walls. However, it is also true that many agricultural localities there, which were not cities in the administrative sense (in China this means, as we shall discuss later, that they were not the seat of state authorities), have at all times possessed walls. In some Mediterranean areas, as e.g. in Sicily, we find almost no one living outside urban walls, not even agricultural workers —a phenomenon due to century-long insecurity. By contrast, in old Hellas the polis of Sparta was remarkable for the absence of walls, but on the other hand it was in the most specific sense a "garrison-town," which despised walls precisely because it was the permanent open military camp of the Spartans. Although it is still uncertain how long Athens went without walls, it possessed in the Acropolis a rock-protected castle, as did probably all Hellenic cities except Sparta. In the same manner, Ekbatana and Persepolis were royal castles with surrounding settlements. The castle or wall, at any rate, normally were indispensable parts of Oriental as well as of ancient Mediterranean and medieval cities.

6. *Fortress and Garrison*

The city was neither the sole nor the oldest fortress. In disputed frontier territory and during chronic states of war every village fortifies itself. Under the constant danger of attack in the area of the Elbe and Oder rivers, Slavic settlements, which earlier seemed to have had the

national form of a village extended along a road (*Strassendorf*), were fortified in the form of the hedge-enclosed circular village (*Rundling*) with a single entrance which could be locked and through which at night, the cattle were driven into the center of the village. An alternative form, hill retreats surrounded by ditches and banks, was wide-spread throughout the world, in Israelite East Jordan as well as in Germany, unarmed persons sought refuge there for themselves and their cattle. The so-called "cities" of Henry I in the German East[8] were merely systematically established fortresses of this sort. In England during the Anglo-Saxon period, each shire had a *burh* (borough) after which it was named, and the guard and garrison services fell on certain persons or pieces of land as the oldest specifically "civic" burdens. If such fortresses did not stand empty in normal times, but were manned by a permanent garrison of guards or "burgmen" paid in money or in land, we have a phenomenon very similar to the Anglo-Saxon "garrison city" of Maitland's theory with "burgesses" (*burgenses*) as inhabitants. The burgess received his name from his political and legal position which, like the legal nature of the specifically "bourgeois" land and house property, was determined by the duty of maintaining and guarding the fortifications.[9]

However, historically, neither the palisaded village nor the emergency fortification are the primary forerunners of the city fortress, but rather the seigneurial castle: a fortress which was inhabited by a lord with his warriors, subordinated to him either as officials or as his personal following, together with their families and servants.

The construction of military castles is very old, doubtlessly older than the war chariot and the military use of the horse. The war chariot has everywhere at some time determined the development of knightly and royal warfare: in ancient China of the period of the classic songs, in the India of the Vedas, in Egypt and Mesopotamia, in Canaan and Israel at the time of the Song of Deborah, in Greece of the Homeric epics, and among the Etruscans, Celts, and Irish. Similarly, castle construction and castle-seated princes were diffused universally. The early Egyptians sources knew the castle and castle commanders, and we can be almost certain that these castles originally housed just as many petty princelings. In Mesopotamia the development of the later territorial kingdoms was preceded, to judge by the oldest documents, by a castle-seated princedom such as existed in western India at the time of the Vedas and such as is probable for Persia at the time of the oldest [Zoroastrian] Gathas. In northern India, on the Ganges, the castle apparently was universally dominant during the period of political disintegration: the old Kshatriya, whom the sources

show to have had a peculiar intermediary position between the king and the nobility, was obviously a castle-seated prince. Castle-dwelling princedoms existed in Russia at the time of Christianization [A.D. 988] and in Syria during the dynasty of the Thutmose[10] as well as at the time of the Israelite confederation (Abimelech), and even old Chinese literature gives fairly certain evidence of their original existence. The Hellenic and Anatolian sea-castle must surely have been as universal as piracy: the unfortified palaces of Crete almost certainly owe their existence to an interim period of very unusual pacification. Castles like that of Decelea,[11] which was so important in the Peloponnesian War, were originally the fortresses of noble families. The development of a politically autonomous nobility in the Middle Ages begins in Italy with the construction of *castelli*, and the independence of the vassals in northern Europe starts with their massive castle construction; von Below draws attention to the fact that even in more recent times individual membership in the regional noble estate (*Landstandschaft*) in Germany was contingent upon the possession by the family of a castle, even if it be only the most decrepit ruin of one.[12] Possession of a castle, of course, signified military domination over the countryside. The only question was who should exert it—whether the lord of the castle for himself, or a confederation of knights, or a ruler who could rely on the trustworthiness of the vassals, *ministeriales*, or officers whom he placed in charge of the fortification.

7. *The City as a Fusion of Fortress and Market*

In the first stage of its development into a special political form, the fortified city either was itself a castle, or it contained or lay adjacent to a castle, the fortress of a king, a nobleman, or an association of knights. Such lords either resided in the fortress themselves, or they maintained a garrison of mercenaries, vassals, or bondsmen in it. In Anglo-Saxon England the right to possess a *haw* (a fortified house) in a *burh* was bestowed by charter on certain landowners of the nearby countryside, just as in Antiquity and in medieval Italy the city-house of the nobleman was held in addition to his rural castle. As "burghers" (*burgenses*), the inhabitants of the castle or the residents living just outside the walls—sometimes all of them, sometimes only special strata—owed the performance of definite military duties to the military lord of the city. These might consist in building and repairing the walls, in guard duty, or in defense and other military services, such as the carrying

of messages and the provisioning of the garrison. The burgher was in this case a member of his status group only by virtue (and to the extent) of his participation in the military association of the city. Maitland brought out this aspect with special clarity for the case of England: the houses of the *burh* are in the possession of people whose primary duty it is to maintain the fortification; *this* constitutes the difference from the village. The royally or seigneurially guaranteed "peace of the market," from which the urban market benefits, is paralleled by a military "peace of the borough."[13] The pacified castle and the military-political center of the city: the drill field and assembly place of the army and hence of the citizenship, on the one hand, and the pacified economic market of the city on the other, often stand in plastic dualism beside one another. It is true that they are not always spatially separated; thus, the Attic *pnyx*[14] was much younger than the *agora*, which originally [probably] served for both the economic transactions *and* the political and religious acts. But in Rome the *comitium* and the *campus Martius*[15] were always separate from the economic *fora*, and in the Middle Ages the *piazza del campo* in Siena (a tournament plaza still used today for the annual race between the wards of the city) in front of the municipal palace was distinct from the *mercato* at the rear. Analogously, in Islamic cities the *kasbeh*, the fortified camp of the warriors, is spatially separate from the *bazaar*, and in southern India the political "city of *honoratiores*" stands apart from the economic city.[15a]

The problem of the relationship between the garrison, the political citizenry of the fortress, on the one hand, and the civilian, economically active population, on the other hand, is frequently exceedingly complex, but it is always of crucial importance for the constitutional history of the city. The following is clear: wherever a castle existed, artisans came in or were brought in to satisfy the needs of the seigneurial household and of the warriors; the purchasing power of a military court and the protection which it guarantees always attracted merchants and, furthermore, the lord himself was always interested in attracting these classes since they put him in a position to procure money revenues, either by taxing trade and the crafts or by participating in them through capital advances, or by conducting trade on his own account, or even by monopolizing it. The lord of a coastal castle could always, as shipowner or ruler of the port, procure a share in violent or peaceful "sea-borne" profits. It is also clear that his resident followers and vassals were in the same position if he permitted them to partake of these chances, either voluntarily or under compulsion because of his dependence upon their good will. On a vase painting from an early Hellenic city, Cyrene, we see the king assisting in the weighing of *silphion*, the local export good.[16]

and in the earliest Egyptian records a trading fleet belonging to the Pharaoh of Lower Egypt is reported.

A process that can be observed all over the world, but especially in coastal localities (not in "cities" alone) where the trade middlemen are easily controlled, was that the interest of the resident warrior families in participation in the profits from trade would grow, and so would their power to assert this interest, until they eventually shattered the monopoly (if it had existed) of the local chieftain or prince of the castle. If this occurred, the prince was usually reduced to the position of a *primus inter pares*, and perhaps ultimately to an approximately equal member of the urban *gentes*, elected for a short period only and with severely restricted powers, which he then had to share with the patrician "families" owning urban land and participating either in peaceful commerce—in person or merely with their capital (in the Middle Ages frequently in the form of the *commenda*)—or in the bellicose pursuits of piracy and maritime war. This process, in the form of the gradual emergence of an office tenure restricted to one year, can be observed in the ancient coastal cities from the Homeric period on and, in very similar form, several times in the early Middle Ages. Instances are the evolution of the dogedom in Venice, and similar developments in other typical trading cities where, however, the composition of the opposing parties varied greatly, depending upon whether the urban seigneur was a royal count or *vicomte*, a bishop, or some other notable. In this context it is necessary always to differentiate between the urban capitalist trading "interests"—the financiers of commerce and typical *honoratiores* of the early ancient and early medieval city—and the actual "operators" continuously engaged in the trading activities, the merchants proper, native or naturalized. This conceptual differentiation must be observed even though in fact these two strata frequently tend to blend into each other. However, with this we already anticipate points to be discussed later.

In landlocked territory the beginning and end points or intersections of river and caravan routes—such as Babylon, for instance—can become the locations of similar developments. There the temple priest or the priestly lord of a city would sometimes offer competition to the secular prince of the castle or the city. The temple districts of widely known gods provide a religious sanctuary to inter-ethnic—and hence politically unprotected—trade, so that, in their shadow, city-like settlements can arise which find their economic sustenance in the purchasing power of the temple revenues, just as the princely city lives from the tributes to the prince.

Whether, and to what extent, the prince's interest in money

revenues from privileges granted to craftsmen and traders pursuing a taxable occupation independent from the lord's court predominated over his interest in satisfying his needs to the largest extent from the production of his own labor force, and in monopolizing trade in his own hands, depended upon the circumstances of the individual case; he also had to consider, when he was attracting strangers through the offer of such privileges, the interests and the important tax- and service-yielding economic capacity of his resident political and manorial dependents. To these developmental variations must be added the variations of the politico-military structure of the "ruling organizations" within which the founding or development of the city took place. These give rise to certain phenomena which we must now consider.

8. *The "Commune" and the "Burgher": A Survey*

A. FEATURES OF THE OCCIDENTAL COMMUNE

Not every "city" in the economic sense, nor every garrison whose inhabitants had a special status in the political-administrative sense, has in the past constituted a "commune" (*Gemeinde*). The city-commune in the full meaning of the word appeared as a mass phenomenon only in the Occident; the Near East (Syria, Phoenicia, and perhaps Mesopotamia) also knew it, but only as a temporary structure. Elsewhere one finds nothing but rudiments. To develop into a city-commune, a settlement had to be of the nonagricultural-commercial type, at least to a relative extent, and to be equipped with the following features: 1. a fortification; 2. a market; 3. its own court of law and, at least in part, autonomous law; 4. an associational structure (*Verbandscharakter*) and, connected therewith, 5. at least partial autonomy and autocephaly, which includes administration by authorities in whose appointment the burghers could in some form participate. In the past, such rights almost always took the form of privileges of an "estate" (*Stand*); hence the characteristic of the city in the political definition was the appearance of a distinct "bourgeois" estate.

B. LACK OF COMMUNAL FEATURES IN THE ORIENT

It should be noted that if the above definition were to be strictly applied, even the cities of the Occidental Middle Ages would qualify only in part—and those of the eighteenth century only to the smallest part

—as true "city-communes." But the cities of Asia, with the possible exception of very isolated cases, would not, so far as we know, fit this classification at all. It is true that they all had markets and that they also were fortresses. In China—but not in Japan—all large seats of trades and commerce and most of the small ones were fortified. The same is true for similar towns in Egypt, the Near East, and India. Separate court districts for the larger trade and craft towns of these countries were also quite frequent. The seat of the administrative authorities of the large political associations was, in China, Egypt, the Near East, and in India, always in these towns—a statement which does *not* apply to precisely the most typical Occidental cities of the early Middle Ages, especially those of the North. However, the Asian cities did not know a special substantive or trial law applicable to the "burghers" by virtue of their membership in the city-commune, or a court autonomously appointed by them. They experienced an approximation only in the case of guilds or (in India) castes which, if they primarily or exclusively inhabited a single city, might then develop a special law and their own courts. But from the point of view of the law, the urban seat of these organizations was purely accidental and of no significance. Autonomous administration of the city was unknown or merely vestigial. Most importantly, the associational character of the city and the concept of a *burgher* (as contrasted to the man from the countryside) never developed at all or existed only in rudiments. The Chinese townsman was legally a member of his sib and hence of his native village, where the temple of his ancestor-cult stood and with which he carefully upheld his association. Similarly, the Russian member of a village community who earned his living in the city remained a "peasant" in the eyes of the law. The Indian townsman was, in addition, a member of his caste.

It is true that, as a rule, town dwellers were also members of local professional associations, of guilds and crafts with a specifically urban location, and that they were members of the urban administrative districts, city wards, and blocks into which the city was divided by the local authorities—and that in these capacities they had definite duties and, at times, even certain rights. The city ward or block, as a collective entity, could in particular be made liturgically responsible for the security of persons and for other police purposes. For this reason they might be organized into communes with elected officials or hereditary elders, as in Japan, where we find one or several civilian administrative agencies (*machi-bugyo*) superordinated to the self-administration of the city blocks.[11] But a special status of the town dweller as a "citizen," in

the ancient and medieval sense, did not exist and a corporate character of the city was unknown. Of course, the city as a whole might form a separate administrative district, just as it did in the Merovingian and Carolingian realms. Yet, in strong contrast to the medieval and ancient Occident, we never find the phenomenon in the Orient that the autonomy and the participation of the inhabitants in the affairs of local administration would be more strongly developed in the city—that is, in nonagricultural-commercial and relatively large localities—than in the countryside. In fact, as a rule the very opposite would be true. In China, for example, the confederation of the elders was practically all-powerful in the village, and the *taotai*[18] therefore had to cooperate with it even though it had no standing in the law. In India, too, the village community had very far-reaching competencies, and the Russian *mir* ruled almost autonomously within its bailiwick until the bureaucratization under Alexander III. In the entire Near Eastern world the elders (in Israel: *zekenim*),[19] originally those of the sibs and later the chiefs of the patrician clans, were the representatives and administrators of the [*non-urban*] localities and the local courts. In the Asian *city* this could never occur, because it was usually the seat of the high officials or of the prince himself and thus directly under the cudgel of their military bodyguards. The [Asian] city was a princely fortress; hence it was administered by officials (in Israel: *sarim*)[20] and military officers of the prince, who also held all judicial powers. The dualism of the officials and the elders can be clearly observed in Israel of the Time of Kings. The royal official always gained the upper hand in the bureaucratic monarchies. To be sure, he was not all-powerful; in fact, he often had to take account of popular opinion to an amazing degree. The Chinese official, in particular, was quite powerless vis-à-vis the local organizations, the sibs and occupational associations, if they formed a common front on a particular issue; whenever they seriously combined in opposition, he lost his office. Obstruction, boycotts, closing of shops and refusal to work were common reactions of the artisans and merchants to measures of oppression, which set limits to the power of the officials. However, these limits were of a completely indeterminate kind. Guilds or other occupational associations, on the other hand, had certain competencies, in China as well as in India, or at least claimed them in such a way that the officials had to reckon with them. The heads of these associations at times exercised far-reaching coercive powers even over nonmembers. Normally, however, these were only competencies or factual powers of a *particular* association with respect to *particular* issues touching on its concrete group interests. But ordinarily, there existed no association which could represent the commune of burghers as such. The very con-

cept of an urban burgher and, in particular, a specific status qualification of the burgher was completely lacking. It can be found neither in China nor in Japan or India, and only in abortive beginnings in the Near East.

In Japan, the status structure was purely feudal: the *samurai* (mounted) and the *kasi* (unmounted servitors) were juxtaposed to the peasants (*no*) and to the merchants and craftsmen, some of whom were organized in occupational associations. The concept of a "bourgeois" estate (*Bürgertum*), however, was as absent as was that of a "city commune." The same was true of China in its feudal period. Since the beginning of bureaucratic domination, however, we find the *literati*, with their various academic degrees obtained by examination, confronting the "illiterate" strata; economically privileged guilds of merchants and occupational associations of artisans also appear at this time. But here, too, the notions of the "burgher" and the "city commune" are missing. In China as well as in Japan, "self-administration" was a feature of the professional associations and of the villages, but not of the cities. In China the city was a fortress and official seat of the imperial agencies; in Japan the "city" in this sense was completely unknown. In India the cities were royal seats or official centers of the royal administration as well as fortresses and market centers. We also find merchant guilds and the castes, to a large extent coterminous with the occupational associations, both of which enjoyed considerable autonomy, above all in the fields of legislation and administration of justice. But the hereditary caste structure of Indian society, with its ritual segregation of the occupations, precludes the emergence of a "bourgeoisie" as well as that of a "city commune." Although several merchant castes and very many craft castes with innumerable subcastes existed (and still exist), they cannot be equated as a group with the Occidental burgher estate, nor could they themselves combine to form something corresponding to the medieval craft-ruled city, for caste barriers prevented all intercaste fraternization. It should be noted, however, that in the period of the great religions of salvation we do in fact find in India that the guilds, headed by their hereditary elders (*shreshtha*), combine into an association in many cities; residues of this still exist at present in some cities (Ahmedabad) which are led by a common urban *shreshth* corresponding to a Western lord mayor. There also existed, in the period prior to the large bureaucratic kingdoms, some cities which were politically autonomous and were ruled by a local patriciate recruited from those families who served in the army with elephants.[20a] But all this later disappeared almost completely; the triumph of ritual caste barriers shattered the guild association, and the royal bureaucracy in alliance with

the Brahmans swept away all such budding developments except for the remnants which survived in north-western India.

In Near Eastern and Egyptian Antiquity the cities were fortresses or official administrative centers with royal market privileges. However, during the domination of the great territorial kingdoms they lacked autonomy, municipal organizations, and a privileged burgher estate. During the Middle Kingdom in Egypt we find office feudalism, and during the New Kingdom bureaucratic administration by scribes. The "city privileges" were grants to the feudal or prebendal holders of the powers of office in these localities, similar to the privileges granted to the bishops in medieval Germany, but not grants to an autonomous "bourgeois" estate. Not even the beginnings of a "city patriciate" have so far been found.

In Mesopotamia and Syria, and above all in Phoenicia, by contrast, we find in the early period the typical city kingdoms of the shipping and caravan markets, sometimes ecclesiastic, but more often of a secular character, and later, which is also typical, the rising power of the patrician families in the "city hall" (*bitu* in the Tel-el-Amarna tablets) of the days of chariot warfare.[21] The Canaan league of cities was an association of the town-dwelling knighthood of war-charioteers; this stratum held the peasantry in debt-bondage and clientship, as also in the early period of the Hellenic polis. Relationships seem to have been similar in Mesopotamia where the "patrician," the landowning citizen with full rights and the economic resources for military service, is differentiated from the peasant and the capital cities were granted immunities and liberties by royal charter. However, with the mounting power of the military kingdom this disappeared here, too. Later, neither politically autonomous cities and a burgher stratum of the Occidental type nor a special urban law alongside the royal law can be found in Mesopotamia. Only the Phoenicians retained the city state under the domination of a landed patriciate which employed its capital in trade. The Phoenician coins with the inscription *'am Ṣôr* and *'am Karthadaš* can hardly be used to prove that the *demos* dominated in Tyre and Carthage;[22] if this should nevertheless have been the case, the period involved would have to be a rather late one.

In Israel, Judah became a city state. But the *zekenim* (elders), who in the early period had led the administration of the cities as heads of the patrician clans, were pushed into the background under the rule of the kings; the *gibborim* (knights) became royal servitors and soldiers, and precisely in the large cities—in contrast to the countryside—the administration came to be conducted by the royal *sarim* (officials).[23] It

is only after the Exile that the "congregation" (*kahal*) or the "brotherhood" (*heber*) on the basis of a ritual segregation makes its appearance as an institution—but by that time it was under the hierocratic rule of the priestly clans.[24]

C. PRE-COMMUNAL PATRICIAN CITIES—MECCA

Nevertheless, it is in this area, on the Mediterranean littoral and on the Euphrates, that we first find phenomena analogous to the ancient polis, at a stage of development about equivalent to that of Rome at the time of the immigration of the *gens* Claudia [5th century B.C.]. Authority is always in the hands of an urban patriciate, whose power rests on monetary wealth gained in trade and invested in landed property, enslaved debtors and purchased slaves, and on their military training in knightly warfare. The patriciate would often be rent by bitter intramural feuds; on the other hand, its clans could live in several cities at once and form interlocal alliances. Headed by a king as *primus inter pares*, or by *shofetim*[25] or *zekenim* with a position similar to that of the *consules* at the head of the Roman nobility, such patrician groups were always threatened with the power seizure and *tyrannis* of a charismatic war hero supported by mercenary bodyguards (Abimelech, Jephthah, David).[26] Prior to the Hellenistic period, this stage of development was nowhere surpassed, or at least not permanently.

The cities of the Arabian coast at the time of Mohammed seem also to have been arrested at this stage, which persisted in the Islamic cities wherever the autonomy of the city and its patriciate was not, as in the large territorial states, completely destroyed by the monarchy. Very often, however, the ancient and Oriental conditions appear to have been preserved under Islamic rule. We then find the urban patrician families retaining a rather unstable autonomy vis-à-vis the princely officials. The mainstay of the patriciate's power position was its wealth, derived from participation in the urban economic opportunities and usually invested in land and slaves. Even without formal legal recognition, the princes and their officials had to reckon with this power of the patriciate, just as the Chinese *taotai* had to reckon with the obstruction of the village clan elders and the merchant guilds and other associations of the cities. However, this strength of the patrician clans did not generally or necessarily cause the city to consolidate into a separate and independent association; in fact, frequently the very opposite occurred.

We shall illustrate this with an example. The Arab cities—Mecca, for instance—were typical clan towns all through the Middle Ages and

almost up to the present. Snouck Hurgronje's graphical description[27] shows the city of Mecca surrounded by the *bilads* [territories]: the seigneurial estates of the individual *dèwis*, the Hasanid sib and other noble sibs descended from [Mohammed's son-in-law] Ali. The various estates of different clans, which were settled with peasants, clients and protected Bedouins, lay intermingled. A *dèwi* was any clan which could claim a "sherifian" ancestor.[28] The She ˆ [of Mecca] himself—since A.D. 1200 always a member of the Alidic branch descended from Qatadah [ruled ca. A.D. 1201–1221]—should legally have been appointed by the Caliph's governor, who was often a man of unfree birth and under Harun al Rashid once a [freed] Berber slave; in fact, however, he obtained his position from the *dèwi* chiefs residing in Mecca, who selected a member of the qualified family for the post. For this reason—and because the residence in Mecca offered the chance to participate in the exploitation of the pilgrims—the clan heads (the *emirs*) lived in the city. Among them there usually existed certain "ties," i.e., agreements for preserving the peace and dividing the spoils. But these "ties" could at any moment be broken, and this initiated feuds within as well as outside of the city in which slave troops were employed. The defeated would be exiled from the city. Nevertheless, the community of interest between the hostile families against outsiders survived the feuds, and the victor, lest he be threatened by a revolt of his own partisans, would have to observe the courtesy of sparing the goods and the lives of family and clients of the defeated exiles.

In more recent times, the following official authorities have existed in Mecca: 1. Largely on paper, the collegiate administrative council (the *mejlis*) installed by the Turks; 2. As an effective authority, the Turkish governor, who had taken over the position of the earlier "lord protector" (in former times this had usually been the ruler of Egypt); 3. The four *kadis* of the orthodox rites,[29] always noble Meccans, of whom the most eminent—the *Shafi'i* one—has for centuries come from the same family, appointed by the Sherif or nominated by the lord protector; 4. The Sherif himself, at the same time the head of the corporation of the urban nobility; 5. The craft guilds, foremost of which was the "craft" of the pilgrim guides, followed by the butchers, grain merchants, and others; 6. The city wards with their elders. These authorities competed with each other in many ways without firmly established jurisdictions. A plaintiff in a legal suit would select that authority which appeared most favorably inclined to him or which seemed to be able to bring most power to bear on the accused. The governor could never prevent an appeal to the *kadi*, who competed with his jurisdiction

in all matters touching on religious law. The Sherif was accepted as the real authority by the indigenous population, and especially in all matters concerning the Bedouins and the pilgrim caravans the governor was utterly dependent upon his good will. Finally, here as in other Arabic areas the corporation of the nobility was of decisive importance precisely in the cities.

We are reminded of Occidental developments when we hear that in the ninth century, when the Tulunids and the Saffarids fought in the streets of Mecca, the position taken by the richest guilds (those of the butchers and the grain merchants) could decide the outcome of the conflict.[30] At the time of Mohammed, by contrast, only the attitude of the noble Quraysh families would have been of any military and political significance. Nevertheless, it never came to a guild regiment. The slave troops of the urban noble families, maintained from their shares in the [pilgrim trade] profits, must have safeguarded the predominant position of the clans time and again, just as in the medieval Italian cities power tended ever again to gravitate into the hands of the knightly families, the wielders of military power. Any association of the kind that might have united the city into a corporative unit was lacking in Mecca, and this constitutes the characteristic difference from both the ancient synoikized *poleis*[31] and even the earliest medieval Italian *comune*. Apart from this, however, we can regard these Arabian conditions, making allowance for the specifically Islamic traits or transposing them into their Christian equivalents, as quite typical also for Occidental cities, in particular for the sea-trading ones, of the period *before* the rise of the communal association.

All safely founded information about Asian and Oriental settlements which had the economic characteristics of "cities" seems to indicate that normally only the clan associations, and sometimes also the occupational associations, were the vehicles of organized action (*Verbandshandeln*), but never the collective of urban citizens as such. Transitions, of course, are fluid here too. But this statement holds precisely for the largest settlements, which sometimes embraced hundreds of thousands, and even millions of inhabitants. In medieval Christian Constantinople, the representatives of the *city wards* (which also financed the circus races, as is still the case for the horse races of Siena) were the agents of the party formations—the *Nika* insurrection under Justinian was a product of this type of local party division.[32] And in the Constantinople of the Islamic Middle Ages—i.e., up into the nineteenth century—merchant guilds and corporations are the only representatives of bourgeois interests. Besides them we find the purely military associations of the Janis-

saries and the Spahis and the religious organizations of the Ulemas and the Dervishes, but no general corporation of the burghers. In late Byzantine Alexandria the situation was similar insofar as only the burgher militias of the individual city wards seem to have existed as organized bourgeois powers beside the competing dominant powers: the Patriarch who relied on the strength of his very sturdy monks, and the Governor who was supported by a small garrison. Within the wards, rival circus parties of the "Greens" and the "Blues" represented the leading organizations.

NOTES

Unless otherwise indicated, all notes in ch. XVI are by Wittich.

1. This chapter was first published separately after Weber's death in *AfS*, vol. 47 (1921), 621–772, under the title "The City. A Sociological Investigation." In the fourth German edition of *Wirtschaft und Gesellschaft* it was given the title "Non-Legitimate Domination. The Typology of Cities" which appears in Weber's first outline plan for the work. We use a compromise title since the essay has become well known as "The City" in an earlier translation. "Non-Legitimate Domination" (*nichtlegitime Herrschaft*) refers to what was for Weber the decisive feature of the Occidental city, observable already in Antiquity: Its break with the ruler's traditional legitimacy, and the substitution of authority (*Herrschaft*) based on various types of usurpatory consociations of the ruled (*demos, plebs, comune, popolo, coniuratio,* etc.). Cf. especially *infra*, 1250f., and "Politics as a Vocation," in Gerth and Mills, *From Max Weber*, 84.

2. On the medieval forms of partnership, *commenda* and *societas maris*, as well as on the "sea loan," cf. Weber, *Handelsgesellschaften*, 323–44; *id.*, *Economic History*, 158f; *Cambridge Economic History of Europe*, III, 49–59.

3. Cf. *Economic History*, 243; *Ancient Judaism* (henceforth *AJ*), 73.

4. For the curious story of the establishment of the elder Miltiades, an Athenian patrician of the Peisistratid period (6th century B.C.), as "tyrant by invitation" of the Thracian Chersonese (the Gallipoli Peninsula on the Dardanelles Straits), see Herodotus' *Histories*, vi:34ff. The Philaid family held its dominions there, which Weber frequently mentions, until the Persian wars of the 5th century, when the younger Miltiades, the later victor of Marathon, was expelled by the invaders.—The Grimaldi overseas possessions were in southern Italy and Sicily, where the family was granted large estates by the Angevin rulers of the kingdom of Naples. In Provence, of course, they still rule Monaco.

5. Cf. Part One, ch. II, n. 24.

6. For the definitions of "wage work" and "price work," see Part One, ch. II:19. In the former case, customers supply the raw materials, while in the latter they are provided by the producer, together with the instruments of production. The terminology is that of Karl Bücher.

7. Karl Rathgen, *Japans Volkswirtschaft und Staatshaushalt* (Leipzig: Duncker & Humblot, 1891), 47–49. (W)

8. On the nature of the "cities" (*urbes*) founded by King Henry the Fowler (r. 919–936) in Saxony, cf. Frederic William Maitland, *Domesday Book and Beyond* (Cambridge: The University Press, 1897), 189 and the references given

there; C. Rodenberg, "Die Städtegründungen Heinrichs I.," *Mitteilungen des Instituts für österreichische Geschichtsforschung*, XVII (1896), 161–67.

9. Maitland, *op. cit.*, 172–219, and the same author's *Township and Borough* (Cambridge: The University Press, 1898), 36–52, 209–211; Julius Hatschek, *Englische Verfassungsgeschichte* (Munich: Oldenbourg, 1913), 104ff.

10. The Egyptian XVIII Dynasty, ca. 1540–1300 B.C. Especially Thutmose II (1479–1427) and IV (around 1400) conducted long campaigns in Syria.

11. On the pass leading over the east end of Mt. Parnes. Because it commands the entrance to the Attic plain, it was seized and fortified by the Spartans as a base for forays into Attica during the later years of the Peloponnesian War (413–404 B.C.). On the clan of Decelea, see below, *sec. iii*, n. 39.

12. Georg von Below, "Zur Entstehung der Rittergüter," in his *Territorium und Stadt* (Munich: Oldenbourg, 1900), 95–162.

13. Maitland, *Domesday Book and Beyond*, 189–195; on "market-peace" and "borough-peace," 193.

14. A flat-topped hill below the Athenian Acropolis which probably from the fifth century B.C. served as the place of the political assemblies; hence also the name of the popular assembly.

15. The assembly, respectively, for the Roman people in its civilian-tribal (*comitia curiata*) and military (*comitia centuriata*) formations.

15a. For the Indian case, cf. Weber's observations in his "Hinduismus und Buddhismus," *GAzRS* II, 85 n. 1 (English in *Religion of India*, 87f).

16. This famous export article of the (North African) Cyrenaica was a plant, the milky juice of which yielded a spice and medicine highly prized by the Ancients. For a reproduction of the sixth century drinking bowl which shows King Arkesilaos II of Cyrene (ca. 560 B.C.) on his throne, keeping tab on the weighing and loading of *silphion* bales, see Victor Ehrenberg, *The People of Aristophanes: A Sociology of Old Attic Comedy* (New York: Schocken Books, 1962), plate X(*a*).

17. Cf. Rathgen, *Japans Volkswirtschaft*, *op. cit.*, 45f., 51.

18. *Taotai*: circuit intendant—a travelling administrator responsible for a territorial unit intermediate between county and province.

19. *Zekenim*: see *AJ*, 16ff.

20. *Sarim*: see *AJ*, 18ff. for more detail on these royal officials and the conflict between royal and patrician administration in early Israel.

20a. On the guild-*shreshth* (or *sheth*) of Ahmedabad in Gujarat, India, see E. Washburn Hopkins, "Ancient and Modern Hindu Guilds" in his *India Old and New* (New York: Scribner's, 1901), 169ff., esp. 178f.; also *GAzRS* II, 53, 86, 89, 105 (*Religion of India*, 51, 87, 90, 107). On the council of the elephant-supplying notables in Vaiçali (?), cf. *GAzRS* II, 88 (*Rel. of India* 89).

21. On *bitu* in the Tel-el-Amarna tablets, see also *AJ*, 14f. and 430f., notes 12–13.

22. The legends on the coins can be translated as "people (*demos*) of Tyre" and "people (*demos*) of Carthage." (W)

23. On the status of the *zekenim*, *gibborim* and *sarim* in the early Israelite cities, cf. *AJ*, 16–20.

24. On the ritualistically exclusive *kahal* of Ezra and Nehemiah (mid-fifth century B.C.), cf. *AJ*, 358ff, and on the *heber* of the Pharisees, *ibid.*, 385–91.

25. *Shofetim*, "judges," were the Phoenician senior magistrates in Tyre, Carthage and Marseilles.

26. For the power seizures of Abimelech and Jephthah with the help of

"hired vain and light persons," cf. *Judg.* 9 and 11; for David's rise as an army leader posing a challenge to the king, I *Saml.* 19–31.

27. Christiaan Snouck Hurgronje, *Mekka*, Vol. I: *Die Stadt und ihre Herren* (den Haag: Nijhoff, 1888), ch. 3, *passim* and esp. 112–118.

28. The term *sherif*, originally meaning "nobleman," eventually became restricted to the numerous Alid descendants of the Prophet; this is the meaning used here. Cf. Snouck Hurgronje, *op. cit.*, 56f. This meaning should be distinguished from the Sherif (or prince) of Mecca.

29. On the four basic schools of law, the *Anasi*, *Hanafi*, *Shafi'i*, and *Hanbali* schools and their significance in Islam, cf. *Selected Works of C. Snouck Hurgronje*, ed. G. H. Bousquet and J. Schacht (Leiden: Brill, 1957), 52ff.

30. In 883 troops and representatives of the Egyptian and the Persian ruling dynasties, the Tulunids and the Saffarids, both nominally vassals of the waning Abbasid Caliphate, battled in the streets of Mecca over a question of precedence in a religious ceremony. The guilds mentioned above helped, "for good money," to decide the conflict in favor of the Egyptians. Cf. Snouck Hurgronje, *Mekka*, I, 46.

31. On *synoikismos*, see below, sec. *ii*:2 and sec. *ii*, n. 9.

32. Revolt in A.D. 532 of the "Blues" and the "Greens," political parties with a race-track background, which is also revealed by the name: *nika* means "wins." It was bloodily suppressed by Belisar.

ii

The Occidental City

1. *Character of Urban Landownership and Legal Status of Persons*

A striking contrast to the Asian conditions is presented by the city of the medieval Occident, in particular by the city of the lands north of the Alps wherever it developed in a form approximating the ideal type.

Like the Asian and Oriental city, the European city was a market center, the seat of trade and of the crafts, and a fortress. In both areas the cities had merchant and artisan guilds, and even the creation of autonomous constitutions by such guilds is found throughout the world, differences being questions of degree only. Again like the Asian city, both the ancient and the medieval city of the Occident—although with qualifications, to be specified later, in the case of the latter—contained the seigneurial seats of patrician families which held manorial estates

outside of the city in addition to urban properties, often large ones which in time were further increased out of the profits from the participation of the patriciate in the urban economic opportunities. Most Occidental cities of the Middle Ages also knew "lord protectors" and officials of outside political lords who exercised varying degrees of authority within the walls.

Finally, as in most of the rest of the world, the law applying to urban house lots differed in some way from that applying to agricultural land. But in the Occidental medieval city such differences in the real estate law constituted an essential feature, one that was almost never lacking except in certain transitional stages. Urban landed property was always alienable without restriction, inheritable, unencumbered with feudal obligations or obligated only to fixed rent payments, while peasant land was always restricted in multiple ways by rights reserved to the village, the manor, or both. In Asia and in the ancient world this distinctive treatment of urban real property cannot be observed with similar regularity.

If the contrast with respect to land law was only relative, the contrast between the East and the ancient world on the one hand and the medieval West on the other with respect to the legal status of the person was absolute. Everywhere, whether in the early Middle Ages or in Antiquity, in the Near or in the Far East, the city arose from a confluence and settling together of outsiders, and because of the poor sanitary conditions of the lower classes it was able to maintain itself only through continuous new immigration from the countryside. Hence it has everywhere contained the most varied social elements. Examined office candidates and mandarins live within the walls together with illiterates despised as "mere mechanicks" and with men of the (very few) impure occupations in East Asia. Castes of many kinds live together in the Indian city, members of the patrician clans and landless artisans in the cities of the Near East and of Mediterranean Antiquity, freedmen, serfs and slaves together with manorial lords, their court officials and servitors, *ministeriales* and mercenaries, priests and monks in the early medieval city. Seigneurial courts of all kinds could be located within the city, or the city itself with its entire territory could belong to the manor of a lord; the repair and the guard of the walls might then be entrusted to a group of castle vassals or to a stratum holding privileged "castle fiefs" or other special rights. Very strong status differences stratified the town dwellers of Mediterranean Antiquity. To a much lesser degree this is true also of the early Middle Ages and of Russia up to the threshold of the present, even after the aboli-

tion of serfdom. The Russian immigrant from the countryside continued to be legally bound to his village of origin, and the *mir* could force him to return by revoking his internal passport. To be sure, the non-urban status order was almost everywhere modified in certain ways within the city. In India this took the form that the emergence of specifically urban activities resulted in the formation of new castes which in fact, though not in law, were specific to the city. In the Near East, in Antiquity, in the early Middle Ages, and in Russia before the abolition of serfdom, an important influence was exerted by the development that the broad strata of town-dwelling slaves or serfs would in fact—although again this found no immediate recognition in the law—merely pay a money tribute to their lord, but otherwise would join the class of economically independent burghers on the same level with others who were legally free. The circumstance that the city was a market with relatively permanent opportunities to earn money through commerce or the trades induced many lords to exploit their slaves and serfs not as workers in their own houses or enterprises but as sources of annuities; they trained them to be artisans or small merchants and permitted them to pursue their livelihood in the city in return for the payment of a body rent (*Leibzins*); at times (as in Antiquity) they also equipped them with working capital. In the public construction works of Athens we can thus find slaves and free men employed for wages in the same piece-work category. In the Roman territories, unfree men—either *institores*[1] of their master or slaves working with their *merx peculiaris*[2] as independently as any small burgher—can be found alongside free men in the crafts and in retail trade as well as belonging to the same secret religious communities (mysteries). The possibility of purchasing his freedom intensified the economic effort especially of the unfree petty burgher; it is hence no accident that in Antiquity and in Russia a large part of the first fortunes acquired through continuous rational operation in trade or industry is found in the hands of freedmen. The Occidental city thus was already in Antiquity, just like in Russia, a place where *the ascent from bondage to freedom* by means of monetary acquisition was possible. This is even more true for the medieval city, and especially for the medieval inland city. In contrast to all known urban development elsewhere, the burghers of the Occidental city engaged in status-conscious policies directed toward this goal.

In the early period of ample economic opportunities, the inhabitants of the cities had a common interest in their full utilization. Population growth through immigration was seen as a way to increase the oppor-

tunities for sales and acquisition of every individual. For the same reason the burghers had a common interest in the elimination of the possibility that a serf, once he had become prosperous in the city, would be requisitioned for house and stable service by his lord, if for no other reason than to extort a ransom from him. This was repeatedly practiced by Silesian noblemen as late as the eighteenth century and by Russians still in the nineteenth century. The urban citizenry therefore usurped the right to dissolve the bonds of seigneurial domination; this was the great—in fact, the *revolutionary*—innovation which differentiated the medieval Occidental cities from all others. In the central and northern European cities appeared the well-known principle that *Stadtluft macht frei*,[3] which meant that after a varying but always relatively short time the master of a slave or serf lost the right to reclaim him. The principle was translated into fact to very differing degrees. Very often, in fact, cities were forced to promise not to admit unfree men, and with the narrowing of economic opportunities this barrier was often not unwelcome to them. Nevertheless, in general the principle prevailed. In the cities the status differences disappeared—at least insofar as they signified a differentiation between "free" and "unfree" men.

On the other hand, there developed in many of the northern European urban settlements, where originally internal political equality of the settlers and free election of the municipal officials had obtained, a stratum of *honoratiores:* Council-seated families (*Ratsgeschlechter*), monopolizing the municipal offices by virtue of their economic independence and power, became differentiated from the other burghers. Furthermore, in many cities of the South, but also in some rich Northern (including German) cities, even as in Antiquity, we find from the very beginning a division into *equites*—people who maintained a stable (we would call it a "racing stable" today since it was kept for tournament purposes)—or *Konstaffeln*[4] on the one hand, and common burghers on the other. The former group constituted a specifically urban nobility; hence this was evidently a status (*ständische*) differentiation.

However, this development was countered by another one tending to enhance the status unity of the urban citizenry, whether noble or not, vis-à-vis the non-urban nobility. Toward the end of the Middle Ages, at least in northern Europe, the "nobility" of the urban patricians was no longer acknowledged by the knightly nobility of the countryside because of their participation in economic acquisition and—this was particularly stressed—because they sat together with the craft guilds in the municipal governments. Consequently, the urban patriciate was denied the qualification for tournament, for participation in noble en-

dowments (*Stiftsfähigkeit*), connubium with the nobility and the capacity to enter into feudal relations and to hold fiefs (the latter in Germany with the only temporary exception of the burghers of the privileged "Free Imperial" cities).

Of the two trends, one toward a relative levelling of status differences, and the other toward more internal differentiation within the city, the latter generally dominated in the long run. At the close of the Middle Ages and at the beginning of modern times, nearly all Italian, English, French, and German cities—insofar as they had not become monarchical city states as in Italy—were ruled by a council-patriciate or a burgher corporation which was exclusive towards the outside and a regime of *honoratiores* internally; this was true even when—as a holdover from the period of crafts dominance—such notables were still obliged to maintain formal membership in one of the craft guilds.

The cutting of status ties with the rural nobility was carried out quite consistently only in the municipal corporations of northern Europe, while in the South, specifically in Italy, by contrast, almost the entire nobility moved into the cities as the power of the municipalities increased. This latter trait was even more characteristic of Antiquity, where the city originated precisely as the seat of the nobility. The ancient and, to a lesser extent, the medieval southern European city thus in a sense form a transitional stage in this respect between the Asian and the northern European city types.

Beside these differences, the decisive common quality of the ancient Occidental and the typical medieval city lies in the institutionalized association, endowed with special characteristic organs, of people who as "burghers" are subject to a *special law* exclusively applicable to them and who thus form a legally autonomous status group. This quality of the *polis* or *comune* as a special status group (*Stand*) can be found, as far as is known, in all legal systems other than the Mediterranean and Occidental only in the most rudimentary form. The most likely places [where its existence might still be shown by further research] would be Mesopotamia, Phoenicia, and Palestine at the time of the wars of the Israelite confederacy with the Canaanite city nobility; perhaps it might be found also in some maritime cities of other areas and periods. For instance, in the cities of the Fanti tribes of the Gold Coast, which were described by Cruickshank[5] and after him by Post,[6] a city king presided over a "council" as *primus inter pares* among the members, in whose hands were the court of law and the administration; the members included 1. the *cabboceers*, heads of patrician families distinguished by wealth and a socially appropriate style of life (hospitality and con-

spicuous consumption); 2. the elected foremen of the city quarters which were organized as military associations directed by elders and elected foremen, were quite independent of each other, and in fact often feuded with each other; 3. the *pynins*, hereditary police officials of the city quarters. Similar preformations of a polis or commune constitution may have appeared elsewhere in Asia or Africa. However, nothing is known of corporate "burgher rights."

2. *The Rise of the City as a Confraternity*

The fully developed ancient and medieval city was above all constituted, or at least interpreted, as a fraternal association, as a rule equipped with a corresponding religious symbol for the associational cult of the burghers: a city-god or city-saint to whom only the burghers had access. It is true that many Chinese cities also had a special god (often an apotheosized mandarin), but there he retained the character of a functional deity in the pantheon.

In the Occident, the association of the city community as such owned and controlled property. While the famous dispute of the Alids with the community over the "Gardens of Fadak"—the first economic cause for the separation of the *shi'ah*—was a conflict over dynastic versus community property, the "community" in whose name the representatives of the caliph claimed the land was the religious community of Islam, and not a political "community" of Mecca which, in fact, did not exist.[7] A "commons" owned by the urban settlement may have existed elsewhere, just as it did in village communities. Also, princes sometimes had specifically urban tax sources. But a municipal financial administration, such as was known in the ancient or medieval city, appears at best only in the barest rudiments.

One of the foremost factors responsible for the peculiarities differentiating the Mediterranean city of all periods from the Asian city is the absence of magical and animistic caste and sib constraints and of the corresponding taboos among the free townsmen. In China it has been the exogamous and endophratric sib, in India (since the victory of the patrimonial kings and the Brahmans) in addition the endogamous and exclusive caste with its taboos which has prevented any kind of fusion of city dwellers into an association of burghers based on religious and secular equality before the law, *connubium*, commensality, and solidarity against non-members. Because of the taboo-protected caste closure this applies to India even more strongly than to China; it is at least

in part due to this factor that India had a population which, from the legal point of view, was 90 per cent rural, whereas in China the city played a considerably more significant role. While for the inhabitants of an Indian city a communal cult meal was an impossibility, the Chinese, due to their sib organization and the overwhelming importance of the ancestor cult, had no need for one. However, only taboo-bound people like the Indians and (to a much lesser degree) the Jews went so far as to exclude even private commensality. In India this was taken to such length that even the mere glance of one outside the caste suffices to defile the kitchen.[8]

It was still true in Antiquity that the religious ceremonies of the *gens* were as inaccessible to non-members as was the Chinese ancestor cult. On the other hand, already for the ancient polis it was (according to the Hellenic tradition) one component of the (real or fictitious) act of "housing together" (*synoikismos*) that the individual *prytaneia* of the communities joining in the establishment of the city, the localities of their cultic meals, were replaced by a common city *prytaneion*.[9] This was originally an indispensable feature of the city which symbolized the commensality of the urban clans in the wake of their confraternization. Nevertheless, officially the ancient city at first continued to be organized in sibs and superordinate groups which often rested (at least fictionally) on common descent and formed strictly exclusive cult associations. Membership was purely personal [i.e., not territorial or occupational]. It was the belief of the ancient townsmen—which was not without practical consequences—that their cities had originated as freely-willed associations and confederations of groups which were partly of a clan character and partly (as is probable for the phratries) of a military character, and which in the later reorganizations of the cities had become schematized along technical-administrative lines. For this reason the cities of Antiquity were religiously exclusive not only toward the outside, but also internally against everyone who did not belong to one of the confederated sibs—that is, against the plebeians, and for this reason they remained compartmentalized into initially very exclusive cult associations.

With respect to this trait—that of a confederation of noble families—the southern European city of the early Middle Ages, especially the maritime city, closely resembles the ancient city. Within the walls each noble family had its own fortress or, if not, a fortress shared with other families, in which case its use was regulated in great detail (as is documented for Siena).[10] Feuds between noble families raged as violently within the city as outside, and some of the oldest urban ward systems (for example, the division into *alberghi*) presumably were delimitations

of feudal power claims. However, it is most important that there were no residues—such as had still been present in Antiquity—of religious exclusiveness of the sibs toward each other and toward the outside. This was a consequence of the historically memorable event which Paulus justly thrust into the foreground in his Epistle to the Galatians: that Peter, in Antiochia, had partaken of the (ritual) communal meal with uncircumcised brethren [*Gal.* 2]. Ritual exclusiveness had already begun to wane in the ancient city; the clanless *plebs* obtained at least the principle of ritual equality. In medieval Europe, especially in the central and northern European cities, ritual exclusiveness was never strong, and the sibs soon lost all importance as constituencies of the city. The city became a confederation of the *individual* burghers (heads of households), and the membership of the burghers in non-urban associations also lost all practical significance for the city commune itself. Already the ancient polis was thus on the road to becoming an institutionalized "commune" (*Gemeinde*) in the mind of its inhabitants. However, in Antiquity the concept of the "commune" was fully differentiated from that of the "state" only with the city's incorporation into the large Hellenistic or Roman territorial states, which at the same time robbed the city of its political independence. The medieval city, by contrast, was a "commune" from the very beginning, even though the legal concept of the "corporation" as such was only gradually formulated.

3. *A Prerequisite for Confraternization: Dissolution of Clan Ties*

In the Occident, taboo barriers like those of the Indian and Equatorial areas were absent, as were the magical totemic, ancestral and caste props of the clan organization which in Asia impeded confraternization into a city corporation. A thorough totemism and the casuistic adherence to sib exogamy arose—probably at a relatively late point of time—precisely in those areas where large-scale politico-military and, in particular, urban associations never developed. In the religions of Western Antiquity we find only traces of these phenomena, either residuals or rudiments. The reasons for this, insofar as they are not specifically religious, can only be vaguely guessed. The mercenary soldiering and the piratical life of the early period, the military adventures, and the numerous inland and overseas colony foundations, inevitably leading to intimate permanent associations between tribal or at least clan

strangers, seem with equal inevitability to have broken the strength of the exclusive clan and magical ties. Even though in Antiquity clan ties were everywhere artificially reinstituted, for tradition's sake, by the division of the newly founded communities into "gentile" associations and phratries, it was not the sib association but the military association of the polis which now constituted the basic unit. The century-long wanderings of conquering warrior-associations of the Germanic tribes before and during the Great Migration (*Völkerwanderung*), their mercenary soldiering and their war expeditions under elected leaders, must have resulted in an equal number of impediments to the rise of taboo and totemic ties. Even though they are said to have settled, wherever possible, according to real or fictitious sibs, other forms of association were much more important. The legislative-judicial and military association of the "hundreds," the "hide"-system as the basis for the allocation of public burdens, later the relationship to a prince: following and vassaldom—these were the decisive elements, and not some magical clan ties which never really developed, perhaps precisely because of these circumstances. When Christianity became the religion of these peoples who had been so profoundly shaken in all their traditions, it finally destroyed whatever religious significance these clan ties retained; perhaps, indeed, it was precisely the weakness or absence of such magical and taboo barriers which made the conversion possible. The often very significant role played by the parish community in the administrative organization of medieval cities is only one of many symptoms pointing to this quality of the Christian religion which, in dissolving clan ties, importantly shaped the medieval city. Islam, by contrast, never really overcame the divisiveness of Arab tribal and clan ties, as is shown by the history of internal conflicts of the early caliphate; in its early period it remained the religion of a conquering army of tribes and clans.

4. *Extra-Urban Associations in the Ancient and Medieval City*

Let us recapitulate the basic distinctions. A common trait of all cities in the world is that they were to a large extent settlements of people previously alien to the given location. Chinese, Mesopotamian, Egyptian, and occasionally even Hellenistic warlords founded cities, relocated them, and settled in them not only voluntary immigrants but also human livestock rustled from here and there as need and oppor-

tunity dictated. This was most pronounced in Mesopotamia, where the forced settlers first had to dig the canal which made possible the construction of the city in the desert. As the prince with his official administrative apparatus in such cases remains the absolute master, no municipal association can develop or only the most feeble beginnings of one. The urban population often retains its tribal identity with connubial segregation or, where this is not the case, it at least retains the membership in its former local and clan associations. Not only the Chinese town-dwellers normally stayed members of their rural communities of origin, but also broad strata of the non-Greek population of the Hellenistic Orient. Thus, the legend of the New Testament justifies the birth of the Nazarene in Bethlehem with the explanation that the sib of his father had its land there (its *Hantgemal,* in the words of the [9th century] German translation, the *Heliand*),[11] for which reason—thinks the legend—it also had to undergo the census count there. The situation of the Russian peasant migrating into the city was no different until very recently: he retained his right to the land as well as the duty to share, upon demand of the village community, in the public burdens of his native village. Under such circumstances no legal status of urban citizenship (*Stadtbürgerrecht*) arose, but only an association for sharing the burdens and privileges of those who happened to inhabit the city at any given time.

The Hebraic *synoikismos,* too, was based on sib associations. The reconstitution of the polis of Jerusalem by Ezra and Nehemiah was effected, as the tradition has it, according to clans, namely by settling together delegations of each rural sib which possessed full political rights; only the clanless, politically rightless *plebs* was organized according to place of origin.[12] Even though a man was a citizen as an individual in the ancient Greek and Roman city, [he obtained this quality] originally only as a member of his sib. Every Hellenic and Roman *synoikismos* and every colonizing conquest of early Antiquity took a form, at least according to tradition, which was similar to the reconstitution of Jerusalem, and even Democracy was initially unable to abolish the organization of the citizenry into sibs (*gentes*) and the superordinated phratries and phylae, but had to rely on indirect means to render politically innocuous these purely personal cult associations which were dominated by the aristocratic families.

In Athens, qualification for the "legitimate" offices was restricted to members of clans which had a cult center (a Ζεὺς ἑρκεῖος). The Roman tradition knows of many cases of cities founded through the settling together of natives and peoples of alien tribes; ritual acts confirmed the

formation of a fraternal religious community out of the separate elements, with a communal hearth and a municipal god housed on the capitol, but at the same time the population was organized into *gentes* (clans), *curiae* and *tribus* (the latter two the equivalents of the Greek phratries and phylae). These divisions, an indispensable feature of every ancient city, quite early became to be created artificially (as is indicated by the round numbers of such units—typically 3, 30, or 12) for the allocation of the public burdens. Nevertheless, membership in one of these associations remained the distinguishing mark of the citizen with full rights, entitled to participation in the religious cult and qualified for all offices which required communication with the gods (in Rome: participation in the *auspicia*). It was the need to qualify for participation in the religious rites which made such membership indispensable, for an association with claims to legitimacy could rest only on the basis of the traditional, ritually oriented organizational forms such as the clan, the military association (phratry), and the political tribal association (*phyle*), or at least had to create such a basis by fiction.

All this was quite different in the medieval "founded" cities, particularly in the North. Here, at least in a new foundation, the burgher joined the citizenry as an individual, and as an individual he swore the oath of citizenship. His personal membership in the local association of the city guaranteed his legal status as a burgher, not his tribe or sib. Here, too, the city foundations often encompassed persons originally foreign to the particular locality and at times even merchants of altogether alien extraction. At least in the case of new foundations this happened when the founders extended the privileges of citizenship to all comers; of course it occurred to a much lesser degree when old settlements were transformed into cities. As is quite natural, the foreign merchants attracted from the entire Western orbit, from Rome to Poland, who are documented in Cologne, did not become members of the urban *coniuratio* [of A.D. 1112], the creation of which was, rather, the work of precisely the native propertied strata. Nevertheless, sometimes even complete foreigners were enfranchised.

A special position, corresponding to that of the "guest peoples" in Asia, was occupied in the medieval cities only by the Jews—a fact which in itself is interesting. In an Upper Rhine document, it is true, a bishop stresses that he invited Jews into his town "for the greater glory of the city,"[13] and in the [12th century] Cologne parish documents registering real estate transactions, the *Schreinsurkunden*, the Jews appear as owners of lots intermingled with those held by Christians.[14] Nevertheless, the ritual exclusion of *connubium*—otherwise foreign to the Occident—and the actual impediments to table community between Jews

and non-Jews, but above all the absence of a common share in the ritual of the Lord's Supper, effectively prevented fraternization. The medieval city, after all, was still a cultic association. The city church, the city saint, participation of the burgher in the Lord's Supper, the official celebrations of the church holy days—all these are obvious features of the medieval city. But the *sib* had been deprived of all ritual significance by Christianity, for by its very nature the Christian congregation was a religious association of individual believers, not a ritual association of clans. The Jews, therefore, remained from the beginning outside the burgher association.

In spite of all this, the medieval city, just like the ancient city, was a secular foundation, even though it still required the bond of a shared cult and ecclesiastic parishes were often (perhaps always) among its constituencies. The parishes acted not as ecclesiastic associations nor by means of ecclesiastic representatives, but rather through the lay elders of the parish communities who, together with the purely secular board of *Schöffen* and at times the merchant guilds, participated on behalf of the burghers in the legally decisive acts. Full membership in the ecclesiastic community was the prerequisite for urban citizenship, rather than birth into a sib which satisfied certain cult requirements as in Antiquity. Initially, the differences between the medieval and the Asian city were not as yet of a fundamental nature. The local god, corresponding to the local saint of the medieval city, and the cult community of the citizens were indispensable elements of all early cities of Near Eastern Antiquity. However, the resettlement policies of the men-hunting Great Kings apparently destroyed this tie between the cult community and the city and turned the city into a purely administrative district within which all inhabitants, whatever their tribal or cult membership, shared the same manner of life and the same opportunities. Evidence for this conclusion may be seen in the fate of the Jews carried into [the Babylonian] Exile: only the state offices, which demanded a knowledge of writing and apparently also ritual qualifications, seem to have been closed to them. Officials of the urban "commune" or municipality as such do not seem to have existed in the [Near Eastern] cities. The various foreign groups, just like the exiled Jews, had their own elders and priests—in other words, they remained "guest peoples." In pre-Exile Israel, the metics (*gerim*) stood outside the ritual community (they were originally not required to be circumcised); among these we find almost all the artisans.[15] Hence they were guest tribes, just like those of India. There it was the caste taboo which ruled out ritual confraternization of the city inhabitants. In China, each city had its own god (often a former mandarin of the city who had become the object of a cult).

But in all Asian cities, including the Near Eastern ones, the phenomenon of a "commune" was either absent altogether or, at best, present only in rudiments which, moreover, always took the form of kin-group associations that extended also beyond the city. The religious commune of the Jews after the Exile, [a seeming exception,] was ruled in a purely theocratic manner.

5. *The Sworn Confraternization in the Occident: Legal and Political Consequences*

The Occidental city—and especially the medieval city, which for the time being shall be our only concern—was not only economically a seat of trade and the crafts, politically in the normal case a fortress and perhaps a garrison, administratively a court district, but beyond all this also a sworn confraternity. In Antiquity the symbol of a confraternity was the joint election of the *prytaneis*.[16] In the Middle Ages the city was a sworn *comune* which had the legal status of a corporation, although this was attained only gradually. Hatschek points out that as late as 1313 English cities could not obtain a "franchise" because, to put it in modern terms, they had no "legal personality"; only under Edward I [1272–1307] had cities first appeared as corporations.[17]

Everywhere, not only in England, the burgher associations of the emerging cities were initially treated by the political power, the lord of the city, as passive liturgical associations of urban land owners who shared in certain specific tasks and duties as well as privileges: market monopolies and staple rights, rights of practicing and of controlling the practice of certain trades, participation in the city court, special military and taxation treatment. Moreover, the economically most important of these privileges initially were not in a formal legal sense acquisitions of the burgher associations, but the property of the political or manorial lord of the city. It was he, rather than the burghers, who formally acquired these important rights which were to the immediate economic advantage of the burghers; the lord's indirect financial benefit lay in the tax resources which he thus developed. In Germany, for instance, such rights were in the oldest cases royal grants to a bishop, on the basis of which he could and did treat his town-dwelling subjects as privileged. At times, as in Anglo-Saxon England, permission to settle in the market town was an exclusive privilege of the neighboring manorial lords, to be bestowed upon their own serfs only (but not upon those of any other lord), whose revenues they then proceeded to tax. The urban court was

either a royal or a seigneurial court; the *Schöffen*[18] and other court functionaries were not representatives of the burghers, even when they were elected by them; as officials of the lord they judged according to his statute. The *universitas civium*, which term soon appears everywhere, thus was initially heteronomous and heterocephalous; it was incorporated in other political and frequently also in manorial associations. However, this situation did not remain unchanged for long.

The city became an institutionalized association (*anstaltsmässige Vergesellschaftung*), autonomous and autocephalous (even though to varying degrees), an active "territorial corporation"; the urban officials, in their entirety or in part, became officials of this institution (*Anstalt*). It is of great importance for the development of medieval cities that from the very beginning the privileged position of the burgher was a right of the individual also vis-à-vis outside parties. This was not only a consequence of the "personalist" approach to law, common to both Antiquity and the Middle Ages,[19] under which the members of a group were considered to have—as a matter of group privilege—a "subjective" right to be dealt with under a common "objective" law. Another source for this position of the burgher, especially for the Middle Ages, is to be sought, as Beyerle stressed quite correctly,[20] in survivals from the Germanic judicial system and in particular in the concept of the *Ding*-community. As an active member in that community —and that means, as a judge in the *Ding*-court—the burgher and member of a legally autonomous group himself creates the "objective" law to which he is subject. We have previously spoken about the significance of this institution for the formation of law.[21] A right of this type did not exist for those subject to the law of almost all cities of the world. (Only in Israel can traces of it be found, and we shall see what special circumstances caused this exception.)

For the development of the medieval city into a burgher association two circumstances were of central significance: on the one hand, the fact that at a time when the economic interests of the burghers urged them toward institutionalized association (*anstaltsmässige Vergesellschaftung*) this movement was not frustrated by the existence of magic or religious barriers, and on the other hand the absence of a rational administration enforcing the interests of a larger political association. Even if only one of these conditions was violated—as in Asia—the strongest common economic interests of the city inhabitants enabled them to achieve no more than transitory unification. The rise of the medieval autonomous and autocephalous city association, with its administrative council headed by the *Konsul, Majer* [mayor] or *Bürger-*

meister, is a process that differs in its very nature not only from the development of the Asian city but also from that of the ancient polis. We will have to discuss this in detail later [*infra*, ch. XVI:*iii*:6–8], but may note now that the specifically urban constitution of Antiquity under the domination of *honoratiores* from the militarily qualified sibs always represented—and most pronouncedly so in its most typical examples—a transformation of the power of the city king on the one hand, and of that of the sib elders on the other. Especially in those medieval cities which are most typical for their time, matters were quite different.

In the analysis of this process it is, however, indispensable to keep apart the formal juridical and the sociologically and politically relevant aspects—a precaution which has not always been observed in the disputes over the various "city theories." In a formal legal sense the corporation of the burghers and its authorities had their "legitimate" origin in (real or fictitious) privileges granted by the political and at times by the manorial powers. It is true that to some extent the actual process corresponded to this formal pattern. But quite often, and especially in the most important cases, the real origin is to be found in what is from the formal legal point of view a revolutionary usurpation of rights. To be sure, this cannot be said of all cases. We can distinguish a "spontaneous" and a "derived" formation of medieval city associations. In the "spontaneous" case, the commune was the result of a political association of the burghers in spite of, or in defiance of the "legitimate" powers or, more correctly, of a series of such acts. Formal recognition by the legitimate authorities came only later, if at all. A "derived" burgher association was formed through a contracted or legislated grant of more or less limited rights to autonomy and autocephaly, issued by the city founder or his successors; it is found frequently in the case of new foundations as a grant to the settlers and their descendants.

The "spontaneous" usurpation through an act of rational association, a sworn confraternization (*Eidverbrüderung*: *coniuratio*) of the burghers, is found especially in the bigger and older cities, such as Genoa or Cologne. As a rule, however, a combination of events of both kinds occurred. In the documentary sources of urban history, which by their nature overemphasize the continuity of legitimacy, such usurpatory confraternizations are as a rule not mentioned at all; it is usually only by accident that one can be documented. As a result, the frequency of the "derived" origin is almost certainly overrepresented in the sources, at least with respect to cities which were already going concerns at the time of the commune formation. Only a single laconic note mentions the Cologne *coniuratio* of 1112. The *Schöffenbank* of the Cologne *Altstadt*

and the parish representatives particularly of the Saint-Martin suburb, the new settlement of the *mercatores*, probably appear on the documented transactions precisely for the reason that they were "legitimate" authorities.[22] And the opponents of the burgher association, the city lords, would naturally always be ready to make an issue of questions of formal legitimacy, such as (in Cologne) that some of the aldermen had not sworn an oath [of obedience],[23] or to use similar pretexts for complaint. It was, after all, in such things that usurpatory innovations would find their formal expression. The edicts of the Hohenstaufen emperors against urban autonomy took a different line: they did not forbid this or that form of legal innovation, but the very *coniurationes* themselves.[24] It is quite indicative of what strata were the driving power behind such acts of usurpation that in Cologne, even at a much later time, the *Richerzeche* (guild of the rich), which from the point of view of legitimacy was nothing but a private club of wealthy citizens, could successfully assert the right to confer citizenship—a quality which was legally quite independent from membership in this club. The majority of the larger French cities obtained their urban constitutions in a similar way through acts of sworn confraternization of the burghers.

6. *The* coniurationes *in Italy*

The real home of the *coniuratio*, however, is obviously to be found in Italy.[25] In the overwhelming majority of cases the city constitution was here formed in the "spontaneous" way, by *coniuratio*. It is in Italy, therefore, that in spite of the ambiguity of many sources the sociological meaning of the burgher association can best be determined. Its general precondition was the partly feudal, partly prebendal appropriation of powers of domination characteristic for the Occident. We have to picture urban conditions prior to the *coniuratio* on the whole as rather similar, in spite of differences in detail and between cities, to the peculiar anarchy prevailing in Mecca, which for this reason was described above at some length. Numerous claims to authority stand side by side, overlapping and often conflicting with each other. Episcopal powers of seigneurial and political nature; appropriated vicontiel and other political office powers resting partly on chartered privileges and partly on usurpation; powers of great urban feudatories or freed *ministeriales* of the king or the bishops (*capitanei*); those of rural or urban subfeudatories (*valvassores*) of the *capitanei*;[26] allodial clan properties of most varied origin; countless owners of castles fortified on their own

authority or that of some other power, a privileged estate wielding authority over a broad stratum of *clientes*, either bound or free; occupational unions of the urban economic classes; judicial powers based on manorial law, on feudal law, on territorial law and on ecclesiastic law —all these are found in the same city. Temporary treaties, similar to the "ties" of the Meccan patrician sibs, interrupted the feuds of the armed interests within and outside the city walls. Officially the legitimate lord of the city was either an imperial vassal or—as in most cases—the local bishop; by virtue of his combination of secular and religious instruments of power, the latter usually stood the best chance of imposing an effective rulership.

The type of *coniuratio* which under the name of a *compagna communis*[27] or some similar designation prepared the way for the political association of the later "city" was likewise concluded for a concrete purpose, and usually for a definite time period or until further notice; it could thus be dissolved again. At times, during the early period, several such "companies" can be found within the same city walls, but permanent significance was reached only by the sworn association of the "whole" community—i.e., of all those groups which at the given time effectively claimed and held military power within the city. In Genoa this association was at first renewed every four years. The opponent varied with the conditions of the locality. In Milan the *coniuratio* of the arms-bearing townsmen of A.D. 980 was directed against the bishop, while in Genoa the bishop and the vicontiel families (who had appropriated the secular seigneurial rights—later on transformed into tax claims) seem initially to have been members of the urban *coniuratio*.[28] But here, too, the later *compagna communis* was directed against the power claims of the bishop and the Visconti.

The immediate positive aim of the sworn confraternity was the unification of the local landowners for protective and defensive purposes, for the peaceable settlement of internal disputes, and for the securing of an administration of justice in correspondence with the interests of the townsmen. But there were further goals. One was the monopolization of the economic opportunities offered by the city: only the members of the sworn association were to be permitted to share in the commerce of the city. In Genoa, for example, membership was a prerequisite for permission to invest capital in overseas trade in *commenda* partnerships. Another aim was the delimitation of the obligations owed to the city lord: the replacement of arbitrary taxation by fixed lump sum payments or by high [but determinate] annual payments. Finally, the city association took in hand the military organization for the purpose of expand-

ing the political and economic power sphere of the commune against the outside. Hence we find, only a short time after the formation of the *coniurationes*, the beginning of the wars of the communes against each other, which by the early eleventh century had already become a chronic phenomenon.

Within the city, the mass of the burghers was forced to join the sworn confraternization. The noble and patrician families which had founded the association would administer an oath to all inhabitants qualified by landownership; those who did not agree to take it were forced into exile. This was not always immediately accompanied by a formal change in the existing organization of offices. The bishop or secular city lord often retained his position as head of an urban district which continued to be administered through his *ministeriales;* the great transformation was felt only in the existence of the burgher assembly.

But this did not continue for long. In the last decades of the eleventh century annually elected *consules* appear everywhere, often numbering up to a dozen or more; officially they were elected by the citizenry directly or by an electoral college of *honoratiores*, itself in theory elected by the burghers but in practice merely certified by acclamation, which probably always usurped the right to nominate the officials. The consuls, salaried and entitled to take fees, completed the revolutionary usurpation by seizing all or the major part of judicial powers and the supreme command in wartime; they administered all affairs of the commune. In the beginning the consuls seem to have been often recruited from the noble judicial officials of the episcopal or seigneurial *curia*, who now obtained office from the sworn burgher fraternity by election rather than from the city lord by appointment.

A college of *sapientes* (sages), often called the *credenza*, strictly controlled the consuls; it was formed at times by the former [i.e., episcopal or seigneurial] *scabini*, at times by *honoratiores* appointed by the consuls themselves or by an electoral college. In practice it usually consisted of the heads of the economically and politically most powerful families, who divided these positions among themselves.

The initial *coniurationes* still observed the status separation into vassals (*capitanei*), subvassals, *ministeriales*, castle lords (*castellani*), and *cives meliores*—that is, persons economically qualified for military service; office and council positions were assigned proportionally to these groups. However, very soon the anti-feudal character of the movement came to the fore. It was forbidden to the consuls to accept fiefs or to "commend" themselves as vassals to a lord. The razing of the imperial, episcopal and seigneurial castles within the city, their removal

to a place without the walls (this is found especially in the city privileges granted by the Salic emperors), the establishment of the principle that no castles could be built within a specified area around the city and that the emperor or other city lords should not have the right to be quartered within the city walls—these were among the first *political* achievements of the new regime, obtained either by force or by extorted or purchased grant from the emperor or the bishop.

The main *legal* achievement of the urban revolutions was the creation of a special trial procedure which excluded irrational means of evidence and in particular the test by duel (this is mentioned in many eleventh century privileges). The same interests thus assert themselves here as were catered to by the concessions of the English and French crowns to the burghers. The legal gains further comprised the prohibition against hailing burghers before non-urban courts, and the codification of a special rational law for urban citizens which the court of the consuls was to apply.

In this manner the purely personal and temporary *coniurationes* developed into permanent political associations whose members were collectively, as urban citizens, subject to a special and autonomous law. Formally, the new urban law signified the extinction of the old personality principle of the law. Substantively, it meant the destruction of the feudal associations and of patrimonialism, but not yet in favor of the principle of general compulsory membership for all inhabiting a given territory. The "bourgeois" law was, rather, a status right of the members of the sworn fellowship of burghers; one was subject to it by virtue of membership in a status group which comprised the full citizens and their dependent clients. Even in the sixteenth century we still find in areas where the domination of the noble families in the cities had been preserved—as, for instance, in most Dutch communities—that the urban delegations to the provincial diets and to the Estates General did not represent the city as such, but only the urban nobility; this is revealed by the fact that frequently, in addition to the patrician delegation, representatives of the craft guilds or other non-noble strata of the same city appear, who voted separately and definitely were not combined with the delegation of the patriciate of their city into a common city representation. This particular phenomenon did not appear in Italy, but in principle the situation was often similar. Although normally the urban nobility should at least have severed its ties with the feudal association, this was by no means always the case. The nobleman usually owned castles and manorial estates outside the walls in addition to his townhouse, and was thus as a feudal lord and fellow landowner a member

also of political associations other than that of the urban commune. In the early period of the Italian *comune* the municipal regiment was in practice firmly in the hands of families with a knightly style of life, regardless of whether the act of consociation formally prescribed a different arrangement and of whether the non-noble strata had in the past even effectively obtained a temporary share in the regiment. The military importance of the knighthood gave it predominance.

In northern Europe, particularly in Germany, the old scabinic families (*Schöffengeschlechter*) played a decisive role to an even stronger degree than in the South, retaining administrative control in the early period even formally, or at least informally by combining offices in a personal union. At times, depending upon the distribution of power, the previous agents of the city lord, especially of the bishops, the dependent seigneurial servitors (*ministeriales*), also regained a share in the administration. Especially in cases where the usurpation had not been completely effective—and this was not infrequent—the lord, usually a bishop, obtained membership in the council for his *ministeriales*. In large cities like Cologne and Madgeburg the bishops had staffed their administration entirely or in part with free "bourgeois" *Schöffen;* these now tended to turn from sworn officials of the city lord into sworn representatives of the commune, associated with representatives of the *coniuratio* or sharing the administrative tasks with them. In the cities of Flanders, Brabant and the Low Countries, *échevins* appointed by the count began to be joined in the thirteenth century by town councillors or *jurati* (i.e., sworn delegates—their very name indicates the origin in an usurpatory *coniuratio*) and by "burghermasters." These administrative representatives of the burgher strata were usually organized into separate "colleges," although at times they met with the *échevins* in a common assembly. They were delegates of a burgher fraternity which in Holland continued to exist into a later period as the corporation of the *Vroedschap*.[29]

One must picture the conditions of this early period as very unstable, with almost no formal regulation of the distribution of powers and competencies. Personal influences and connections were decisive as individuals gathered functions of many types into a single set of hands. A formally separate municipal administration with special office buildings and a town hall did not exist. In Italy as in Cologne, the citizenry ordinarily assembled in the cathedrals, while the executive committees probably met in private houses or in club rooms. Meetings in club houses can be specifically documented. During the time of the revolutionary usurpation in Cologne [early 12th century] the "house of the rich" (*domus divitum*) seems to have been identical with the "house

of the burghers" (*domus civium*), i.e., the seat of the administration, just as the leaders of the club of the rich—the *Richerzeche*—must to a large extent then and later have been identical with the holders of the scabinic and other important municipal offices. Both of these hypotheses presented by Beyerle are almost certainly correct.[30] An urban knighthood as significant as that in Italy did not exist in Cologne. In England and France the merchant "companies" played the leading role.[31] In Paris, the wardens of the hanse of water merchants were even formally recognized as representatives of the citizenry.[32] In most of the large and old French cities, too, the urban communes originated in revolutionary usurpation by associations of burghers, merchants and urban *rentiers* who either united with the resident knights—as in the South—or with the *confraternitates* and guilds of the artisans—as in the North—to seize political power.

7. *The* confraternitates *in the Germanic North*

Associations such as the above-mentioned were not identical with the *coniuratio*, but they played an important role in its genesis, especially in the North. Due to the lack of an urban knighthood, the sworn confraternities of the Germanic North displayed archaic traits that were largely missing in the southern European countries. The confraternities might, of course, be specifically created for the purpose of political association and usurpation of power from the city lord. But the revolutionary movement in the North and in England could also take its point of departure from the mutual protection guilds (*Schutzgilden*) which had there sprung up in great numbers. These had by no means been primarily created for the purpose of influencing political conditions. Originally they were substitutes for something their members frequently very much missed in the early medieval city: the backing of a clan, and its protective guarantees. They provided the services otherwise supplied by the clan: help in case of personal injury or threats, aid in economic distress, elimination of feuds between members by means of peaceful conciliation, and payment of the wergild liabilities of members (in an English case[33]). The guilds provided for the members' social needs by holding periodic feasts—a practice traceable to pagan ritual meals—and for his funeral with the participation of the brethren; they guaranteed salvation of his soul through good deeds and secured for him from the common treasury indulgences and the benevolence of powerful saints. It goes without saying that such protective associations also represented joint interests, including economic interests.

While the city unions in northern France were primarily sworn peace unions without other guild attributes, the Nordic and English city unions regularly bore the character of a guild. In England the typical form of the city union was the [single] Gild Merchant, which monopolized retail trade within the city.[34] The German merchant guilds were in the majority of cases specialized in terms of particular branches of trade as, for example, the often powerful drapers' guild and the retailers' guild. This branch differentiation led to the use of the guild as the organizational form of long-distance trade—a function which does not concern us here.

The cities did not, as was thought by many,[35] originate in the guilds. But the converse is always true: the guild originated in the cities. Furthermore, the guilds actually obtained domination only in a small number of cities (primarily in the North, and especially in England, as *summa convivia*);[36] it was rather the patrician "families"—not at all identical with the guilds—who initially seized power in the cities. For the guilds were not identical with the *coniuratio*, the sworn city union. Lastly, it should also be noted that the guilds were never the only type of association in the city. Beside them we find the religious associations, comprising representatives of several or of all occupations, and the purely economic, occupationally differentiated associations, the craft guilds (*Zünfte*).[37] Throughout the Middle Ages the creation of religious unions, the *confraternitates*, occurred alongside that of associations with a political, guild or craft character, and the two types of movements overlapped and intersected in many ways. Especially among the artisans the religious associations played a significant role, which varied over time. The fact that the oldest documentable religious society of artisans in Germany, the *fraternitas* of the Cologne bedsheet weavers (*Bettziechenweber*) of 1149, is younger than the corresponding occupational association[38] does not in itself prove that the occupational union, or rather the specifically professional purpose of the union, has everywhere been the original and earlier form of organization. Nevertheless, for the craft guilds this seems to have been the rule. It may be explained with the supposition that the associations of free craftsmen, at least outside of Italy, had been formed in the image of the seigneurial organization of dependent tributary artisans in units headed by a master. But in other cases the religious *fraternitas* may have been the crystallization-point for the later occupational association. Thus, as recently as in the last generation, the formation of a Jewish trade union in Russia would begin with the purchase of the articles most important for the orthodox Jew: the rolls of the Torah. Similarly, numerous medieval

associations of a basically occupational orientation would bring social and religious interests to the fore or would at least, if they were primarily occupational, attempt to obtain some religious recognition. This was done by most guilds and in fact by all types of associations in the Middle Ages. This was by no means merely a cover-up for strong material interests. The fact that the earliest conflicts of the journeymen associations of later centuries arose not over working conditions, but over questions of religious etiquette, such as rank order in processions and similar problems, demonstrates again how strongly even the status evaluations of the clanless burgher were conditioned by religious elements. But at the same time the other important point becomes quite clear: the enormous contrast between this type of social situation and that of taboo-closed castes which would have precluded any kind of confraternization into a commune.

By and large, the membership of these religious and social fraternities, whether they be thought older or younger in origin, was only approximately coterminous with that of the official occupational associations, the merchant companies and craft guilds, of which we will have to say more later on. The occupational groupings themselves, in turn, were not always, as is often believed, splinter organizations which had withdrawn from an original unitary guild of all burghers (although this did in fact occur at times), for some of the craft guilds were considerably older than the oldest *coniurationes*. Nor were occupational unions initial stages or forerunners of *coniurationes*, for they appear throughout the world, even where no burgher commune has ever arisen. The effect of all these associations was essentially indirect. They facilitated the city union by habituating the burghers to the formation of coalitions in the pursuit of common interests, and by providing models for the cumulation of leadership positions in the hands of persons who had gained experience and social influence in the direction of such associations.

It was quite natural, as the further development confirms, that in the North, too, it should everywhere have been the rich burghers with an interest in the independence of urban trading policy who actively participated alongside the nobility in the formation of the *coniuratio*, financed it, kept the movement going, and forced the mass of the citizenry to adhere to it by swearing the oath—an activity of which the right of the Cologne *Richerzeche* to grant membership in the commune is apparently a survival. Wherever economic associations of the burghers participated at all in the *coniuratio* movement alongside the patrician "families," only the merchant guilds were normally involved. In England we find the petty burghers, at that time in revolt against the merchantry, complaining as late as the reign of Edward II [1307–1327]

that the *potentes* were demanding oaths of obedience from them and from the craft guilds, and that they were levying taxes by virtue of such usurped powers.[39] Similar phenomena could probably observed in most of the "spontaneous" cases of usurpatory urban confraternization.

Once the revolutionary usurpations had met with success in several large cities, the political lords who founded new cities or granted new charters to existing ones hurried, for reasons of competition, to concede to their burghers varying portions of the rights elsewhere obtained without waiting for the formation of formal unions. Thus the attainments of the city unions tended to spread universally. This was further aided by the fact that the entrepreneurs managing the settlement operation or the prospective settlers themselves, wherever they carried sufficient weight vis-à-vis the city founder by virtue of wealth or social rank, secured charters that granted the use of the municipal law of one of the old-established cities. Thus the burghers of Freiburg received a charter grant of the Cologne law, numerous South German cities were chartered with the law of Freiburg, and Eastern cities received the law of Magdeburg. In disputed cases the court of the city whose law had been granted was appealed to for authoritative interpretation. The wealthier the settlers desired by a city founder, the larger were the concessions he found himself forced to grant. The 24 *coniuratores fori* in Freiburg, for instance, to whom Konrad von Zähringen vowed the preservation of the liberties of the burghers in his new city,[40] played a role equivalent to that of the *Richerzeche* in Cologne. They were granted considerable personal privileges, and as *consules* of the commune they initially had the city government in their hands.

Among the most important attainments that were gained when princes or manorial lords founded a city or granted privileges to it was the organization of the citizenry as a "commune" (*Gemeinde*) with its own administrative organs. In Germany these were headed by a "council" (*Rat*), which was considered an indispensable aspect of a "city" and its freedom. The burghers claimed the right of autonomously appointing its members—a right which was not obtained without struggle. As late as 1232, Emperor Frederick II prohibited all city councils and mayors instituted by the burghers without consent of the bishops, and the Bishop of Worms obtained for himself or his representative the chairmanship in the council and the right to appoint its members.[41] In Strassburg toward the end of the twelfth century a council, consisting of representatives of the citizenry and five episcopal *ministeriales*, replaced the bishop's administration. In Basel the bishop managed to obtain an Imperial edict abolishing the council even though, as Hegel

assumes,[42] its original establishment had been approved by the Emperor himself. But in numerous South German cities the town magistrate (*Schultheiss*) appointed or confirmed by the lord remained the actual head of the city; the burghers could get rid of this control only by purchasing the office from the city lord. In the documents of almost all South German cities we find with increasing frequency, beside the *Schultheiss*, a *Bürgermeister*, who in the end generally assumes first rank. In contrast to the *Schultheiss*, he was always a representative of the city guild, and his office thus originated in usurpation, not in the seigneurial administration. However, this fourteenth-century *Bürgermeister* was—due to the different social composition of many German cities—usually no longer a representative of the patrician families, as the Italian *consules* had been, but rather the representative of the occupational associations. Thus he belongs to a later stage of development, whereas the German counterparts of these Italian magistrates were the *scabini non jurati* and *consules* of an earlier period.[43]

In the beginning, active membership in the burgher association was bound up with possession of urban land which was inheritable and transferable, exempt from compulsory services, and either free of a seigneurial charge (*Zins*) or charged only with a fixed amount. However, urban land was for city purposes subject to a municipal tax (*Schoss*); in Germany, in fact, this became the identifying characteristic of bourgeois land tenure. Later other kinds of property also became subject to municipal taxation, especially money or monetary metals. Townsmen not possessing land of this kind originally could only be protected guest residents of the city, regardless of their social status.

8. *The Significance of Urban Military Autonomy in the Occident*

The right to participate in urban offices and in the council underwent various changes which shall be discussed in the next section. But first we must once again raise the question of what ultimately caused the development of cities to start around the Mediterranean, and later in Europe, while preventing it in Asia. One answer has already been supplied, namely, that the development of an urban *confraternity*, and thus of an urban *commune*, was elsewhere impeded by the magic ties of the sib association and, in India, of the castes. In China the sibs were the bearers of the central religious concerns, the ancestor cult, and were therefore indestructible. In India the castes were carriers of a specific

conduct of life, upon the observance of which the individual's fate in his next incarnation hinged; hence they were ritually exclusive vis-à-vis each other. But while the ritual obstacles to confraternization were indeed absolute in India, the same cannot be said for China—and even less for the Near East—where the sib ties constituted only a relative impediment. For these areas a quite different element still needs to be considered: the differences in the military constitution and, above all, in its economic and sociological foundations.

The necessity of river regulation and an irrigation policy in the Near East and in Egypt, and to a lesser degree also in China, caused the development of royal bureaucracies; initially these were charged only with construction tasks, but from this core ensued the bureaucratization of the entire administration which enabled the king, through this apparatus and the revenues supplied by it, to take the army administration under his own bureaucratic management. The "officer" and the "soldier," an army recruited by compulsory draft and equipped and fed from storehouses, became the foundation of military power. The result was the separation of the soldier from [ownership of] the means of warfare and the military defenselessness of the subjects. On such ground no political commune of burghers independent from the royal power could arise. The burgher was here simply the non-soldier. Things were quite different in the Occident where up to the time of the Roman emperors the principle of *self-equipment* of the armies prevailed, whether these were peasant levies, knightly armies, or burgher militias. But this signified the military *autonomy* of the individual obligated to military service. The position of King Clovis vis-à-vis his military following illustrates a principle which is basic for all self-equipped armies: that the lord is to a very large extent dependent upon the good will of the soldiers whose obedience is the sole basis of his political power.[44] He is more powerful than any individual one of them and also stronger than small groups, but any larger association of his military men against him leaves him quite powerless. In this political structure the lord lacks the bureaucratic apparatus—an instrument of compulsion which is blindly obedient because of its complete dependence; if the strata on whom his rule is based coalesce against him, he cannot have his way unless he comes to terms with the militarily and economically independent *honoratiores* who staff his administrative positions and supply his dignitaries and local officials. But such associations have always taken shape in the Occident whenever the lord approached his militarily independent subjects with new *economic* demands, particularly if these were demands for *money* payments. The rise of the "Estates" in the Occident—and only there—can be ex-

plained from these relationships, and the same goes for the development of the corporate and autonomous city commune. The financial strength of his urban subjects forced the lord to turn to them in case of need and to negotiate with them. To be sure, the guilds of India and China and the "money men" of Babylon also possessed financial strength which compelled the king even there to impose certain restraints upon himself in order not to scare them away. But it did not enable the townsmen, however rich they may have been, to unite and to offer a *military* check to the city lord. By contrast, all *coniurationes* and city unions of the Occident, beginning with those of early Antiquity, were coalitions of the *armed* strata of the cities. This was the decisive difference.

NOTES

1. In Roman law, the *institor* was a person appointed by the owner of a commercial undertaking to operate it in his stead; he could conclude contracts for which the principal was liable. Usually slaves or persons under the *patria potestas* were utilized for this purpose. Cf. art. "institor" in *Paulys Realencyclopädie der classischen Altertumswissenschaft*, newly edited by Georg Wissowa (Stuttgart 1894–1965; henceforth cited as: Pauly-Wissowa, *RE*), vol. IX (1916), cols. 1564–65.

2. That is, with merchandise (*merx*) forming part of their *peculium*, on which see "Soc. of Law," above, ch. VIII: ii, n. 124.

3. "Town air makes free." On the substantive content of his proverbial principle, see Hans Strahm, "Stadtluft macht frei," in *Das Problem der Freiheit in der deutschen und schweizerischen Geschichte* (Institut für geschichtliche Landesforschung des Bodenseegebiets, "Vorträge und Forschungen," ed. Th. Mayer, vol. II; Konstanz: Thorbeke, 1955), 102–121.

4. On this military fellowship in the 14th century Zurich, see below, sec. *iv*, n. 1.

5. Brodie Cruickshank, *Eighteen Years on the Gold Coast of Africa* (London: Hurst & Blackett, 1853), I, 240–52 (*Cabboceers*, 242; *pynins*, 250). (W)

6. Albert Hermann Post, *Afrikanische Jurisprudenz: Ethnologisch-juristische Beiträge zur Kenntniss der einheimischen Rechte Afrikas* (Oldenburg: Schulze, 1887). (W)

7. "The main reason for the discontent of [Mohammed's son-in-law] Ali with [the first Caliph] Abu Bekr was that the latter was not willing to treat certain pieces of land, which the Prophet had owned as head of the community, as the inheritance of the family of Mohammed; the conflict over the 'gardens of Fadak' in particular induced Ali to found his party" (Snouck Hurgronje, *Mekka*, I, 32). *Shi'ah* means "party"; in time the term became restricted to that section of the Moslem movement which considered only the Alids rightful successors of the Prophet.

8. On the Chinese sibs and Indian castes in their relation to the city, cf. Weber's more extensive observations in "Konfuzianismus und Taoismus" and

"Hinduismus und Buddhismus," *GArRS* I, 290ff., 353ff., 375ff.; II, 36ff. (*Religion of China*, 13ff., 66ff., 86ff.; *Religion of India*, 34ff.).

9. A tradition of a single founding act, called *synoikismos* (i.e., housing or settling together), existed in many Greek *poleis*. In some places this may have reflected an actual fact; in others, the tradition interpreted as one single act a merger and subjugation process in which a territory with perhaps several *poleis* and other political communities had gradually become united under a single center. This was certainly the case with the Attic *synoikismos* ascribed to the mythical hero Theseus. Cf. Victor Ehrenberg, *The Greek State* (New York: Norton, 1964), 26ff.

10. On the *consorterie* of the Sienese nobility, cf. Ferdinand Schevill, *Siena. The History of a Medieval Commune* (New York: Harper Torchbooks, 1964), 278–280. Some details of the statutes of the tower associations are described in CasimirChledowski, *Siena* (Berlin: Cassirer, 1913), I, 68ff.

11. A *Hantgemal* was the inheritable family estate of free, especially knightly families in the Germanic Middle Ages. In the Old-Saxon *Heliand*, the Saviour and his Apostles are featured in "contemporary" dress as a Germanic warrior-king with his military following.

12. After the Exile, ca. 450 B.C. For the listings of the clan delegations and the organization of the *synoikismos*, separating those who "could not shew their father's house nor their seed," cf. *Ezra* 8; *Neh.* 7 and 11.

13. Bishop Rüdiger of Speier, who stated in 1084 that "putavi milies amplificare honorem loci nostri, si et Judeos colligerem." Cf. Karl Hegel, *Die Entstehung des deutschen Städtewesens* (Leipzig: Hirzel, 1898), 113.

14. *Kölner Schreinsurkunden des zwölften Jahrhunderts*, ed. Robert Hoeniger (Gesellschaft für rheinische Geschichtskunde, "Publikationen," I/1–2; Bonn: Weber, 1884–1892). A Cologne guild document of 1149 shows even the "town hall," the *domus civium*, as *inter Judeos sita*. Cf. Hegel, *Städtewesen*, *op. cit.*, 115.

15. On the *gerim*, cf. *AJ*, 32ff.

16. City councillors. The point Weber (again) wishes to make here seems to be that in Antiquity the traditional or artificial "tribal" subdivisions of the city were confraternities, but not the city as a whole, for the Attic prytans were delegations of the individual phylae (tribes). Under the Cleisthenian constitution each of the ten phylae sent 50 *prytaneis*, chosen by lot, to the Council of Five Hundred; each of these delegations served as the executive committee of the city for one tenth of the year, which periods were called "prytanies." On the working of this system see Ehrenberg, *The Greek State*, 31, 63ff.; A. H. M. Jones, *Athenian Democracy* (Oxford: Blackwell, 1964), ch. V.

17. J. Hatschek, *Englische Verfassungsgeschichte*, 113 ("*communa non est sine pax libertatis*"), 269 (first appearance as corporations). (W)

18. Lay judges; a Carolingian institution found as *schepen*, *échevins*, *scabini* throughout continental Europe. On their significance, see "Soc. of Law," above, ch. VIII:*iii*, n. 53.

19. On "personal law" and "personality principle," cf. "Soc. of Law," above, ch. VII:*ii*:5.

20. Konrad Beyerle, "Die Entstehung der Stadtgemeinde Köln," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germ. Abteilung, XXXI (1910), 1–57. (W)

21. On the *Ding* (or *thing*: the Germanic judicial assembly) and *Dinggemeinschaft*, cf. "Soc. of Law," above, ch. VIII:*iii*:6.

22. I.e., rather than the new organs probably created by the 1112 *coniuratio;* the latter do not become prominent in the documents until half a century to a century later. The *Schöffenbank* (board of lay judges) also served many administrative functions under the rule of the city lord (here: the archbishop) and together with the *magistri* of the parish communities constituted the old administrative structure. The *Altstadt* was the old Roman settlement, the only walled part of the city until 1106 when after the temporary expulsion of the archbishop several suburbs were included in a new town wall; the Saint-Martin suburb outside the old wall on the river flats was the market settlement. See Beyerle, "Die Entstehung der Stadtgemeinde Köln," *loc. cit.*, 67.

23. Complaint by Archbishop Konrad of Hochstaden, in his *Schiedsspruch* of 1258. Cf. Hegel, *Städtewesen, op. cit.*, 185; id., *Städte und Gilden der germanischen Völker im Mittelalter* (Leipzig: Duncker & Humblot, 1891), II, 335–40.

24. On the edicts of Emperor Frederick II of 1232, cf. below, n. 40.

25. For much of the following, cf. Carl Hegel, *Geschichte der Städteverfassung in Italien* (Leipzig: Weidmann, 1847), II, chs. 4–6, which Weber seems to have had at hand while writing this section.

26. On the status of *capitanei, valvassores* and *cives*, cf. Hegel, *Städteverfassung, op. cit.*, II, 144ff. and 161f.

27. *Compagna communis* was the name of the association in Genoa, probably from 1099 on. Cf. Hegel, *Städteverfassung, op. cit.*, II, 178ff.

28. The alliance of the bishop and the Genoese Visconti, descendants of the tenth-century *vicecomes* Ydo, in the *compagna* of 1099 and later years was directed against the imperial margrave. The office revenues appropriated by the viscountal families included gate, port, market and passport fees. Cf. Erik Bach, *La cité de Gênes au XII^e siècle* (Kopenhagen: Nordisk Forlag, 1955), 34, 37, 43.

29. On the development in the Low Countries, cf. Hegel, *Städtewesen, op. cit.*, 190ff. For details on the *Vroedschap* (i.e., wisdom—the *sapientes* of the Latin terminology) guild, which existed in various Dutch towns into the 15th century, see Hegel, *Städte und Gilden, op. cit.*, II, 267–72.

30. Beyerle, "Die Entstehung der Stadtgemeinde Köln," *loc. cit.*, 64–67. The hypotheses actually were first proposed by H. Keussen in "Die Entwicklung der älteren Kölner Verfassungsgeschichte und ihre topographische Grundlage," *Westdeutsche Zeitschrift*, XXVIII (1910), 503ff.

31. On English merchant "companies" and their role in local government, cf. Sylvia Thrupp, *The Merchant Class of Medieval London 1300–1500* (Ann Arbor: The University of Michigan Press, 1962), chs. I–II.

32. On the Paris *hanse des marchands de l'eau*, cf. Henri Pirenne, *Economic and Social History of Medieval Europe* (New York: Harcourt, Brace Harvest ed., n.d.), 94 and sources given *ibid.* in fn. 14; Hegel, *Städte und Gilden, op. cit.*, II, 86–110.

33. Cf. Hegel, *Städte und Gilden, op. cit.*, I, 20.

34. On the English Gild Merchant, cf. *Cambridge Economic History of Europe*, III, 190ff.

35. Allusion to a dispute that was bitterly fought among German historians of the turn of the century. For the latest position and a summary of the debate, cf. Edith Ennen, *Frühgeschichte der europäischen Stadt* (Bonn: Röhrscheid, 1953), 165–179 ("Gilde und coniuratio").

36. The Danish term for guild was *gelag:* drinking bout, feast. In the Latin documents this was rendered as *convivium;* a *summum convivium* or supreme

city guild is mentioned in the Schleswig *Stadtrecht* of ca. 1200. Cf. Hegel, *Städte und Gilden, op. cit.*, I, 6, 149, 163.

37. Following the standard German terminology, Weber differentiates between *Gilden* and *Zünfte*, the former associations in which mercan le interests were dominant, often single associations of the "whole town," and the latter groupings in which the producers were more important. The dividing line, however, is not hard and fast (see Weber's own caution below, in sec. *iii*:5). In medieval English the latter kind of union used to be called a "craft" or "mistery," but modern English usage applies the term "guild" to both groups. We render the German *Zunft* alternatively as craft guild or "craft," reserving the unadorned term for the German *Gilde*.

38. Cf. Hegel, *Städtewesen, op. cit.*, 120f.

39. Cf. Hatschek, *Englische Verfassungsgeschichte*, 267f.

40. In the foundation charter of 1120. Hegel, *Städtewesen, op. cit.*, 38ff., reprints part of the document.

41. *Statutum in favorem principum*, issued at the Diet of Ravenna, 1231–1232, at the behest of Bishop Heinrich of Worms and some other bishops and princes. Bishop Heinrich established his rights through a treaty with the city in the following year after having obtained an Imperial ban against his recalcitrant subjects. Cf. Hegel, *Städtewesen, op. cit.*, 177f.

42. Hegel, *Städtewesen, op. cit.*, 182. This prohibition (of 1218) does not seem to have been very effective, for a few years later the Basel council was still —or again—in existence. On the Strassburg developments, see *ibid.*, 178–180.

43. E.g., in the unsworn Cologne *Schöffen* of 1258 (cf. *supra*, at n. 23) and the *Richerzeche* members of the Cologne *coniuratio* of 1112 mentioned earlier.

44. Clovis (Chlodovech), Merovingian king, ruled 481–511. Weber undoubtedly has in mind the famous incident of the vessel of Soissons related by Gregory of Tours (*Historia Francorum*, ii:27). Clovis, wishing to return to the church from which it had been seized a certain sacred vessel, had to beg the assembled army to let him have it *extra partem*, i.e., beyond his share of the booty as determined by lot. The refusal of a single warrior thwarted the ing. The sequel of the story, however, indicates that even under these conditions the early feudal king was not without certain disciplinary powers: at the next regular "Marchfield" or inspection-of-arms, King Clovis, like any experienced master sergeant, found reason to criticize this man's weapons and lawfully bashed in his head.

iii

The Patrician City in the Middle Ages and in Antiquity

1. *The Nature of Patrician City Rule*

Since as a rule all landowners of the city participated in the *coniuratio* (and not only the leading *honoratiores*), the burgher assembly—in Italy called the *parlamentum*—was officially considered the highest and sovereign organ of the commune. This notion of popular sovereignty was often formally retained, even though in fact the notables were completely dominant, especially in the early period. The qualification for the offices and for participation in the council was soon also formally restricted to a limited number of patrician "families," and in many cases it was commonly understood from the very beginning, if only implicitly, that they alone were qualified for the council seats. Even where this was not the case, a limited ruling circle evolved quite naturally—as can be observed especially clearly in England—from the fact that only those who could afford it economically participated with regularity in the meetings of the burgher assembly and, what is more important, took the time to consult with each other on the management of affairs. For participation in urban administration everywhere was at first felt to be a burden, which was accepted only to the extent that an explicit obligation existed. In the early Middle Ages the burghers had to be present at the three regular meetings (*echte Dinge*), but those who did not have direct political interests stayed away from the non-compulsory "bid" meetings (*gebotene Dinge*). The *direction* of affairs quite naturally fell to men who were respected because of their wealth and, not to be forgotten, their military power, which in turn rested upon wealth.

Hence, as the later documents on the procedures of the Italian *parlamenta* show, these mass-meetings very rarely represented anything more than audiences which either passed the proposals of the notables by acclamation or rioted against them. In the early period, as far as is

known, they never determined the elections or influenced the measures of the city administration in any continuous and decisive manner. Often the majority was formed by people economically dependent upon the notables. It is thus logical that the later rise to power of the *popolo* was everywhere accompanied by the displacement of the tumultuous general burgher assemblies in favor of a smaller assembly consisting of delegates or of a narrowly circumscribed group of qualified burghers. And it is equally logical that the beginning of the tyrannies and the overthrow of the *popolo* should have been marked, [as in Florence in 1531], by the revival of the old popular "parliaments," against which even Girolamo Savonarola had [less than forty years] earlier been warning the people of Florence.

In fact, even though often not in formal law, the city arose as or soon became a status association led by a group—of varying size—of *honoratiores*. The peculiarities of this stratum have been discussed elsewhere. The *de facto* domination could either turn into a legally sanctioned monopolization of the city government, or it could be undermined or completely removed by a series of further revolutions. The notables monopolizing the urban administration are usually termed a "patriciate" (*"die Geschlechter"*—literally: "the families"), and the period of their predominance in administration we call "patrician domination" (*Geschlechterherrschaft*).

The patrician "families" were not altogether homogeneous. What they had in common was that their power position rested on landed property and an income not derived from their own production establishments. But beyond this they could show the most diverse characteristics. In the Middle Ages one particular trait of the external conduct of life had a special significance for the formation of status groups, namely: a knightly mode of life. From this derived the eligibility to participate in tournaments, the capacity to receive a fief, and all other attributes of status equality with the non-urban petty nobility in general. At least in Italy, but in the majority of cases also in the North, only the urban strata that had these characteristics were counted among the patriciate. If nothing to the contrary is specified, we shall in the following *a potiori* always think of this trait when the patrician "families" are under discussion—keeping in mind, of course, that there always exist fluid transitional stages.

In some extreme cases patrician domination led to the emergence of a specifically urban nobility. This happened in particular wherever the development was strongly influenced, as in Antiquity, by the overseas policy of a trading city. The classic example is Venice.

2. *The Monopolistically Closed Rule of the* Nobili *in Venice*[1]

The early development of Venice was shaped by the increasing localization of general administration and, in particular, of army recruitment which had begun already in Hadrian's reign [A.D. 117–138] and which was furthered by the ever more liturgical character of the late Roman and Byzantine state. The soldiers of the local garrisons were increasingly recruited from the local population, which in practice meant that they were furnished from among their dependent *coloni* by the local estate owners. The [military unit, the] *numerus*, was commanded by a *dux* and his subordinate officers, the *tribuni*. The tribunate, too, had formally become a liturgical burden, but at the same time it was in fact a privilege of the local *possessores*, the estate-owning families who supplied these officers. As everywhere else, this dignity had in practice become hereditary in certain families. The *dux*, however, continued to be appointed from Byzantium into the eighth century.

This military nobility of tribunitian families formed the core of the oldest urban patriciate. With the shrinking of the money economy and the increasing militarization of the Byzantine Empire, the power of the tribunitian nobility completely overshadowed the *curiae* and the *defensores*, [the civilian local authorities] of the Roman period.[2] The revolution which initiated the process of city formation in Venice was directed, as in all of Italy in A.D. 726, against the iconoclastic government of that period and its officials and brought about, as a permanent result, the election of the *dux* (doge) by the tribunitian nobility and the clergy. But soon afterwards began the struggle of the doge, who wanted to develop his position into a hereditary patrimonial city-kingship, against his adversaries, the nobility and the patriarch whose interests were violated by the prince's attempts to set up a patrimonially controlled church (*Eigenkirche*)—a conflict which was to last for three centuries. The doge was supported by the imperial courts of the East and the West [Byzantium and Germany]. Byzantium favored his appointment of his son as coregent, a device for establishing hereditability of the office which was quite in accord with the ancient tradition. The dowry of Waldrada, a niece of the German emperor, supplied the last Candiano[3] with the means once more to expand his foreign following and, above all, the personal bodyguard upon which the ducal regime had been based since 811.

The character of the doge's rule in that period as a patrimonial city-kingship stands out in sharp relief if the following details are con-

sidered: The doge was simultaneously a great manorial lord and a great merchant; he monopolized (partly for political reasons) the letter mails between the Orient and the Occident, which had to pass through Venice, and after A.D. 960, utilizing the occasion of church protests against it, also the trade in slaves;[4] he appointed and dismissed patriarchs, abbots, and priests, despite the protests of the church; he was head of the courts (*Gerichtsherr*), appointed the judges and cashiered disputed judgments, although in this respect he was somewhat restricted by the associational principles of the *Ding*-community which had penetrated into Venice under Frankish influence. The ducal administration was conducted through patrimonial officials and vassals and, especially in the Venetian foreign settlements, also by means of the church. The dynastic tendencies are seen not only in the nomination of a coregent, but in one case even in the disposal over the rulership by a testamentary declaration. The doge's own possessions were not differentiated from public property. He equipped the fleet out of his private means, maintained mercenary troops and disposed over the labor services that artisans owed the ducal palace and which at times he arbitrarily increased. One such increase, apparently caused by the growing requirements of his foreign policy, provided the final impulse for a successful revolt in 1032 and offered the hostile nobility the means for reducing the power of the doge. As is always the case under conditions of military self-equipment, the doge was far stronger than any individual patrician family, a match even for most coalitions, but he could not cope with an association of them all. It was such an association which prevailed, as it would nowadays, as soon as he approached the patriciate with *financial* demands.

The domination of the urban nobility living in Rialto[5] began in the wake of these events under rather democratic legal forms. The first act of the new regime, appropriately described [by Kretschmayr] as the "first constitutional law of the Republic,"[6] was to forbid the appointment of a coregent, a measure directed against establishment of a hereditary succession on the Roman pattern. After a quasi-feudal interim period during which rights and burdens were divided between the doge and the *comune* as elsewhere between the territorial prince and the feudal estates, the election concessions [of each new doge] took care of the rest; they formally demoted the doge to the status of a strictly controlled salaried official hemmed in by obstructive court ceremonials, and socially reduced him to a *primus inter pares* in the corporation of noblemen.

It has been quite correctly observed by Lenel that, just as the power position of the doge had formerly been strengthened by his relationship with foreign powers, its reduction now also began in the foreign policy field, which the council of *sapientes* (first documented in 1141) brought

under its own control.[7] It should be stressed more strongly, however, than has been done that here, just as elsewhere, it was primarily the *financial* pressure of a bellicose colonial and trading policy which had made the sharing of public administration with the patriciate unavoidable; in a similar way the financial needs of princely wars under conditions of a money economy were later to initiate the rise of the Estates on the Continent. The Chrysobullon of Emperor Alexios marked the end of the commercial reign of the Greeks and established the trade monopoly of the Venetians in the East in exchange for maritime protection and frequent financial aid to the Byzantine Empire.[8] An increasing part of the public, ecclesiastic, and private wealth of the Venetians came to be invested in the eastern Empire in trade, in *ergasteria* of all kinds, in the farming of government revenues, and also in landed property. The military power developed for the protection of these investments led to the participation of Venice in the war of conquest of the Latin knights by which she acquired the famous three-eighths share (*quarta pars et dimidia*) in the Latin Empire.[9] After the codifications of Dandolo,[10] all colonial conquests were carefully treated as legally belonging to the commune and its officials, not to the doge; his impotence was thereby made final. A public debt and continuous money expenditures of the *comune* were the obvious concomitants of this foreign policy. Such financial requirements, in turn, could be met only out of the means of the patriciate—i.e., that sector of the old tribunitian aristocracy, doubtlessly reinforced by some new nobles, which, because of its urban residence, was in a position to participate in the urban opportunities for accumulating wealth through investing its capital in trade under *commenda* and other types of contracts and in other profit-producing lines of business. It was in the hands of this group that both monetary wealth and political power came to be concentrated.

The dispossession of the doge was therefore paralleled by a concentration of all political power in the patrician-ruled city of Venice, whereas the rural territories of the duchy increasingly lost all political rights. Up into the twelfth century the (originally tribunitian) *honoratiores* of the countryside were at least nominally represented at the *placita* of the doge.[11] But with the formation of the *comune Venetiarum*, first documented in 1143, this ceases to be true. After this date, the "Council of *Sapientes*" appears, which was elected by the *civitas* and to which the doge swore his oath on the constitution. This council seems to have been restricted exclusively to the great landlords residing in Rialto, men who had their primary economic interests in the overseas utilization of capital.[12]

The differentiation between a "large" (legislative) and a "small" (administrative) council of notables, which existed in almost all patrician cities, can be first documented for Venice in 1187. The *de facto* disenfranchisement of the assembly of all landowners, whose acclamation formally continued to be secured until the end of the fourteenth century; the nomination of the doge by a small electoral college of *nobili;* the *de facto* limitation of the selection of officials to families considered eligible for council seats, and also the final formal closure of their list (the *Serrata del Gran Consiglio,* carried out 1297–1315; the list was the precursor of the later Golden Book)—all these represent only a continuation of the above developments, the details of which are here of no interest to us.

The tremendous economic superiority of the patrician families participating in the overseas political and economic opportunities facilitated the monopolization of power in their hands. The constitutional and administrative techniques of Venice are famous because of the development of a patrimonial tyranny of an urban patriciate, extending over a large land and sea area, with the simultaneous preservation of very strict mutual control of the noble families over each other. The discipline of the nobility was never shaken because, like the Spartiates, they managed to keep all means of power very tightly under their grip and maintained a more rigidly observed system of secrecy of office than can be found anywhere else. That this was possible can in the first instance be explained by the solidarity, patently obvious to every individual, of the foreign and domestic interests of all members sharing in the huge monopoly profits of the association. This solidarity of interests compelled the integration of the individual nobleman into the collective which exercised the tyranny. In terms of administrative techniques it was accomplished: 1. By means of competitive separation of powers; the office authorities of the central agencies overlapped, and the different boards of the specialized administrations were almost always furnished with both judiciary and administrative power and competed with each other for jurisdiction. 2. By means of mutually controlling division of functions between the officials administering the subject territories; the judiciary, the military, and the financial administration were always in the hands of different officials, who were all taken from the nobility. 3. By means of short tenures of office and a system of travelling control officials. 4. Since the fourteenth century, also by means of a political court of inquisition, the "Council of the Ten"; originally formed [in 1310] to investigate a single case of sedition, it turned into a permanent agency with jurisdiction over political offences which ultimately supervised the

entire political and personal conduct of the *nobili*, not infrequently annulled even decisions of the "Great Council," and altogether acquired a kind of tribunitian power, the exercise of which in a swift and secret procedure secured it paramount authority in the commune. It was feared only by the nobility, and was by far the most popular agency with the subjects, who, being excluded from political power, found in it the only effective means for bringing a successful complaint against a noble official. In this respect it was far more effective than the Roman *quaestio repetundarum*.[13]

The Venetian empire, expanding over ever larger mainland territories and increasingly based on the support of mercenary armies, presents an especially pure and extreme case of the development of a patrician city. But from the very beginning, a phenomenon of a very different kind accompanied this concentration of power over large territories in the hands of an urban commune and, within it, in those of a patriciate. The mounting expenses of the commune, which had made it dependent upon the financing patriciate, were caused not only by the costs of troops, naval construction and war materials, but also by a far-reaching change in the system of administration. For the patriciate had found assistance of a peculiarly Occidental sort, in its struggle with the doge, in the growing strength of the church bureaucracy. It was no accident that the weakening of the ducal power had occurred simultaneously with the separation of state and church in the wake of the Investiture Struggle; in fact, the Italian cities in general had turned to their advantage the breaking of this bond, which had its origin in the princely rights to establish and control their own churches (*Eigenkirchenrecht*) and had hitherto constituted one of the strongest supports of patrimonial and feudal power. Up into the twelfth century, churches and monasteries had substituted for and made superfluous a secular power apparatus by leasing the administration of the Venetian foreign colonies. But their elimination from the secular administration, an inevitable consequence of their separation from the political authority, necessitated the creation—at first in the foreign colonies—of a salaried lay officialdom.[14] This development, too, reached a conclusion for the time being in Enrico Dandolo's days. The system of short tenures of office, which was based on political considerations, but also on the desire to give as many persons as possible a turn in such positions; the limitation of eligibility for office to the noble families; the non-bureaucratic, strictly collegiate administration of the ruling capital city itself —all these presented barriers to the development of a really professional officialdom, barriers which were inherent in the character of the regime as a rule by notables.

3. *Patrician Rule in Other Italian Communes: The Absence of Closure and the Institution of the* Podestà

In the other Italian communes developments took a considerably different course in this respect, even during the rule of the patriciate. In Venice the permanent closure of the guild of the urban nobility against all outsiders had been successful: The acceptance of new families into the circle of those elegible for a seat on the "Great Council" occurred only on the basis of political deserts and by decision of the corporation of the nobility; later it ceased entirely. The Venetian nobility had also managed to suppress all feuds between its members, a success facilitated by the awareness of the permanently endangered position of the collective. None of this can be said of the other Italian communes of the period of patrician rule. The orientation to the maintenance of overseas trade monopolies was nowhere else so unequivocal and in the awareness of each individual so self-evidently crucial as the basis for the entire existence of the nobility as it was in Venice during the decisive period. And one consequence of the feuds raging in all other cities between the ranks of the urban patriciate was that even in the period of its untrammelled rule the nobility found itself compelled to grant a certain amount of consideration to the non-noble strata of *honoratiores*. Finally, the feuds and the deep mutual mistrust of the great patrician families precluded the creation of a rational administrative system on the Venetian pattern. Almost everywhere, a few great families, especially richly endowed with land and large followings of clients and allied with numerous families of lesser wealth, confronted each other for centuries, always attempting to exclude each other (and each other's allies) from the offices and the economic opportunities of the urban administration and, if possible, to drive each other from the city altogether. As in Mecca, at almost any given time one part of the nobility was decreed ineligible for municipal office, perhaps exiled and frequently even—in contrast to the mutual "courtliness" observed in Arabia—outlawed, in which case the victorious party would sequester the properties of the vanquished; a reversal of political fortunes simply brought an exchange of roles.

A natural result of this situation was the formation of interlocal interest groups. The creation of the Guelf and Ghibelline parties, however, was conditioned also by the politics of the Empire and by social factors: the Ghibellines, in the large majority of cases, were families that had been vassals of the Imperial crown, or they were led by such

families.[14a] But for the remaining and more enduring part, these formations had their origin in the clash of interests between competing cities and, within the cities, in the competing interests of interlocally organized aristocratic groupings. These associations, particularly that of the Guelf party, were permanent organizations with statutes and registers of war contributions which determined—in a form similar to that of the German *Römerzug* roll[15]—what manpower contingents the knighthood of individual cities had to supply in the event of a levy.

Even though the services of the trained knighthood were decisive in all military respects, already in the days of patrician rule the non-knightly burgher could not be dispensed with for the *financing* of warfare. The interests of this class in a rational administration of justice, on the one hand, and the mutual jealousy of the parties of the nobility on the other, caused the development in Italy and some bordering areas of the peculiar institution of an aristocratic professional officialdom which exercised its functions, so to speak, in travelling the rounds: the institution of the *podestà*. This official replaced the early administration by *consules* drawn from the local aristocracy, executives who formally were elected, although in fact the nomination was restricted to and contested by only a few families.

The institution of the *podestà* originated in the period of the intense struggles between the communes and the Hohenstaufen emperors, a time which had especially increased the need for internal unity and the burdens on the financial capacity of the cities. Its high point was reached in the first half of the thirteenth century. The *podestà* was an elected official, in most cases called in from another community, appointed for a short term of office, equipped with the highest judicial power, and normally paid a fixed salary [rather than in fees] which made his compensation relatively high compared to that of the *consules*. He was usually a nobleman, but by preference one with a university education in the law. He was elected either by the council or, as was typical also for most other elections in Italy, by a committee of notables appointed specifically for that purpose. The appointment frequently was the subject of negotiations with the candidate's native commune, which had to give its approval and which occasionally was requested to nominate a candidate. The granting of such a request was considered a politically friendly act, the denial one of hostile foreign policy. At times we find a direct swap of *podestà* between two communes. The appointees themselves not infrequently insisted that hostages be supplied as insurance for good treatment; they haggled for conditions like modern professors and refused the call if the offer was not attractive enough. The *podestà* had to bring along a knightly following, and especially his

auxiliary personnel—not only the subalterns, but also the jurists, court assistants, and deputies, often his entire staff, whom he paid from his own funds. His essential task was the maintenance of public safety and order, and above all of internal peace in the city—it was for this that an outside official was needed; in addition he often held the military command, and he always had control over the courts. All these duties were performed under the supervision of the council. His influence on legislation was everywhere rather limited. Not only was the person of the *podestà* frequently changed as a matter of principle, but also, and intentionally, the locality from which he was called. On the other hand, the communes sending out such officials seem to have placed some value on seeing their citizens officiate in as many positions abroad as possible. Hanauer is certainly right in assuming that this had economic as well as political motives:[16] The high salaries paid abroad constituted a valuable prebendal revenue source for the local nobility.

The most important aspects of the institution are found in the very formation of a noble professional officialdom, and in the effect of the *podestà* system on the development of the law. We begin with the former. In an investigation of only sixteen out of sixty cities, Hanauer documented, for the fourth decade of the thirteenth century, seventy persons who had occupied two, and twenty who had held half a dozen or more different *podestà* positions.[17] Often a man made a life-long career in such offices. For the century during which the institution flourished, Hanauer reckons with 5,400 *podestà* terms of office to be filled in the roughly sixty [larger] communes [of Imperial northern Italy].[18] Some individual noble families provided candidates through several generations. In addition, a very large number of auxiliary officials with legal training was required. Beyond the fact that a part of the nobility was being schooled in the conduct of an impartial administration which, in the nature of the case, was especially strictly supervised by the public opinion of the employing communities, a second important aspect has to be weighed. In order that the administration of justice by a foreign-born *podestà* might be possible at all, the applicable law had to be codified, rationally elaborated, and interlocally somewhat standardized. Whereas elsewhere it was the interest of princes and their officials in facilitating the transfer of the latter from one place to another that led to rational codification of the law, and especially to the propagation of Roman law, in Italy it was the institution of the *podestà*.

In its most typical form, this institution was a phenomenon limited essentially to the Mediterranean area. But some parallels can be found also in the North—in Regensburg, for instance, where in 1334 natives were excluded from the office of the *Bürgermeister* and a knight from

out of town was called in, who was then succeeded by "foreign" mayors for an entire century. This produced a period of relative internal peace in a city that had previously been wracked by feuds between the patrician families and wars with exiled noblemen.[19]

4. *English City Oligarchies and Their Constraint by the Royal Administration*

In Venice the formation of an urban nobility grew without break out of a very pronounced regiment of *honoratiores*, and in the remaining Italian communes patrician rule characterized the beginning of city development. In the North, by contrast, the formation of a closed patriciate proceeded on a different basis and, in part, from quite opposite motivations. The development of the English city oligarchy presents an extreme but "typical" case.

The decisive element in shaping English urban development was the power of the crown, even though it did not confront the city from as firm a position during the early period—not even during the period after the Norman conquest—as it could command later. William the Conqueror did not attempt to take London by force after the battle of Hastings; aware of the fact that possession of this city had always been crucial for aspirants to the English throne, he obtained the homage of the burghers by treaty. For even though, under the Anglo-Saxons, the bishop and the portreeve appointed by the king had been the "legitimate" authorities of the city—to whom consequently also the charter of the Conqueror was addressed—the votes of the London patriciate had carried a decisive weight in nearly every election of the Anglo-Saxon kings. The burghers even held that without their voluntary consent the English royal prerogatives did not include rule over their city, and as late as in King Stephen's time,[20] their agreement was indeed decisive. Nevertheless, once he had received the oath of homage, the Conqueror built his Tower in London, and thereafter the city, like any other, was in principle subject to taxation at the king's discretion.

During the Norman period, the military importance of the cities diminished as a result of the unification of the kingdom, the decline of threats from the outside, and the rise of the great feudal barons. The feudal lords now constructed their fortified castles outside the cities, thus setting into motion the separation of the burghers from the feudal military power which, as we shall see later, was characteristic for the non-Italian Occident. In contrast to the Italian towns, the English cities

at that time almost completely lost the dominance over the countryside which they formerly seem to have possessed in the form of extensive city "marches"; they became corporate bodies essentially oriented to economic pursuits. The barons, for their part, began here—as everywhere—to found cities of their own to which they granted privileges of very varying extent. But nowhere in England do we hear of violent uprisings of the citizenry against the king or other city lords, nor of usurpations by means of which a royal or seigneurial castle might have been broken or, as in Italy, the lord might have been forced to transfer it out of the city. Nor do we hear of a burgher militia created to fight the city lord, to obtain by violent means the right to an autonomous jurisdiction with elected officials instead of the judges appointed by the king, and to defend the application of a special urban law. To be sure, royal grants created in England, too, special urban courts which had the privilege to grant the burghers a rational trial procedure without duels and which had enough autonomy to be able to reject certain innovations of the royal trial procedure, in particular the trial by jury. But the creation of the law itself remained firmly in the hands of the king and the royal courts. The king granted the special courts to the cities in order to retain them on his side against the feudal nobility, so that to this extent they, too, profited from the typical conflicts of the feudal period.

Much more important than these court privileges, however, was the autonomy in fiscal administration which the cities managed to obtain over time. This fact in itself confirms the superior position of the crown. From the point of view of the kings up to the time of the Tudors, the city was primarily an object of taxation. The privileges of the burghers, the *gratia emendi et vendendi* [the rights to buy and sell] and the trade monopolies, had their counterpart in tax burdens also specific to urban citizens. Tax collection, however, was farmed out, and the most important applicants for these tax farms, next to the rich burghers, were the wealthier royal officials. The burghers increasingly succeeded in excluding their competitors and in obtaining from the king, for a lump sum, the right to collect their own taxes (the *firma burgi*);[21] by means of special payments and gifts they also secured additional privileges, the most important being the right to elect the sheriff.

Despite the presence of groups with pronounced seigneurial interests in the urban citizenry, purely economic and financial interests were ultimately decisive for the constitution of the English city. The *coniuratio* of the Continent is to be found in English cities, too, but here it typically took the form of a [single] monopolistic city guild. This is not true everywhere—in London, for instance, it did not arise. But in numerous other cities the guild, as the guarantor of the urban fiscal

obligations, became the decisive union of the city. Like the *Richerzeche* in Cologne, it often bestowed the citizenship rights. In manorial cities it was usually the city guild which secured an autonomous court, but its jurisdiction was exercised over the townsmen as guild members rather than as burghers. Nearly everywhere the city guild was in fact, although not in law, the governing association of the city. For in law it was still true that burghers were all those who shared the "bourgeois" burdens owing to the king (guard and military duties, court service, tax payments) with the other townsmen. Hence not only residents were burghers, but as a rule also all the neighboring landowners, the "gentry." In particular, the London commune included in the twelfth century among its members nearly all the great noble bishops and officials of the country, because they all owned town houses in the city, the seat of the king and of the administrative agencies—a phenomenon which has its parallels in republican Rome, but is much more interesting because of the characteristic deviations from the Roman conditions. Any individual who was unable to share in the burden of the collective tax guarantee and paid the royal taxes only from assessment to assessment—thus primarly anyone not wealthy—was *eo ipso* excluded from the stratum of active burghers.

All privileges of the city rested on royal and seigneurial grants which, however, were interpreted rather freely. Of course this was true in Italy too. In one respect, however, city development in England took an entirely different course from that of Italy: The cities became, within the system of Estates, privileged corporations whose organs possessed definite individual rights derived from the acquisition of special legal titles; they held these in the same way as individual barons or trading corporations held their specific rights obtained by individual grant. This development came once the concept of the *corporation* was finally admitted into English law. The transition was fluid from the privileged "company"[22] to a city guild and from there to the incorporated city. The special legal status of the English burghers thus was composed of a bundle of privileges obtained within the partly feudal, partly patrimonial overall association of the kingdom; it did not derive from membership in an autonomous association which had organized its own system of political domination.

Let us recapitulate the development in its rough outlines. Initially the English cities were compulsory associations burdened by the king with liturgical obligations—only with different ones than the villages. Later on, in the period of massive new city foundations equipped by the king or manorial lords with economic or legal privileges, a basic equality of rights for all burghers with urban landholdings and a certain

limited autonomy of the cities was established. The initially private guilds came to be accepted as the guarantors of the cities' fiscal obligations and were acknowledged in royal charters. Ultimately the towns would be endowed with the rights of a corporation.

London developed into a "commune" in the Continental sense. Henry I [1100–1135] had granted the residents the right to elect the sheriff, and from the end of the twelfth century we find the commune as an association of the burghers, recognized by King John [Lackland, 1199–1216], with a mayor who, like the sheriff, was elected, and with aldermen[23] who, from the late thirteenth century, joined together with an equal number of elected councillors to form a city council. The farming by the commune of the Middlesex sheriff's office initiated its domination over the surrounding districts. By the fourteenth century the mayor of London bore the title "lord."

The majority of the remaining cities, however, remained—or better, became after temporary but abortive attempts to form political communes—simple compulsory associations with certain special privileges and firmly regulated rights of corporate autonomy. The development of the "craft" constitution (*Zunftverfassung*) will have to be discussed later,[24] but it may be pointed out already here that it did not alter the basic character of the cities. It was the king who mediated the dispute over predominance between the "crafts" and the *honoratiores*. The cities continued to be under obligation to grant the crown's tax demands until the strengthening of the Estates permitted the creation, in Parliament, of a *collective* protection against discretionary taxation which no individual city, nor even all the cities together in joint action, had been able to obtain by virtue of independent power. The rights of active citizenship, however, remained hereditary rights of corporation members which it was possible to acquire through purchase of membership in certain associations. The difference between the English and the Continental development, although to some extent only a difference of degree, is nevertheless of basic significance: because of the particular form which the English law of corporations assumed, the notion of the commune as a territorial institution did never arise in England.

The reason for this contrast is to be sought in the power of the royal administration, always unbroken and extended even further after the accession of the Tudors, which constituted the basis for the political unity of the country and for the unity of its law. It is true that the royal administration was always strictly supervised by the Estates, and that it had to rely on the collaboration of the *honoratiores*. But this very fact had the consequence that the economic and political interests [of the notables] were oriented not to the individual closed urban com-

mune, but rather to the central administration whence they expected economic opportunities and social advantages, guaranteed monopolies and aid against violators of their own privileges. The crown, which was financially and administratively utterly dependent upon the privileged strata, feared these groups. But the political strategy of the English kings was essentially one of rule through the central parliament. In the main they tried to influence the urban constitutions and the composition of the city councils only in the interest of their parliamentary election politics; hence they supported the oligarchy of notables. The urban notables, for their part, could find a guarantee for their monopoly position vis-à-vis the non-privileged strata in the central administration, and only there.

In the absence of a bureaucratic apparatus of their own, and in fact precisely because of the centralization of administration, the kings were dependent on the cooperation of the notables. The power of the burghers in England was based not on their own military might, but mainly on the "negative" foundation that the feudal administration, in spite of its relatively advanced technical development, was unable to maintain a truly permanent domination over the country without the constant support of the economically powerful *honoratiores*. For the military power of the large majority of English cities was comparatively unimportant in the Middle Ages. The financial power of the townsmen, however, was considerable. But it was exerted collectively—within the status union of the commoners represented in Parliament—as the power of an *estate* of privileged urban interests. It was around this grouping that all interests transcending the utilization of purely local monopolies revolved. Here we thus find for the first time an interlocal, *national* bourgeoisie. The increasing power of the burghers in Parliament and within the royal administration, which was conducted through the justices of the peace—their power, that is, in the national polity of notables—prevented the development of a strong movement for political independence in the *individual* communes. Not the local interests of municipalities as such, but the interlocal interests of the townsmen, formed the basis for the political unification of the bourgeoisie. The same development also favoured the bourgeois and mercantile character of the English city oligarchy. The development of the English cities thus was similar to that in Germany until about the thirteenth century. But thereafter it increasingly turned into a domination of the "gentry," which was never again broken; this contrasts with the at least relative democracy developing in Continental cities. The offices, above all that of the alderman, which originally had been based on annual elections, came increasingly to be occupied for life and frequently came to be

filled either by cooptation or as patronage of neighboring manorial lords. For reasons already indicated the royal administration supported this development, just as the ancient Roman administration had supported the oligarchy of the landed nobility in the dependent cities.

5. *Rule of the Council-Patriciate and of the Crafts in Northern Europe*

The conditions of development in the Continental cities of northern Europe differed from those of either England or Italy. In some cases the rise of the patriciate in this area was based on status and economic differences already present at the time of creation of the burgher association. This was true even for newly founded cities: The 24 *coniuratores fori* in Freiburg, from the very beginning, were privileged in tax matters and appointed as *consules* of the new city. However, in the majority of newly founded cities—and even in many Northern maritime cities which by their very nature tended toward a merchant plutocracy—the formal closure of the group of families qualified for a seat on the council came about only gradually. Typically the frequently existing formal right of the officiating council to propose its successors, or the mere habit of following its advice, or perhaps simply the social weight of the circles in question together with the objective need to keep experienced men in the council, ultimately led to the *de facto* practice of replenishing the council through cooptation, and thus of surrendering the executive boards of the city to a closed circle of privileged families. It will be remembered how easily a similar development can occur even under modern conditions: in Hamburg, for instance, the complementation of the Senate has recently sometimes tended in the same direction, in spite of the right of the House of Burgesses to elect the senators. We cannot pursue the details here; at any rate, such tendencies have asserted themselves everywhere, the only variation consisting in the extent to which they have found formal legal expression.

The patrician families monopolizing the council seats could everywhere maintain this closure easily only as long as no strong contrast of interests arose between them and the excluded part of the citizenry. But once such conflicts emerged, or once the self-esteem of the outs, based on growing wealth and education, and their economic indispensability for administrative work had risen to a point where they could no longer tolerate the idea of being excluded from power, the makings of new revolutions were at hand. Their agents were once again sworn

burgher unions, but behind these new unions stood—at time directly identical with them—the craft guilds (*Zünfte*). In connection with this period one has to be careful not to identify the term *Zunft* primarily or even exclusively with the artisan guilds of the handicraft workers. The movement against the patrician families was in its first period by no means a movement primarily of the artisans. Only in the further course of events, which we shall have to discuss later [sec. *iv* below], did the artisans assume an autonomous role. In the first period they were almost always led by the non-artisan "crafts." The variable success of the "craft" revolutions could in extreme cases lead, as we shall see, to a composition of the council exclusively of representatives of the craft guilds and to the tying of full citizenship to membership in one of the "crafts."

Only this rise of the "crafts" signified the real seizure of power, or at least general participation in the rule, of the "bourgeois" classes in the economic sense of the term. Wherever "craft"-rule (*Zunftherrschaft*) was installed at all effectively, this coincided with the peak of the city's external power and its greatest internal political independence.

The similarity of these "democratic" developments with the fate of the ancient city is very striking. Most cities of Antiquity experienced a similar early period of growth as "cities of the nobility," beginning roughly with the seventh century B.C., and a later rapid spurt to political and economic power which was accompanied by the development of Democracy or at least a trend in this direction. These similarities exist even though the ancient polis arose from a very different historical background. We shall first have to compare the ancient *patrician* city with the medieval one.

6. *Family-Charismatic Kingdoms in Antiquity*

The Mycenaean culture of the Greek mainland, at least in Tiryns and Mycenae itself, must have been based on a patrimonial kingship of Oriental character, though of far smaller dimensions, supported by forced labor.[85] Its buildings, unequalled before the classical period, are inconceivable without forced labor of the subjects. On the frontiers of the Hellenic cultural area of that day towards the Orient, on Cyprus, there even seems to have existed a state which—quite in the Egyptian manner—employed a script for purposes of billing and list-keeping: a bureaucratic patrimonial storehouse administration. By contrast, even in Athens of the classical period administration was still conducted almost completely verbally and without the use of writing. This script,

and in fact the entire culture, later disappeared without leaving a trace.

The "catalogue of ships" of the *Iliad* lists hereditary kings who rule over large territories, each of which contains several and in some cases numerous localities which later were known as cities, but which then probably were mere castles;[26] a great ruler like Agamemnon was prepared to give several of these in fief to Achilles. In Troy we find the old men from noble houses, exempt from military service because of their age, acting as advisors to the king. Hector is considered the Trojan war-king, while Priam himself has to be fetched for the conclusion of treaties. Only one written document is mentioned, and this may actually have been in symbols [rather than in regular script].[27] But all other relationships described in the epics rule out the existence of a regular administration based on forced labor and a patrimonial kingship. Homeric kingship rests on family charisma. However, the epic can ascribe also to Aeneas, a foreigner to the city, the hope of obtaining King Priam's office if he were to kill Achilles, for kingship is conceived as an office-like "dignity" rather than as a possession. The king is leader of the army and participates with the nobles in the court sessions; he represents the group before the gods and to outsiders, and is furnished with a special royal domain. But his power, especially in the *Odyssey*, is essentially that of a chieftain, based on personal influence rather than on regulated authority. The military (normally maritime) expeditions, too, have for the noble families more of the character of the knightly *aventiure* of a leader with his companions than that of a military levy: the companions of Odysseus are called *hetairoi*, just like the later followership of the Macedonian kings. The long-term absence of the king is not considered a source of serious trouble. While Odysseus is away, there is no king at all in Ithaca; he entrusts his house to Mentor, who has no share in the royal "dignity." The army is an army of knights; individual combat decides the battle, and the ordinary foot soldier plays a very minor role.

In some parts of the Homeric poems an urban *political* "market" [the *agora*] is mentioned. If Ismaros is called a *polis*, this could mean "castle," but in any case it is not the castle of an individual, but that of the Ciconians.[28] In the description of the scenes on the shield of Achilles, the elders of the wealthy and militarily powerful sibs are shown sitting in the market [*agora*] holding court; the people, as in the Germanic folkthing, stand in a circle and accompany the speeches of the parties with applause.[29] Telemachos' complaint is discussed in the market by the military notables under the direction of the herald.

The nobles, including the kings, are landed lords and ship owners who move into battle on chariots. But only those resident in the city

have a share in the power. The fact that King Laertes lives on his country estate signifies that he is in retirement. The sons of the noble sibs, as among the Germanic tribes, join as followers (*hetairoi*) in the *aventiure* of a hero—in the *Odyssey*, that of the king's son. Among the Phaeacians the nobility asserts the right to collect from the people part of the cost of hospitality gifts.[30] It is nowhere stated in the Homeric epics that all rural inhabitants are regarded as dependent peasants or servants of the urban nobility, but free peasants are not mentioned either. The treatment of the figure of Thersites, at any rate, indicates that even the common conscript, who does not go into battle in a chariot, occasionally dares to speak up against the lords—but then this is also taken as rank insolence.[31] Yet, even the king performs domestic chores, constructs his own bed, and ditches his garden. His war companions row their boat themselves. The purchased slaves, on the other hand, may hope to obtain a *kleros* [land lot] of their own;[32] the difference between the purchased slave and the "client" endowed with a lot of land, which was to be so pronounced later on in Rome, does not yet exist. Relations are patriarchal; the household economy satisfies all normal uses. The Greeks used their own ships for piracy; their participation in trade was merely passive, while the active side was still conducted by the Phoenicians.

In addition to the "market" and the town-living habits of the nobility, two other phenomena are of great importance. One is the institution of the *agon* [contest], which later was to dominate the entire conduct of life. It arose naturally from the knightly concept of honor and the military training of the youths on the exercise grounds. In organized form it appears above all in the funeral cult of war heroes (Patroklos).[33] Even in the Homeric period it already dominates the style of life of the nobility. The other important phenomenon is the completely unrestrained relationship—in spite of a certain fearful respect (*deisidaimonia*)—to the gods, whose treatment in the epics was later to be so painful to Plato [e.g., *Republic*, bk. II, 376E–385B]. This lack of religious respect of the heroic society could arise only in the wake of migrations, especially of overseas migrations, and thus in areas in which the people did not have to live with old temples and close to the ancestral graves.

While the noble cavalry of the historic patrician polis is absent from the Homeric poems, it is striking that the hoplite battle order, which arose only much later with the disciplined organization of foot soldiers in rank and file, does indeed seem to be mentioned: evidence that widely different periods left their traces in the epics.

The historical period prior to the development of the *tyrannis* knows

family-charismatic kingship, apart from Sparta and a few other examples (Cyrene), only in institutional survivals or from traditions such as we have for many cities of Hellas, Etruria, Latium, and for Rome. It was always a kingship over an individual polis, family-charismatic, equipped with religious authority, but normally (excepting Sparta and the Roman tradition) furnished only with some honorific privileges over the nobility who, in fact, were sometimes also described as "kings." The example of Cyrene shows that there, too, the king owed the source of his power, his treasure, to the middle-man trade, whether he traded himself for his own account or exacted fees for the controls he imposed and the protection he granted.[34] It was probably the rise of knightly warfare, with the attendant military independence of noble families who maintained their own chariots and followings and who themselves owned ships, that shattered the monopoly of the kings. This would be especially true for the period after the collapse of the great Oriental empires, the Egyptian as well as the Hittite [about 1200 B.C.], with which the Mycenaean kingdoms had been in contact, while other great monarchies such as the Lydian had as yet not developed; that is, after the breakdown of the trade monopolies and the forced-labor state of the Oriental kings which the Mycenaean culture reflected *en miniature*. It was probably also this collapse of the economic foundations of royal power which made possible the so-called Doric migrations [ca. 1100–900 B.C.]. This time saw the beginning of the migrations of the seafaring knighthood to the coasts of Asia Minor, where Homer does not yet report any Hellenic settlements and where at the time no strong political associations existed. The entry of the Hellenes into active participation in trade began at the same time.

7. *The Ancient Patrician City as a Coastal Settlement of Warriors*

At the beginning of known history we find the typical patrician city of Antiquity.[35] It was always a coastal city. Up to the time of Alexander and the Samnite wars in Italy [late fourth century B.C.] no polis was further removed from the sea than a day's journey. Outside the area of the polis we find only villages (κῶμαι) with unstable political associations of "tribes" (ἔθνη). A polis which was dissolved on its own initiative or by the enemy would be "dioikized" into villages. A real or fictitious act of *synoikismos*, on the other hand, was considered the origin of the city: the "settling together" of the sibs into or around a fortified castle on command of the king or by free agreement. Such

acts were also in the Middle Ages not entirely unknown: thus we have the *synoikismos* of Aquila described by Gothein, and one at the foundation of Alessandria.[96] But the fundamental nature of such acts was much more clearly defined in Antiquity than in the Middle Ages. The actual permanent living together was *not* a fundamental aspect: like the medieval noble families, those of Antiquity in part continued to reside in their country castles (as for example in Elis), or they at least owned country houses in addition to their urban seats. Decelea, for instance, was the castle of a noble clan, and many Attic villages as well as some of the Roman *tribus* were named after such castles. The territory of Teos was divided into "towers."[97] For all that, the center of gravity of the nobility's power lay in the city. The political and economic masters of the countryside, the manor lords, financiers of trade and creditors of the peasantry, all were *astoi*—i.e., "town-dwelling" noble families,[98] and the actual transplantation of the rural nobility into the cities continued apace. By the classical period the rural castles had been broken. The burial grounds (*nekropoleis*) of the noble clans had always been in the cities.

The truly fundamental element in the formation of a polis, however, was always thought to be the fraternization of the sibs into a *cult* community: the replacement of the *prytaneia* of individual families by a common *prytaneion* of the city in which the prytans took their communal meals. In Antiquity this formation of a "fraternity" did not only mean, as in the Middle Ages, that the *coniuratio* of the burghers, in becoming a *comune*, also adopts a saint for the city. The confraternity of Antiquity signified much more: the very foundation of a new local commensal and cultic community, for there was no common church, as in the Middle Ages, of which everyone was already a member before the formation of the city fraternity. To be sure, Antiquity had always known interlocal cults in addition to those of local deities. But the form of religious activity most central for everyday life was the cult of the individual clan, which in the Middle Ages did not exist, and this was always firmly closed to outsiders and thus an impediment to fraternization. Such family cults were almost as severely restricted to the members as were the cults of India, and only the absence of magical taboo-barriers made the confraternization possible. Even then the principle remained that the spirits revered by the clan would accept sacrifices only from clan members; the same held for all other associations.

Among the associations which entered into a fraternal relationship in the cultic city-association we find, significant already at a very early stage and surviving into very late periods, the phylae and phratries in which everyone had to be a member to be considered a citizen. About

the phratries we can with certitude say that they reach back into a time antedating the polis. Later they were primarily cult associations, but also exercised some other functions; in Athens, for example, they passed judgment on the military capability of the young and the related capacity for inheritance. Hence they must originally have been military associations, corresponding to the "men's house" which we have already discussed [ch. IX:2 and elsewhere]; the very term was preserved in the Doric warrior states (*andreion*) and also in Rome (*curia* derives from *coviria*) as the designation for the subdivisions of the military association which had confraternized to form the polis. The meal communities (*syssitia*) of the Spartan full citizens, the severance of men in the military age group from their families for the length of their full service liability, and the communal training of the boys in military asceticism —all these were elements of the general type of education associated with the primeval warrior associations of the tribal youths. But outside some Doric associations, this radical militaristic semi-communism of the warrior associations was nowhere developed in historical times, and even in Sparta itself it unfolded in its full harshness only during the military expansion of the Spartan *demos*, after the destruction of the nobility, for the sake of maintaining discipline and safeguarding the status equality of all warriors. In the normal phratries of other cities, by contrast, the noble families or houses (γένη, οἶκοι) alone supplied the ruling notables, as the inscriptions of the *Demotionidai* show for the old clan which had its castle in Decelea.[39] In the Draconian code of Athens [621 B.C.], for instance, this is still reflected in that the "ten best men" of the phratry —that is, the most powerful ones because of their wealth—are to decide on reconciliation or blood revenge [in the case of manslaughter].[40]

In the urban constitution of later periods the phratries were treated as subdivisions of the phylae (and in Rome: of the three old personal *tribus*) into which the ordinary Hellenic city was divided. The term *phyle* (tribe) is technically associated with the polis; the word for a non-urban "tribe" is ἔθνος, not φυλή. In the historical period the phylae had everywhere become artificial subdivisions of the polis, created for the purpose of assigning regular turns in the bearing of public burdens, in the sequence of balloting, and in the occupancy of offices, as well as for the organization of the army, and for the distribution of the yields of state enterprise, of booty and of conquered territories (thus in the allocation of land [after the prehistoric Doric conquest] on Rhodes).[41] At the same time, of course, they were also cult associations, as all—even the rationally formed—associations of early periods have always been. Artificial creations were also the typical three phylae of the Dorians, as is already indicated by the very name of the third: Pamphylae [i.e., "all

tribes"], which finds a counterpart in the Roman tradition about the *tribus* of the Luceres.[42] The origin of the phylae may frequently have been a compromise between a resident stratum of warriors and a newly entering conquering group; this may also explain the two Spartan royal families with unequal rank, which again had a counterpart in the Roman tradition of an original dual kingship. In the historical period the phylae were in all cases purely personal, rather than territorial, associations, headed by a "king of the *phyle*" (*phylobasileus*) who initially was an hereditary family-charismatic chief and later an elected official.

Members of the phylae and phratries, *tribus* and *curiae* were, as "active" or "passive" citizens, all participants in the army of the polis, but only the members of the noble clans were "active" citizens—i.e., only they shared in the offices of the city. Hence the term denoting a "citizen" is at times directly identical with the word for a member of the patrician "families." The attribution of a family to the nobility was here, as elsewhere, without doubt originally tied to the family-charismatic dignity of the district chieftaincy; with the advent of chariot warfare and castle construction, however, it seems to have become a function of castle ownership. During the period of polis monarchy, the formation of new nobility must have come about as easily as did in the early Middle Ages the rise into the circle of fief holders of any family adhering to a knightly style of life. But in historical times only a member of the patriciate (*patricius, eupatrides*) could validly communicate, as priest or official, with the gods of the polis through conducting the sacrifices or consulting the oracles (*auspicia*). As a rule the individual patrician families also had their own gods, different from those of the polis, and their own cults at their ancestral seats—signs of their pre-urban origin. On the other hand, an office priesthood existed beside the family-charismatic priesthood reserved to certain patrician families, but there was never a general priestly monopoly of communication with the gods, such as prevailed almost everywhere in Asia, for the urban magistrates had the power to perform such functions. Nor was there a priesthood that was independent from the polis, apart from the few large interlocal sanctuaries such as Delphi; priests were appointed by the city, and even the Delphic shrines were not ruled by an autonomous hierocracy. Initially they were under the authority of a neighboring polis, and after the destruction of the latter in the course of a holy war, several adjacent communes formed an amphictyony which exerted a very close control. The political and economic power of great temples —as manorial lords, owners of *ergasteria*, money lenders to private persons and, above all, to states (whose war hoards they held in deposit), and as deposit banks in general—did not change the fact that

both on the Greek mainland, and even more so in the overseas colonial settlements, the polis retained and indeed increasingly expanded its power over the wealth of the gods and the priestly benefices. The final result in Hellas was the filling of priestly offices by way of public auctions. It seems that the rule of the military nobility was decisive for this development which was completed during the rule of the *demos*. The sanctuaries, the sacred law, and magic norms of all kinds at that time became instruments of power in the hands of the nobility.

The nobility of a polis was not unconditionally closed; the acceptance of individual outside lords who had moved from their castles into the city together with their clients (as in the case of the *gens* Claudia), and mass "promotions" like that of the *gentes minores* in Rome,[43] occurred in Antiquity just as later in Venice, although this was probably more frequent in the very early period than later. Nor was the nobility a purely local, territorially limited community. Attic noblemen, such as Miltiades, held large seigneuries outside of the city territory, and everywhere, just as in the Middle Ages, interlocal connections were especially prevalent among the noble strata.

In its economic nature, the property of the nobility was predominantly seigneurial. The prestations of slaves, serfs, and clients---categories which will be discussed later---supplied the domestic needs. Even after the disappearance of the old type of bondage and of clientage, most wealth remained landed and agricultural. For this we can find a parallel in the Babylonian patriciate: at the division of the assets of the Babylonian trading house which for generations appears most frequently in the documents, that of the Egibi, urban and rural landed property, slaves, and cattle appear as the main holdings.[44] The *source* of this economic power of the typical urban nobility, however, was in Hellas as in Babylon and in the Middle Ages the direct and indirect participation in trade and shipping. This was accepted as in accord with patrician status up into a late period, and only in Rome did it come to be entirely forbidden for senators. In the ancient world, as in the Orient and in the European Middle Ages, urban residence was sought precisely for the sake of these profit opportunities. The wealth accumulated in this way was used to practice usury against the peasants who, as inhabitants of the countryside, were excluded from political power. Massive debt servitude was the result, and the best rent-producing land (in Attica: the πεδία, the lands in the plain) accumulated in the hands of the *astoi*, while the hill-sides (the seats of the Diacrii), which could not produce a rent, were everywhere held by the peasantry.[45] The seigneurial power of the urban patriciate thus originated to a large extent in urban profits. The endebted peasants either continued as sharecroppers or were pressed directly into *corvée* labor to work beside the true serfs of the old type

which had its origin in seigneurial relations. Purchased slaves began to assume some importance. Nowhere, however, not even in patrician Rome, did the free peasantry entirely disappear; this is as true of Antiquity—and perhaps even more so—as it is of the Middle Ages. The tradition about the struggles in Rome between patriciate and *plebs* clearly indicates that these conflicts were not caused by problems of a manorial social structure; but by incompatibilities of a quite different —and indeed opposite—kind.

Anyone not belonging to the urban, clan-associated, and militarily trained warriorship—and that means above all any free rural resident: *agroikos, perioikos, plebeius*—was economically at the mercy of the urban nobles. This was due to a number of factors: The exclusion from all political power, which also meant the exclusion from active participation in all judiciary activity at a time when the determination of law had not yet assumed a form strictly bound by firm rules; the necessity—which follows from the above—to give gifts or to enter into a client relationship with an urban nobleman in order to obtain a court finding in one's favor; and finally, again not unconnected, the severity of the law of debtorship. The spatial mobility of the peasantry, however, and the possibility of buying land in a new locality, apparently was relatively large during the patrician period, as is shown by the case of Hesiod's family.[46] This was in sharp contrast to later periods, to the "hoplite city," and even more so to radical Democracy. The free urban artisans and the non-patrician small merchants, by contrast, probably were in a position similar to that of the *Muntmannen* of the Middle Ages.[47] In early Rome the king seems to have had a certain tutelary power over this group, similar to the relationship between patron and client, just as did the city lord of the early Middle Ages. Occasionally we find traces of liturgical organizations of artisans: the Roman *centuriae* of military artisans, for instance, may have had this origin.[48] We do not know whether the artisans had ever been organized into guest-tribes, as was the rule in Asia and also in pre-Exile Israel; at any rate, there is no trace of a ritualistic segregation in the manner of the Indian castes.

8. *Ancient and Medieval Patrician Cities: Contrasts and Similarities*

The stereotyped number of phylae, phratries, or sibs in the organization of the ancient patrician city constitutes one obvious contrast to the patrician city of the Middle Ages. Their origin in military and religious units is reflected in this fact. The ancient city arose as a community of

warriors settling together, and this explains these divisions, just as the "hundreds" of the Germanic tribes can be explained from settlement in military groupings. It is this origin of the ancient city, as we shall see further on [cf. sec. *v*:6 below], which causes the structural differences between the patrician period here and in the Middle Ages. Other causes are, of course, to be found in the different environments. The medieval city arose in the context of large continental patrimonial realms and in opposition to their political authorities, the city of Antiquity on the sea coast and in the neighborhood of peasant and barbarian peoples; the latter had its origin in city monarchies, the former in the conflict with feudal or episcopal city lords.

In spite of these differences, whenever political conditions were similar this also found expression in similarities of the formal features of city development. We saw how the position of the city monarch in Venice, which for a time had been truly dynastic and patrimonial, was formally changed through the prohibition of appointing a coregent and ultimately through the transformation of the doge into a president of the corporation of the nobility, and thus into an office-holder. The corresponding development in Antiquity was that from the city kingship to the magistracy with a one-year tenure. In Antiquity, too, the appointment of coregents had considerable significance in the early period, which Mommsen in particular has emphasized.[49] This can be deduced from such phenomena as: The role of the Roman *interrex*;[50] the residues of an earlier practice of the appointment of successors and colleagues by the incumbent (appointment of the *dictator* by the consul; admission to candidateship and conduct of the election of a new official by the old—this was considered a precondition for a valid installment); the original restriction of the Roman community in elections to mere acclamation, and then to a choice between only those candidates proposed or (later) admitted by the magistrates. In Greece, however, the development from city monarchy to an annual magistracy under the control of the nobility differs in formal respects much more strongly from the Venetian model than does the course of events in Rome. Furthermore, the development of medieval European city constitutions outside Venice also shows important differences from the Venetian type.

The fully developed rule of the nobility everywhere replaced the Homeric council of the elders no longer fit for military service by a council of the noble families. This could be a council of the family heads, such as the patrician Senate of early Rome, the Spartan council of the γερῶχοι—i.e., of those to whom honorific gifts (of their clients) were due, and the old Attic council of prytans elected by the clans

organized in naucraries.[51] The Middle Ages knew this stage also, but not in quite so consistent a schematization, which in Antiquity was due to the religious significance of the sibs. Or else it might be a council of former officials, like the later Attic Areopagus and the Roman Senate of historical times.[52] For this latter type the Middle Ages have only modest parallels in the form of the admission of past burgomasters and councillors to the council sessions: the military and also religious character of the ancient magistracy furnished even the past incumbents with far more enduring significance than the offices of the medieval city could do. But in both periods it was always a limited number of noble families in mutual rivalry—at times, as during the rule of the Bacchiadae in Corinth,[53] only a single one—which held the power and alternated in the offices. As in all systems of domination by notables, including that of the Middle Ages, the number of people who ever held office in the patrician polis was very small. Wherever the rule of the nobility was at least *de facto* maintained, as in Rome, this remained permanently so.

Patrician rule also shows other similarities in the Middle Ages and in Antiquity. Feuds between the noble families, exile of the vanquished and their return by force of arms, wars between the knighthood of different cities (in Antiquity, e.g., the "Lelantine" war),[54] all these can be equally found in both periods. In both periods, too, the countryside was outside the law. Whenever they could, the cities of Antiquity, like those of the Middle Ages, forced other cities into clientage: the Spartan cities of the *perioikoi*,[55] later those ruled by harmosts,[56] and the numerous communities subject to Athens and Rome find their parallel in the Venetian mainland realm (the *terra ferma*) and the towns subjugated by Florence, Genoa, and other cities, and administered by their officials.

9. *Economic Character of the Ancient and Medieval Patriciate*

Economically, the urban patrician families of Antiquity and the Middle Ages were above all characterized by the fact that they were *rentiers*. In both periods noble status was determined by a knightly style of life, and not by ancestry alone. The medieval patriciate included the families of former princely servitors (*ministeriales*) together with those of free vassals and knights (especially in Italy), as well as those of free land owners who, after coming into some wealth, had assumed the knightly manner of living. In Germany and in Italy some of the patrician families retained their castles outside of the city, where they withdrew during the struggles with the craft guilds and from which

for long periods they conducted feuds with the cities which had expelled them. In Germany the best known example probably is the family of the Auers in Regensburg.[57] These knightly strata, joined together in the feudal associations, were the true *magnati* and *nobili* of the Italian terminology. The knightly families which did not possess own castles later found themselves obliged to remain in the city when the craft guilds seized power, to submit to the new government and to offer their military service against the magnates. The further development could proceed in two directions. Families not of knightly descent could gain entrance into the nobility by purchasing a noble holding—often a castle—and transferring their residence outside the city; on the other hand, noble families living in the city could take the step from merely occasional participation with their capital in trade to regular commercial operations of their own, thus abandoning their character as *rentiers*. Both movements occurred, but on the whole, the first tendency predominated since it signified an upward movement in the social hierarchy.

When cities were newly founded by political or manorial lords in the Middle Ages, it often happened that not a single knightly family was included among the settlers. Sometimes they were explicitly excluded, especially after the struggle of the craft guilds against the patriciate had begun This phenomenon is met the more frequently, the further we go East and North into the (economically speaking) "new" lands. In Sweden the foreign-born German merchants participated in the founding and the government of the new cities, as also in Novgorod and very frequently in the East in general. In these areas the "patriciate" and the mercantile stratum were really identical, at least during the early period of these cities. The great significance of this phenomenon will be discussed later [sec. *v*:6 below]. In the old cities the situation was different. But everywhere we find the tendency towards development of a *rentier* stratum which constituted the real nobility and exercised leadership in the patrician clubs. In Antiquity, a truly mercantile patriciate is also found mainly in colonial territories—e.g., in cities like Epidamnos.[58]

Thus the economic character of the patriciate was quite fluid; only its center of gravitation can be determined, and this undoubtedly was rentiership. We should strongly stress once again that the urban residence of the patriciate had its economic cause in the urban economic opportunities, and hence that in every case the economic power of the urban nobility derived from the exploitation of such sources of revenue. Neither the ancient *eupatrides* or *patricius* nor the medieval patrician was a merchant, not even in terms of the modern concept of an entrepreneur conducting business from an office. To be sure, he often participated in

mercantile enterprise, but then in the capacity of a ship owner, or as a limited partner, provider of *commenda* capital or of a "sea loan." The actual work: the voyage and the conduct of the trading operations, was left to others; the patrican himself participated only in the risks and the profits, although at times he might have taken a share also in the intellectual management of the enterprise. All important forms of business of early Antiquity and the early Middle Ages, especially the *commenda* and the "sea loan," were tailored to the existence of such financiers who invested their wealth in concrete individual undertakings, with a separate settling of accounts for each one, and usually in a great number of these to distribute the risk. This is not to deny, of course, that all imaginable transitions can be found between a patrician way of life and the personal conduct of business. The travelling trader who obtained money on *commenda* for individual ventures could transform himself into the owner of a great house operating with permanently invested limited-liability capital and employing foreign representatives to do the actual trading work. Money changing and banking operations, but also a shipping or wholesale firm, could easily be conducted for the account of a patrician who himself lived like a knight, and the transition from a capital owner who utilized momentarily unused portions of his wealth by letting them out on *commenda* to one who was continuously active as an entrepreneur was by nature quite fluid.

This fluidity is certainly a very important and characteristic aspect of urban development. But it is itself only the product of other developments. This blurring of the lines frequently came about only in the period of the craft guilds' rule, when even the nobility was forced to enroll in the guilds if it wanted to participate in the city government and when, on the other hand, the burgher remained a guild member even if he was no longer an active entrepreneur. The name *scioperati* ["idlers"] for the great merchant guilds in Italy proves this point. This development was especially typical for the large English cities, in particular for London. There the struggle for power of the economically active groups of burghers organized in the craft guilds found expression in a dispute over the basic election constituency: whether the council and the officials should be elected by the wards of the city or their representatives where the power of the land-owning urban nobility usually was strong, or by the craft guilds ("liveries"). The increasing power of the craft guilds is shown by the growing dependency of all urban citizenship rights on membership in one of the occupational associations. Edward II had early established this principle for London, and although the election of the "Common Council" according to city wards (which had been the general procedure until 1351) was later reimposed several times (1384) by force, it was permanently abandoned in favor

of election by the "crafts" in 1463.[58] While guild membership became compulsory for every burgher—even King Edward III enrolled in the Company of Linen Armourers (merchant tailors)—the importance of the really active merchants and tradesmen within the "crafts" continued to decline in favor of that of the *rentiers*. Although membership in the craft guilds was theoretically obtainable only through apprenticeship and admission, it came in practice to be acquired through inheritance and purchase, and the connection of the "crafts" with their nominal occupation shrank for all but a few (as, e.g., that of the goldsmiths) to vestigial remnants. In part the "crafts" were rent by economic and social contrasts among their members, and in part they became gentlemen associations for the sole purpose of electing the communal officials.

In reality, as we saw, the "types" always become fluid vis-à-vis each other. But this is true of all sociological phenomena and should not prevent the statement of the typical aspects. The typical patrician, at any rate, was not a professional entrepreneur in either Antiquity or the Middle Ages, but rather a *rentier* and "occasional" entrepreneur. The expression "honorable idlers" (*ehrsame Müssiggänger*) is found in the statutes of Upper Rhine cities as the official designation for members of the patrician chamber, in contrast to those of the craft guilds. In Florence, the great merchants of the *Arte di Calimala* and the bankers belonged to the "crafts" and not to the patriciate.

For the ancient world the exclusion of entrepreneurdom from the patriciate was even more a matter of course. This does not mean that the Roman senatorial nobility, for example, did not include any "capitalists" —it is not at all on this level that we find the difference. "Capitalist" *moneylenders* were both the early Roman patricians vis-à-vis the peasants, and the later Roman senatorial families vis-à-vis their political subjects —and that, as we shall see, in no mean dimensions. It was only the role of the *entrepreneur* that the status etiquette, occasionally and with varying flexibility backed up by the law, forbade to the truly patrician families of both Antiquity and the Middle Ages. The objects in which the typical patriciate of the different ages invested its wealth of course varied considerably. Nevertheless, the distinction remained the same: Whoever too noticeably crossed the line between the two forms of economic activity represented by the investment of wealth on the one hand, and by profits from capital on the other,[59] was considered a *banausos* in Antiquity and a man "not of the knightly kind" in the Middle Ages. In the later Middle Ages the old knightly families of the cities were denied equal rank by the rural nobility because they sat on the council together with the men of the craft guilds—and thus with entrepreneurs. It was not "greed for gain" as a *psychological* motive that was rejected; in practical life the Roman office nobility and the medieval

patriciate of the large coastal cities was just as possessed by the *auri sacra fames* as any other class in history. Rather, it was any *rational*, continuously organized, and in this sense specifically "bourgeois" form of acquisitive operation, any systematic economic activity, that was looked upon with disdain. The Florentine *Ordinamenti della giustizia*, passed [in 1293] to break the rule of the *nobili*, identify the families who were to be deprived of political rights as all those whose members had in the past been knights—families, that is, with a knightly style of life. In Antiquity the same criterion, that of the style of life, was used to disqualify all candidates for office who were actively engaged in a trade.[61] The consequence of the Florentine *ordinamenti*, according to Machiavelli, was that any nobleman who wanted to stay in the city had to adapt his life style to the usages of the bourgeois strata.[62]

These, then, were the primary characteristics of the patriciate; as can be seen, they belong to the category of "status" characteristics. In addition, of course, the political characteristic typical for every charismatic nobility has to be mentioned: namely, descent from a family that had once occupied certain offices and dignities, and was considered eligible for office for that very reason. This trait is found in the sherifian families of Mecca just as in the Roman nobility and in the tribunitian families of Venice. The closure of the group was of varying rigidity; it was less flexible in Venice than in Rome, where the *homo novus* was not formally excluded from the offices. Everywhere, however, when a family's eligibility for the council and for the city offices was in question, it was sought to ascertain whether a member of this family had previously sat in the council or held an office conferring council rank or, as in the Florentine *ordinamenti*, whether a knight appeared among its ancestors. In general, the principle of status closure became more rigid as the population and the importance of the monopolized offices increased.

In some of the observations in this section we have again anticipated the discussion of a later period in which the old family-charismatic nobility has entirely or in part been deprived of its special legal status and is forced to share power with the *demos* of the Greek city, the *plebs* of Rome, the *popolo* of Italy, the "liveries" of England, and the *Zünfte* of Germany, thus according equal status to these associations. This process we must now consider in greater detail.

NOTES

1. Secs. iii:2–3 appear in small print in the German edition, indicating an excursus. In his account of early Venetian history, Weber in general follows Heinrich Kretschmayr, *Geschichte von Venedig* (3 vols.; Gotha: Perthes, 1905–

1934),–Vol. I: *Bis zum Tode Enrico Dandolos*. Cf. also Bernhard Schmeidler, *Der dux und das comune Venetiarum von 1141–1229* ("Historische Studien," Vol. 35; Berlin: Ebering, 1902); Ernst Mayer, *Italienische Verfassungsgeschichte* (Leipzig: Deichert & Böhme, 1909). (W)

2. The *curia* was the local administrative council, composed of liturgically drafted officials and responsible for local tax collection; *defensor* is the late Roman designation for the highest magistrate of a city. The contrast is between these *civilian* liturgic offices and the *military* tribunate which predominated from the sixth century on. Cf. Kretschmayr, *op. cit.*, I, 38ff.

3. Doge Pietro Candiano IV (r. 959–76), husband of Waldrada of Tuscany, a niece of Emperor Otto I. Cf. Kretschmayr, *op. cit.*, I, 113ff, 436ff. (W)

4. Cf. Kretschmayr, *op. cit.*, I, 111.

5. That is, in the island settlement which in 811 had become the official residence of the doge—at a time when it was still quite inferior to some of the other mainland and lagoon cities of the duchy (*ducatus*) of Venetia. Rialto long remained the primary name of the town which only in the thirteenth century came to be generally known by the name of the territorial unit of which it was the capital. The old designation survives today in the Rialto ward, around the bridge of the same name, the old commercial quarter. Cf. Kretschmayr, *op. cit.*, I, 60, 83f.

6. Kretschmayr, *op. cit.*, I, 148.

7. Walter Lenel, *Die Entstehung der Vorherrschaft Venedigs an der Adria* (Strassburg: Trübner, 1897), 124ff. (W)

8. Chrysobullon (Golden Bull, i.e. privilege) of Alexios I, the first Comnene emperor (r. 1081–1118), of May, 1082, in which he granted Venice full freedom from taxation in her trade in the Byzantine empire in exchange for aid in his struggle against the Sicilian Normans under Robert Guiscard. Cf. Kretschmayr, *op. cit.*, I, 161ff, 168, 178f.

9. Reference to the Fourth Crusade (1202–04), which Venice deflected to an attack on Constantinople, partly in order to have a hostile emperor replaced by one willing to renew the Chrysobullon on favorable terms. After the fall of the city and the foundation of the Latin Empire (1204), the phrase *quartae et dimidiae partis totius Romanie imperii dominator* was added to the styles of the doge.

10. Enrico Dandolo, doge 1192–1205. In his oath of office, the limitations on the dogal power seem to have been spelled out in detail for the first time. Cf. Kretschmayr, *op. cit.*, I, 331, 341.

11. *Publicum placitum* or *curia ducis:* the public court meeting, at times also an acclamatory quasi-legislative meeting, which from the late ninth century on met in the ducal palace under the chairmanship of the doge. Cf. Kretschmayr, *op. cit.*, I, 191ff, 197.

12. Cf. Schmeidler, *op. cit.*, 13ff.; Kretschmayr, *op. cit.*, I, 327ff.

13. *Quaestio repetundarum:* permanent jury court (*quaestio*) instituted by the *lex Calpurnia* of 149 B.C. to try colonial and provincial governors for extortion (*de pecuniis repetundis*) and exploitation of their subjects. Pauly-Wissowa, *RE*, vol. 48 (Stuttgart, 1963), cols. 763ff.

14. Cf. Lenel, *op. cit.*, 143f.; Schmeidler, *op. cit.*, 43–48, 67ff.

14a. On the origins of these party formations and their gradual interlocal coalescence, see Robert Davidsohn, "Die Entstehung der Guelfen- und der Ghibellinen-Partei," in his *Forschungen zur Geschichte von Florenz*, IV (Berlin: Mittler, 1908), 29–66.

15. Lists detailing the contributions (army contingents, later a money tax)

due from the medieval German Estates at the accession of a German king, in support of his armed expedition to Rome (*Römerzug*) to obtain from the pope the coronation as emperor of the Holy Roman Empire.

16. G. Hanauer, "Das Berufspodestat im dreizehnten Jahrhundert," *Mitteilungen des Instituts für österreichische Geschichtsforschung*, XXIII (1902), 377–426, *passim*. (W)

17. *Ibid.*, 395.

18. *Ibid.*, 426.

19. Cf. below, n. 57 on the Regensburg "Auer *Wirren*".

20. King Stephen of Blois (r. 1135–54), whose claim to the throne was contested by the Plantagenets. He was succeeded by Henry II Plantagenet, the first Angevin king. (W)

21. On the *firma burgi*, cf. below, sec. *iv*:10:D; J. Hatschek, *Englische Verfassungsgeschichte*, 109ff. (W)

22. For the "companies," i.e., the guilds of individual trades or crafts such as the (merchant) companies of the drapers or fishmongers, or the (craft) companies of the coopers, cutlers or shipwrights, see S. Thrupp, *The Merchant Class of Medieval London*, *passim*.

23. "*Scivini* (*Schöffen*)" in the German text; however, Weber is obviously thinking of the 24 ward presidents, elected for long terms or until removed, the aldermen (*aldermanni* in the Latin documents) who together with the annually elected mayor and the common council formed the London city government. The *scivini* actually were subordinate officials of the London craft guilds (cf. Hegel, *Städte und Gilden*, *op. cit.*, I, 70, 78 n. 2). The number of councillors was in fact much larger than that of aldermen (for a collation of the changing council strength cf. Thrupp, *The Merchant Class of Medieval London*, 79); Weber was probably misled by Hegel's statement (*op. cit.*, 78f.) that the councillors, like the aldermen, were elected by wards.

24. See below, sec. *iii*:9.

25. On Hellas of the tribal aristocracy, cf. now M. I. Finley, *The World of Odysseus* (New York: Meridian Books, 1959).

26. *Iliad*, bk. II, 494–759.

27. *Iliad*, bk. VI, 168–17.1.

28. *Odyssey*, bk IX 40.

29. *Iliad*, bk. XVIII, 478–608, esp. 503f.

30. *Odyssey*, bk. VI, 259,293.

31. *Iliad*, bk. II, 212–77. Cf. also Finley, *The World of Odysseus*, 117ff.

32. Thus Eumaios the swineherd, Odysseus' purchased slave. Cf. *Odyssey*, bk. XIV, 61–66 and Weber, *GAzSW*, 101, n. 1.

33. *Iliad*, bk. XXIII, 257–897.

34. On the Cyrenaican silphion trade, cf. above, ch. XVI:*i*, n. 16.

35. On the early Greek city state, cf. Ehrenberg, *The Greek State*, Part I and the bibliographical essay, *ibid.*, 243–56.

36. Cf. Eberhard Gothein, *Die Culturentwicklung Süd-Italiens in Einzel-Darstellungen* (Breslau: Koebner, 1886), 162–242 for Aquila. In this case the *incasamento*—thus the Italian term, an almost literal equivalent of *synoikismos*—was compulsory; Emperor Frederick II, in an attempt to contain the Norman feudal barons of the Abruzzi mountains, ordered the villages of the Aternus valley to resettle in the new city and all *castelli* in the territory to be razed within two months. The foundation of Alessandria (near Turin, 1168) is mentioned in Gothein, *Wirtschaftsgeschichte des Schwarzwaldes und der angrenzenden Landschaften* (Strassburg: Trübner, 1892), 63.

37. On Decelea, cf. below, n. 39; on the controversy about the *pyrgoi* of Thos in Asia Minor, which may have been castle districts in the territory or militia districts for the manning of the wall towers of the town itself, see Pauly-Wissowa, RE, 2d series, V (1934), col. 55ff.

38. Cf. Weber, *GAzSW*, 116, 122, 217.

39. The *Demotionidai* formed one of the Attic phratries. A stele found near its cultic center, Decelea, was covered by inscriptions summarizing the resolutions of the association regarding admission procedures. While in the first inscription, dating from 496–495 B.C., the noble clan of the Decelean castle still played a considerable role, it was no longer mentioned in a second inscription later in the fifth century; from this it was concluded—though not without controversy—that the role of the nobility in the phratry had declined between these two points in time. Cf. art. "Demotionidai" in Pauly-Wissowa, RE, V (1905), cols. 194–202, and Weber, *GAzSW*, 136.

40. Cf. art. "Drakon," in Pauly-Wissowa, RE, V (1905), col. 1653.

41. On the land allocation on Rhodes, cf. Weber, *GAzSW*, 152.

42. Unlike the "tribes" of the Ramnes and Tities, which legend derived from Kings Romulus and Titus Tatius, the third *tribus* of the early city constitution could not be identified with one of the mythical royal names; legend instead explained it as a "naturalized" group of military allies.

43. Another mythical king, Tarquinius Priscus, was said to have enlarged the Senate—and thus the circle of noble families represented there—from 100 to 300; the new members, the *patres minorum gentium*, in later times voted only after the "fathers" of the old families. Classical writers disagreed as to whether the *gentes minores* were of patrician origin (Cicero) or were promoted plebeians (Suetonius). Cf. art. "gens" in Pauly-Wissowa, RE, VII (1912), col. 1192f.

44. On the banking house of the "Grandsons of Egibi," which existed in Babylon from the seventh to the fourth century B.C., see Fritz M. Heichelheim, *An Ancient Economic History*, II (Leiden: Sijthoff, 1964), 72ff.

45. Allusion to the party divisions of the early sixth century, which shook Attica shortly after the Solonic reforms, between the landlords of the plain (the *pediakoi*), the trading and sea-faring interests of the coast (the *parálioi*), and the radically democratic small peasantry of the Diakria hill district (the *diákrioi*). Cf. Weber, *GAzSW*, 134, 152; A. Andrewes, *The Greek Tyrants* (New York: Harper Torchbook, 1963), 102ff (on the three parties); Ehrenberg, *The Greek State*, 30f.; R. von Pöhlmann, *Griechische Geschichte und Quellenkunde*, 5th ed. (Munich: Beck, 1914), 88–97.

46. On Hesiod's family, cf. below, sec. v, n. 32.

47. In German medieval cities, small traders and artisans who stood in a special tutelary relationship to the Carolingian king, the city lord, and later to powerful patricians, owing certain services and receiving protection, assistance in the courts and other aid. Cf. Hans Planitz, *Die deutsche Stadt im Mittelalter* (Graz: Boehlau, 1954), 268f.

48. The so-called "Servian" army organization included five unarmed units, two of which comprised the military carpenters and smiths: the *centuriae fabrum tignariorum* and *fabrum aerariorum*; the others were two units of musicians and one of replacement personnel. On their position within the Roman political system and the *comitia centuriata*, see Theodor Mommsen, *Römisches Staatsrecht*, III (first ed., Leipzig: Hirzel, 1887), 281–90.

49. E.g., Mommsen, *op. cit.*, I (2nd ed., 1876), 204–212.

50. During the Roman republic, an interim official with a five-day tenure of

office who conducted affairs when for some reason both consulships were vacant. Cf. Mommsen, *op. cit.*, I, 633ff.

51. On the early Greek councils in general and the Spartan *gerousia*, cf. Ehrenberg, *The Greek State*, 59, 250: The *prytaneis* of the naucraries must be distinguished from the later prytans of the Cleisthenian council, the representatives of the ten post-reorganization phylae (cf. above, ch. XVI:*ii*, n. 16). The naucraries were a pre-Solonic institution, the smallest subdivision of the four original Ionian phylae—twelve to each tribe, and thus 48 in all. Originally, these were probably fiscal units, responsible for the maintenance of a certain number of warships, but later they became general administrative districts headed by a *prytanis*. Relatively little is known about the council formed by these district heads, on which cf. Ehrenberg, *op. cit.*, 30f.

52. Membership in the later Areopagus fell to all former *archontes*, and in the Roman Senate to all who had held curule office.

53. Ruling family of Corinth, 926(?)–657, when it was ove thrown by Kypselos, one of the early tyrants. Cf. Andrewes, *The Greek Tyrants*, 12, 43–49.

54. Seventh century B.C. war between Chalcis and Eretria, on Euboea island, over possession of the Lelantine plain.

55. "Dwellers around," the inhabitants of dependent communities which owed war services to the Spartan state, but as non-citizens enjoyed no active political rights.

56. Spartan military governors of conquered cities during the later expansionary period.

57. Early 14th century. When the Auers, who for a number of yea s had wielded power in the city (with the help of a retinue of *Muntmannen*), were expelled in 1334, the *Bürgermeister* position was for ten years rest icted to out-of-towners, quite in the manner of the Italian *podestà*. Cf. J. Langoth, *Skizze einer Entwicklungsgeschichte der freistädtischen Verfassung Regensburgs im Mittelalter* (Stadtamhof, 1866).

58. A Corinthian-Corcyrean settlement on the present-day Albanian coast, the oligarchy of which conducted trade with the interior through a "factor" on a common account. Cf. *GAzSW*, 101, 107.

59. Cf. Hegel, *Städte und Gilden*, *op. cit.*, I, 79f.; Thrupp, *The Merchant Class of Medieval London*, 73–83. Weber is probably in error with respect to the election of the Common Council by craft guilds after 1463: both Hegel and Thrupp indicate that the return to election by wards in 1384 was final. Perhaps he misinterpreted Hegel's statement (*op. cit.*, 79) that the livery companies (the upper guilds) obtained the right to participate, together with the London Common Council, in the election of mayor and sheriff (1468) and of the members of the House of Commons (1476). The year 1463 as given in the text may then be due to misreading of 1468 in the handwritten manuscript.

60. *Vermögensanlage* and *Kapitalgewinn*. On Weber's differentiation between the utilization of "wealth" (*Vermögen*) and of "capital," categories which are associated, respectively, with the concepts of "budgetary management" (*Haushalt*) and "acquisitive activity" (*Erwerb*), see *supra*, Part One, ch. II: 10–11, esp. p. 98ff.

61. Cf. Mommsen, *Römisches Staatsrecht*, I (2nd ed., 1876), 470f.

62. Niccolo Machiavelli, *History of Florence*, bk. III, ch. 1 (New York: Harper Torchbook, 1960), 109.

iv

The Plebeian City

1. *The Destruction of Patrician Rule Through the Sworn Confraternity*

The manner in which the rule of the patriciate was broken shows strong "external" parallels in the Middle Ages and in Antiquity—especially if the large medieval cities are considered, and particularly those of Italy, where the development proceeded, as in the cities of Antiquity, on an essentially autonomous course, i.e. without interference from extra-urban powers.

In Italy, the next crucial stage of development after the rise of the *podestà* came with the formation of the *popolo*. Like the German craft guilds, the *Zünfte*, the Italian *popolo* was composed of economically varied elements; above all, it comprised both entrepreneurs and handicraft workers. In the struggle against the knightly families the entrepreneurs initially played the leading role; they instigated and financed the sworn confraternity of the "crafts," whereas the artisan guilds provided the necessary manpower for battle. Frequently the sworn association of the craft guilds appointed a single individual to head the movement, in order to safeguard the achievements obtained in the battle with the patriciate. Thus, after the expulsion of recalcitrant noble families in 1336, Zürich was ruled by the knight Rudolf Brun and a council composed in equal parts of representatives of the "Constabulary"—the corporation of the knights remaining in the city and the entrepreneurial "crafts" of the merchants, drapers, salt dealers, and goldsmiths—and of the minor "crafts" of small artisans; under this leadership the city was able to withstand the siege of the Imperial army.[1] In Germany the sworn confederation of the "crafts" was in most cases only temporarily an association separate from the commune. Its separate existence was ended either through the admission of "craft" representatives into the council or through the absorption of the entire citizenry, including the nobility, into the craft guilds. As a permanent organization, in the form of a city guild, the fraternity of the "crafts" was maintained only in some cities of Lower Germany and the Baltic region. Its character as a derivative

organization is shown in the composition of its governing body, which was made up of the "guild-masters" of the individual "crafts." In the fifteenth century no one could be imprisoned in Münster without the agreement of the guilds. The city guilds thus functioned as protective associations against the judicial activity of the councils. In administrative matters, too, the councils were joined, either on a permanent basis or only for important matters, by guild representatives without whom no decision was supposed to be made. In Italy, such protective associations of the citizenry against the patriciate assumed much more significant dimensions.

2. *The Revolutionary Character of the* Popolo *as a Non-Legitimate Political Association*

The Italian *popolo* was not only an economic category, but also a political one. It was a separate political community within the urban commune with its own officials, its own finances, and its own military organization. In the truest sense of the word it was a "state within the state"—the first *deliberately nonlegitimate and revolutionary* political association. The causes for this phenomenon must be sought in the fact that in Italy, much more than elsewhere, knightly families settled in the cities themselves, due to the much stronger development of economic and political means of power of the urban nobility. The consequences of this fact will engage us frequently in the following analysis.

The association of the *popolo,* which confronted these knightly families, rested on the confraternization of the occupational associations (*arti* or *paratici*).[2] The separate political community created by these associations was in the earliest cases (Milano, 1198; Lucca, 1203; Lodi, 1206; Pavia, 1208; Siena, 1210; Verona, 1227; Bologna, 1228) officially known by such names as *societas, credenza, mercadanza, comunanza,* or simply as *popolo.* The highest official of the separate commune of the *popolani* was usually called *capitano del popolo.* He was elected for a short term, usually a year, was paid a salary and, like the *podestà* of the commune, was often called in from another town, in which case he had to bring his own staff along. The *popolo* supplied him with a militia levied in most cases on the basis of city wards, or by the *arti.* Like the *podestà* of the commune, he often resided in a special "house of the

people" with a tower, the fortress of the *popolo*. The *capitano* was assisted, especially in the financial administration, by separate bodies composed of representatives (*anziani* or *priori*) of the craft guilds who were elected from the city wards for short terms of office. They claimed the right to protect the *popolani* in the courts, to contest decisions of the authorities of the commune, to address proposals to them, and often a direct role in legislation. But above all they participated in the formulation of the decisions of the *popolo* itself.

Up to the time of its full development, the *popolo* had its own statutes and its own tax system. At times it even established the principle that resolutions of the commune should be valid only if agreed to by the *popolo*, so that new laws of the commune had to be entered in both statute books. For its own decisions it enforced, wherever possible, admission into the statutes of the commune, and in a few cases the decisions of the *popolo* even obtained priority over all other statutes, including those of the commune (*abrogent statutis omnibus et semper ultima intelligantur* in Brescia).[3] The jurisdiction of the *podestà* was challenged by that of the *mercanzia* or *domus mercatorum*,[4] which asserted competency especially in all affairs of the market and the trades and thus constituted itself as a special court for the merchants and artisan producers. Beyond this, it often obtained universal significance for the *popolani*. In the fourteenth century the *podestà* of Pisa had to swear that he and his judges would not inject themselves into disputes among the city's *popolani*.

At times the *capitano* attained a broad general jurisdiction competing with that of the *podestà* and, in a few cases, even a superior appeals jurisdiction. Very frequently he obtained the right to participate in the sessions of the communal governing agency with control functions and with the power to dismiss meetings; occasionally he had the authority to convoke the citizenry of the commune, to execute the resolutions of the council if the *podestà* failed to do so, to pronounce and to remit banishment, and to supervise or to assist in the administration of the communal finances and, most important, of the property of banished citizens. In the official ranking, the *capitano* stood below the *podestà*, but in a case like that just described,[5] he had in fact become an official of the commune, a *capitaneus populi et communis*; if, in Roman terms, he was formally a *collega minor*, he was nevertheless in practice usually the more powerful of the two. Often the *capitano* also had authority over the military forces of the commune, the more so if these consisted of mercenary troops which could be maintained only from the tax payments of the rich *popolani*.

3. *The Distribution of Power Among the Status Groups of the Medieval Italian City*

Wherever the *popolo* was completely successful, the nobility was, from a purely formal point of view, left with only negative privileges. While the offices of the commune were open to the *popolani*, the offices of the *popolo* were not open to the nobility. The *popolani* enjoyed special privileges of trial procedure if they had been insulted by a *nobile*. The *capitano* and the *anziani* supervised the administration of the commune, while no similar control over the *popolo* existed. At times only the resolutions of the *popolo* concerned the entire citizenry. In many cases the nobility was explicitly excluded temporarily or permanently from any participation in the administration of the commune; the most famous is that of the Florentine *Ordinamenti della giustizia* of Giano della Bella in 1293. The *capitano*—in Florence the leader of the burgher levy of the craft guilds—was supplemented by an extraordinary, purely political official with a very short term of office: the *gonfaloniere della giustizia* (standard-bearer of justice), who was put in command of a special people's militia of one thousand men drawn by lot and subject to immediate call. He was to protect the *popolani*, to prosecute nobles and to execute sentences against them, and to supervise the observance of the *ordinamenti*. The politicized judicial system with an official spying network, abetment of anonymous accusations, an accelerated inquisitorial procedure for magnates, and much simplified methods of proof (by "notoriety") was the democratic counterpart to the Venetian trial before the Council of Ten. The materially most incisive measures against the nobility included: the exclusion from the city offices of all families adhering to a knightly style of life, the exaction of pledges for loyal conduct from the nobility and the imposition of liability for each member's behavior upon the entire patrician family, the passing of special penal laws for political offences of the *magnati*, including that of insulting a *popolano*, and the prohibition of purchasing real estate bordering on the property of a *popolano* without having obtained the permission of the latter.

The guaranty for the rule of the *popolo* was assumed by the interlocal *Parte Guelfa*, whose party statutes were treated as part of the city law. Only enrolled party members could be elected to a city office. The power instruments of the party have already been discussed. The very fact of a guaranty by a party organization which was essentially based on knightly military forces makes it reasonable to assume that the *ordinamenti* had not really destroyed the social and economic power of the patriciate. Indeed we find that within ten years after the promulgation of

these Florentine class laws, which had been adopted by numerous other Tuscan cities, the feuds between noble families flourished once again; the rule by small plutocratic groups was never interrupted at all. Even the offices of the *popolo* were nearly always filled with noblemen, for noble families could be accepted among the *popolani* by an explicit act. The exacted renunciation of the knightly style of life was only partially effective; basically it amounted to no more than a pledge of political obedience and enrollment in one of the craft guilds. The important social effect was a certain fusion of the urban *magnati* with the *popolo grasso* (the "fat people"), a term used to designate the *popolani* strata with a university education or capital wealth which were organized in the seven "upper" guilds (*arti maggiori*) of the judges and notaries, bankers, merchants of foreign cloth, merchants of Florentine woolens, silk merchants, doctors and druggists, and fur dealers. Initially all city officials had to be elected from these upper guilds in which the noblemen enrolled. Only after several additional insurrections did the fourteen "lower" guilds (*arti minori*) of the *popolo minuto*—i.e., those of the small entrepreneurs—gain a formal share in the power. The artisan strata that did not belong to these fourteen lower guilds obtained a very temporary share in the government only after the *Ciompi* revolt of 1378—in fact, they obtained an independent guild organization only then.[6] Only in a few places and temporarily did the small burghers manage, as in Perugia in 1378, to exclude by law from the council of *priores* not only the nobility, but also the *popolo grasso*. Characteristically, these lower propertyless strata of the citizenry as a rule enjoyed the support of the *nobili* in their attack against the rule of the *popolo grasso*, just as in later years the *tyrannis* was founded with the aid of the masses. Even earlier, in the thirteenth century, the nobility and these lower strata had frequently coalesced against the onslaught of the burghers. Whether such alliances came about, and how strong they were, was determined by economic factors. The interests of the small artisans could collide very sharply with those of the entrepreneurial guilds wherever the putting-out system was fully developed. In Perugia, for instance, the pace of this development was so stormy that in 1437 one individual entrepreneur put to work not only 28 *filatori* but also 176 *filatrici* [i.e., male and female spinners], as Count Broglio d'Ajano has shown.[7] The situation of the small artisans under the putting-out system was often precarious, their employment frequently discontinuous. Out-of-town workers competed for the jobs, and hiring by the day was practiced. The entrepreneurial guilds sought to regulate the conditions of the putting-out contract in as one-sided a manner as the guilds of the artisan producers

working for them which, like the *cimatori* of Perugia, prohibited the underbidding of established wage scales.[8]

These strata obviously expected nothing good from the rule of the "upper" crafts. However, they nowhere obtained permanent political power. The proletarian stratum of travelling journeymen, finally, was everywhere without any share in the city government. The participation of the "lower" crafts for the first time brought an at least relatively democratic element into the city councils, but their factual influence nevertheless remained small. The custom of appointing special commissions for the election of officials, which was common to all Italian communes, was supposed to eliminate demagogy and to establish a line of political responsibility for the election managers—men who are often anonymous and not held accountable in the modern European democratic polity. The system made possible a careful selection and orderly organization of the officiating council members and officials, but normally it was bound to issue in compromises between only the socially influential families; above all, it could never ignore the desires of the financially decisive strata. Only in times of competition for power between several families of equal strength or in periods of religious excitement could "public opinion" gain any positive influence on the composition of municipal officialdom. The Medici, for instance, gained dominance in Florence without themselves holding office, merely through utilizing their influence and a systematic manipulation of such election procedures.

The successes of the *popolo* were not achieved without violent and often long drawn-out struggle. The nobility would withdraw from the cities, to continue its feud against them from its castles. The urban armies, in turn, would break the castles; at times the cities would shatter the traditional seigneurial constitution of the countryside through legislative acts declaring the liberation of the peasantry. The means of power, which it needed for crushing the nobility, the *popolo* found in the recognized organizations of the craft guilds. The communes had utilized the "craft" organization from the very beginning for administrative purposes; they had also drafted the tradesmen, in guild-based units, for guard duty in the fortifications and increasingly also for campaign service as foot soldiers. Financially, the aid of the entrepreneurial "crafts" increasingly became indispensable with the advance of military technology. The intellectual and administrative backbone of the *popolo* was supplied by the jurists, above all by the notaries and often also by the judges, and by the other learned professions such as the physicians and druggists. These intellectual strata, which as a rule were organized

in "crafts" of their own, always belonged to the *popolo* and played a leading role similar to that of advocates and other jurists within the *tiers état* in France. The first captains of the *popolo* had in most cases previously been heads of one of the craft guilds or of a guild association. The *mercadanza* in particular, originally a non-political association of the traders and artisan producers (for in Italy, too, as Ernst Salzer has emphasized correctly, the term *mercatores* covers both groups and not merely the merchants),* normally constituted a first stage in the political organization of the *popolo;* its presiding officer, the *potestas mercatorum,* frequently became the first *capitaneus populi.*

The entire development of the *popolo* was initially oriented towards an organized protection of the interests of the *popolani* before the courts, corporations and agencies of the commune. As a rule the movement was triggered by the often far-reaching denial of legal rights to commoners. It happened not only in Germany that purveyors and craftsmen were paid with the cudgel rather than in the desired coin, and subsequently found no remedy in the courts (as is reported in a Strassburg case). Even more inciting seem to have been the personal insults and threats dealt out to the *popolani* by the militarily superior nobility, which continued to recur everywhere even a century after the formation of the separate political association of the *popolo.* The status pride of the knighthood and the natural resentment of the bourgeoisie forever made for collisions.

The development of the captaincy of the *popolo* thus began with a right of assistance and control against the authorities of the commune, similar in type to the rights of the Roman tribune of the *plebs;* from there it developed into a vetoing power, and ultimately into a coordinate office with universal competencies. The rise of the *popolo* was aided by the feuds of the patrician families, which injured the economic interests of the burghers and often provided the first occasion for the intervention of *popolani* officials. An additional favorable factor to be mentioned was the ambition of individual noblemen to utilize the *popolo* for the erection of a personal tyranny. The nobility everywhere lived in continuous apprehension of such desires, and everywhere the divisions within the ranks of the nobility gave the *popolo* the opportunity to enrol the military power of one part of the knighthood in its own service. On the purely military side, the growing importance of the infantry vis-à-vis the knightly cavalry threw its first shadows over these events. It did so in combination with the beginnings of rational military technology: In the Florentine armies of the fourteenth century we first hear of the "bombards," the forerunners of modern artillery.

4. *Ancient Parallels:* Plebs *and Tribune in Rome*

The development of the *demos* and the *plebs* in Antiquity shows many external similarities to the above development. This is especially true for Rome, where the rise of the separate political community of the *plebs*, with its own officials, is quite comparable to that of the *popolo*. The *tribuni plebis* were originally elected heads of the non-noble citizenry of the four city districts, and the aediles, in the opinion of Eduard Meyer, were the administrators of the corporate cult sanctuary which at the same time was the treasury of that group; hence they were also the treasurers of the *plebs*.[10] The *plebs* itself was constituted as a sworn brotherhood which undertook to strike down anyone obstructing its tribunes in their defense of plebeian interests—for this is what is implied in the designation of the plebeian tribune as *sacrosanctus*, as contrasted to the "legitimacy" of the officials of the entire community of Rome.[11] Analogously, the Italian *capitano del popolo* normally lacked the designation *dei gratia* which the officials with legitimate power, the *consules*, used to append to their titles.

The *tribunus plebis* thus did not possess legitimate authority of office and its identifying characteristics: the right to commune with the gods of the city, the *auspicia*, and the most significant attribute of legitimate *imperium*, the right to inflict legitimate punishment.[12] In place of the latter he had, as the head of the *plebs*, the power to execute a sort of lynch law against anyone caught obstructing his official actions: without trial and judgment, he could have such persons arrested and executed by having them thrown off the Tarpeian rock. In close parallel to the *capitano* and the *anziani*, the powers of office which the tribune later did possess developed from his right to intercede and to inhibit official actions of the magistrates against plebeians. This right of intercession—a negative power common to all Roman officials for use against coordinate or inferior authorities—was orginally the main right of the tribune. Just like the *capitano*, he developed this right into a general power of review and veto, and thus into the *de facto* highest power within the limits of the urban peace district. On campaigns, however, the tribune had no say: there, the command of the chief military officer prevailed without restrictions. This territorial limitation, which did not apply to the older authorities, is a characteristic reflection of the specifically "bourgeois" origin of the tribunate.

The political accomplishments of the *plebs* were made possible by the tribunitian veto power alone. Through it, the *plebs* obtained the right of *provocatio*, i.e., to challenge criminal verdicts [in the plebeian assembly], the mitigation of the law of debtorship, the scheduling of

court sessions on market days (in the interest of the rural population), and an equal participation in the state offices, ultimately including also the priestly offices and the council. Finally, it was through the tribunitian veto that the *plebs* managed to get its resolutions (*plebiscita*) recognized as binding for the entire community. This achievement which, as we saw, was sometimes also attained in the Italian communes, was put into force in Rome through the *lex Hortensia* at the time of the last secession of the *plebs* [287 B.C.]. Formally, of course, this signified the same curtailment of patrician power as it did in medieval Italy.

After the culmination of the older *status* struggles in this event, the tribunate moved out of the political limelight. Like the *capitano,* the tribune now became an official of the commune, and his position became one stage in the developing career sequence of municipal magistracies, an office which differed from other offices only in that election was by the *plebs* alone. The historical differentiation between plebeian and patrician was in any case becoming almost devoid of meaning in practical life as a new nobility developed, based on office-holding and wealth (*nobiles* and *equites*). In the *class* struggles, which now began, the old political rights of the *tribuni plebis* were not again powerfully reasserted until the time of the Gracchi, when they were used as instruments in the service of the political reformers and of the economic class movement of the politically disadvantaged "bourgeoisie" in its conflict with the office nobility.[13] It was the ultimate effect of this revival that the tribunitian power later became, in addition to the military *imperium,* one of the life-long official attributes of the *princeps.*[14]

These similarities between the medieval Italian and the early Roman development are very striking, especially since they appear in spite of fundamental political, social and economic differences, which will be discussed soon. It is a fact, after all, that only a limited variety of different administrative techniques is available for effecting compromises between the status groups within a city. Similarities in the forms of political administration can therefore not be interpreted as identical superstructures over identical economic foundations. These things obey their own laws.

5. *Ancient Parallels:* Demos *and Ephors in Sparta*

We may now ask whether this Roman development did not have parallels in Antiquity itself? Separate political associations like that of the *plebs* or the Italian *popolo* cannot be found elsewhere in the ancient world, as far as is known. But there are phenomena of a somewhat re-

lated character. Even in Antiquity the ephors of Sparta were viewed by some (Cicero, *de Re Publica* ii. 59; *de Legibus* iii. 16) as a parallelism of this kind. It is essential, however, to interpret this correctly.

In contrast to the "legitimate" [two Spartan] kings, the [five] ephors ("overseers") had a limited term of office of one year; like the Roman tribunes, they were elected not by the three [original Doric] clan phylae, but by the five territorial phylae of the Spartiates. The ephors convoked the citizen assembly; they had jurisdiction in civil and also in criminal matters (though perhaps not without limitations in the latter sphere), summoned even the kings before their chair, compelled officials to give an accounting of their actions, and suspended them. The administration was under their control, and together with the elected council of elders, the *gerousia*, the ephors in effect constituted the supreme political power within the Spartan territories. In the city district the kings were restricted to honorific privileges and purely personal influence; on campaigns, however, they held the full disciplinary power, which in Sparta was exceedingly severe. It was probably a phenomenon only of the late period that ephors accompanied the kings also during campaigns. It does not speak against a tribunitian quality of the ephors' power that they may have originally been appointed by the kings—perhaps, as some believe, even after the First Messenian War;[15] the same may in fact have been true for the first *tribus* heads in Rome. Nor does the more weighty fact that they lacked the typical tribunitian power of intercession—a power also possessed by the medieval *capitanei populi*—negate the assumption of a tribune-like character of the ephorate. The tradition, of course, states that the original function of these officials was to protect the citizens against the kings. The later absence of this function is to be explained from the unconditional victory of the Spartan *demos* over its opponents, and from the fact that the *demos* itself was subsequently transformed into a ruling class, originally plebeian, but later in fact oligarchic, which exercised an absolute control over the entire country. A nobility was unknown in Sparta during the historical period. The polis jealously guarded its rulership position vis-à-vis the Helots—against whom a "declaration of war" was ceremoniously pronounced each year in order to provide a religious justification for their status as outlaws—and likewise its political monopoly position vis-à-vis the Perioeci, citizens who were not members of the military association of the Spartiates.[16] But equally jealously, at least in principle, it guarded the internal social equality of the full citizens. Both principles were sustained by a spying system reminiscent of Venice, the *krypteia*.[17] According to the tradition, the Lacedaemonians were the first Greeks to have abolished the usage of a distinct costume as part of the noble style

of life, which thus must have existed previously.[18] Both these sumptuary regulations and the severe restriction of royal power almost certainly were the results of a struggle and subsequent compromise. Convincing evidence for this can be seen in the oaths mutually exchanged [once each month] between the kings and the ephors—a kind of periodically renewed constitutional contract. Some doubts [about the rational or revolutionary origin of the ephorate] are raised, however, by the fact that the ephors seem to have exercised certain religious functions. The explanation for this may be that they became "legitimate" communal officials to a much greater extent than the Roman tribunes. At any rate, the crucial features of the Spartan polis too strongly suggest a rational design to be residuals of very ancient institutions.[19]

6. *Stages and Consequences of Democratization in Greece*

A. DIFFERENTIAL VOTING RIGHTS

In the other Hellenic communities we can find no such parallels to the Roman development. However, everywhere we do find democratic movements of the non-noble citizenry against the patriciate which, in the majority of cases, led to the temporary or permanent removal of patrician domination. As in the Middle Ages, this signified neither an equalization of all citizens with respect to voting rights and eligibility for the offices or the council, nor even the admission of all free families entitled to settle in the town into the citizens' association. The freedmen, by contrast to Rome, here never did belong to it. The political equality of the free-born citizenry was vitiated by the gradation of voting rights and office eligibility, originally in terms of ground rents and armed service capabilities and later according to wealth. This gradation of rights was never completely abolished even in Athens, just as in the medieval cities the unpropertied strata nowhere permanently obtained equal status with the middle class.

The voting right in the general citizens assembly was either granted to all land owners attached to the demes[20] and enrolled in the military association of a phratry—this was the first stage of "*Democ*racy"—or also to the owners of other types of wealth. The decisive criterion was initially the capacity to equip oneself for service in the hoplite infantry, with whose emergence this upheaval was associated. The mere gradation of voting rights, as we shall see shortly, was by no means the most important instrument for preserving the preponderance of the propertied

strata. As in the Middle Ages, the formal composition of the burgher assembly could be regulated in ever so many ways and its formal competencies could be meted out ever so generously without a seriously destructive effect on the social power of the property owners.

The evolution of the *demos* produced different results in various places. The immediate, and in some cases permanent, result was the development of a Democracy externally similar to that found in many Italian communes: The wealthiest stratum of non-noble citizens, classified according to some census and mostly owners of money, slaves, *ergasteria*, ships, or trading and loan capital, gained a share in the council and the offices beside the patrician families whose position was mainly based on landed property. The mass of the small tradesmen, retailers, and people of small fortunes in general might remain excluded from the offices either legally or in practice because they could not afford the time. Or else, democratization might continue and eventually put the power into the hands of these very strata. In order that this could happen, however, means had to be found to mitigate their economic unavailability for public service—as through payments of daily allowances—and the census requirements for eligibility for office had to be reduced. But this and the *de facto* non-observance of the official stratification of the *demos* into classes based on wealth was achieved only in the fourth century, as the final form of Attic Democracy. It could come about only after the *military* importance of the hoplite army had disappeared.

The complete or partial victory of the non-noble strata had two particularly important consequences for the structure of the political association in Antiquity and for its administration: [firstly, the rise of the compulsory territorial organization and of territorial legislation; secondly, the replacement of notables in the administration by functionaries of the *demos*.].

B. THE RISE OF THE COMPULSORY TERRITORIAL ORGANIZATION AND OF TERRITORIAL LEGISLATION

We first consider the increasing transformation of the political association into a compulsory organization (*Anstalt*). One aspect of this development was the establishment of the territorial principle for political subdivisions. Just as in the Middle Ages the bulk of the citizenry was organized on the basis of local urban districts already during the rule of the patriciate, and as later at least some of the *popolo* officials were elected by city wards, so in the ancient patrician city, too, the plebeians were organized on the territorial principle, especially for the

purpose of allocating *corvées* and other public burdens. Beside the three old personal *tribus* in Rome, composed of *gentes* (sibs) and *curiae*, there appeared four purely territorial urban districts which were also called *tribus* and which after the victory of the *plebs* were joined by the [thirty-one] rural *tribus*. In Sparta four, later five, territorial phylae appeared beside the three old personal phylae. In the specifically "democratic" Greek states the victory of Democracy was identical with the passage [from a clan subdivision] to the "deme" (*demos*), the territorial district, as the subunit of the state and the basis for allocating duties and rights in the polis. We will soon have to consider the practical significance of this change. Its consequence, at any rate, was the treatment of the polis no longer as a confraternity of defence and clan associations, but as a compulsory territorial organization (*anstaltsmässige Gebietskörperschaft*).

Another factor in this development was the change which occurred in the thinking about the nature of law. The law became the law of a compulsory organization (*Anstaltsrecht*), valid for the citizens and inhabitants of the city territory as such (although, as we saw earlier, there remained residuals of the previous state of affairs). At the same time it increasingly became rationally instituted law. The irrational charismatic *ad hoc* determination of right and wrong came to be replaced by the statute. Parallel to the removal of patrician rule ran the beginnings of legislation. Initially it still had the form of charismatic legislation by an *aisymnetes*. But before long we find a continuous (and in the end unceasing) creation of new law in the *ekklesia* (assembly) and a purely secular administration of justice tied to the instituted law or, as in Rome, to the edictal instructions by the responsible magistrate. In Athens, the *demos* was eventually asked each year anew whether the existing laws should be maintained or amended. This indicates how widely accepted the proposition had become that valid law is and must be something artificially created, and that it should be based on the consensus of those to whom it is to apply. To be sure, in the period of classical Democracy —as in Athens of the fifth and fourth centuries—this conception had not yet become the prevalent one. Not every decision (*psephisma*) of the *demos* was a law (*nomos*), and not even all those which set up general norms. Decisions of the *demos* could be considered illegal, and then they might be contested by any burgher before the Attic jury court, the *heliaia*. At least at that time, the decision of the *demos* did not itself create a law. The actual enactment took the form of a legal contest, initiated upon the proposition of a new law by a citizen, as to whether the old or the newly proposed rule should be considered valid. This litigation was conducted before a special college of jurors, the

nomothetai (lawgivers); it obviously represents a rather quaint residue of the older concept of the nature of law, which disappeared only relatively late.[71] But the first decisive step toward acceptance of the notion of law as a rational creation had been taken in Athens with the abolition of the religious and aristocratic veto, the agency of which had been the Areopagus, through the law of Ephialtes [in 462 B.C.].

C. THE REPLACEMENT OF NOTABLES BY DEMOCRATIC FUNCTIONARIES

The other consequence of "democratization" to be noted is the ensuing administrative revolution. Functionaries of the *demos*, elected or chosen by lot for short terms, responsible to the assemblies and sometimes removable, or even entire subdivisions of the *demos* itself, replaced the notables ruling by virtue of family or office charisma. The new functionaries were "civil servants," but not in the modern meaning of the word. They received only moderate compensation for their expenses, or daily allowances like the jurymen, who were also drawn by lot. This, as well as the short periods of office tenure and the very frequent prohibition of reelection, precluded the development of the professional character of a modern officialdom. There was no career sequence of positions, nor a special status honor of the civil servants. Official business was discharged as an intermittent activity, which for the majority of office holders did not require their full attention, and the office revenues constituted even for men without means only an incidental, though desirable income. To be sure, the highest political positions, above all the military posts, demanded the incumbents' full working capacity; hence they could be occupied only by the well-to-do. For the financial officials in Athens, the place of our bond insurance system (*Amtskaution*) was taken by high census—i.e., wealth—requirements. In essence, these higher offices were honorary (unpaid) positions.

The real political leader created by the fully developed Democracy in Periclean Athens, the demagogue, as a rule formally occupied the leading military position. In fact, however, his power rested not upon law or office, but entirely upon personal influence and the trust of the *demos*. Thus his position was neither "legitimate" nor even "legal," even though the entire constitution of Democracy was tailored to his existence, just as the modern constitution of England is tailored to the existence of the cabinet which also does not rule by virtue of competency regulated by statute. The comparison could be extended; thus, *mutatis mutandis*, the prosecution of the demagogue because of poor leadership would correspond to the vote of no-confidence of the English Parliament, which also has never been formally instituted through legislation. The Athenian Council, whose members were drawn by lot,

now became a mere executive committee of the *demos;* it lost its judicial competence, but acquired control over the agenda of the Assembly (through the *probouleuma*) and over financial matters.[22]

In medieval cities, the seizure of power by the *popolo* had similar consequences: Numerous revisions of the urban law book, codifications of civil and trial law, a veritable flood of statutes of all kinds characterize the one side of the picture, and a spring tide of officials, of whom four to five dozen categories were sometimes to be found even in the smaller German cities, typify the other side. In addition to the auxiliary personnel of the clerks and bailiffs aiding the burgomasters, we find a host of specialized functionaries who officiated only intermittently and for whom the office revenues, mainly fees, constituted only a side-income, albeit a desirable one. Another trait common to both ancient and medieval cities, at least the large ones, was that numerous affairs which today are usually handled by the regular representative assemblies would be handed over to special boards selected through balloting or by lot. Thus in Hellenic Antiquity, legislation was organized in this manner, but also other political functions such as, in Athens, the ratification through oath of articles of confederation and the distribution of the tributes paid by the confederates. In the Middle Ages, the elections—both of officials (especially the more important ones) and of the chief legislative colleges—frequently were handled in this way. This practice was a kind of substitute for a system of representation, which, in the modern form, did not exist at the time. Such "representatives" as did exist could only represent associations, as befits a state of development in which all political rights have the character either of traditional status honors or of granted privileges. In the ancient Democracy, units so represented would be the associations entering into a cult or political community (a state), or perhaps the component parts of a confederacy; in the Middle Ages they would be the craft guilds and other corporations. Only the *special rights of associations* found "representation," not the rights of the varying "electorate" of a territorial district as in modern parliaments.

7. *Illegitimate Rulership: The Ancient* Tyrannis

Another trait common to both the ancient and the medieval city is the appearance of the city *tyrannis*, or at least of attempts to establish it. In both periods this was a locally restricted phenomenon. On the Hellenic mainland, the government in a number of large cities, among them Athens, was seized by tyrants in the seventh and sixth centuries B.C., but none of these regimes lasted more than a few generations.[23]

Here the urban liberties normally perished only after conquest by a superior military power. In the colonial areas, by contrast—in Asia Minor and especially in Sicily—the spread of the city *tyrannis* was more permanent and in part provided the definitive constitution of the city state to the time of its collapse.

The *tyrannis* was everywhere the product of the struggle of status groups. In a few cases, as in Syracuse, it seems to have been the nobility, pushed into a corner by the *demos*, which helped a tyrant to establish his rule. But on the whole the regime of the tyrants was based on sections of the middle class and on the debtors of the patricians, and their foes were the noble families, whom they exiled, whose estates they confiscated, and who conspired against them. What finds expression here is the typical class contrast of the ancient world: between an urban military patriciate as creditors and the peasantry as debtors—a contrast which existed everywhere from Israel and Mesopotamia to the Greek and Italic world. In Babylon, the countryside had almost entirely come into the possession of the patricians, whose *coloni* the peasants had become. In Israel, debt servitude was one of the subjects regulated in the "Book of the Covenant" [*Ex.* 21:1–6; *Neh.* 10:31], and all usurpers from Abimelech to Judas Maccabaeus found support in the fugitive debt slaves. The promise of Deuteronomy runs to the effect that Israel shall "lend unto many nations" [*Deut.* 15:6]; i.e., that the citizens of Jerusalem shall be the creditors and patricians and all others their debt servants and peasants. The class contrasts in Hellas and Rome were similar. Once established, the tyranny was usually supported by the small peasants, a party of the nobility which was in alliance with them, and parts of the urban middle classes. As a rule it relied on a bodyguard, and for the Greek demagogue—e.g., for Peisistratos—the grant of such a guard by the citizenry was usually just as much the first step towards the establishment of a *tyrannis* as later in medieval Italy for the *capitano del popolo*. The tyrants also employed mercenaries. Their substantive policies often attempted to smoothen class and status conflicts, no less than did those of the *aisymnetai* like Charondas and Solon.[24] Apparently the appointment of an *aisymnetes* for the reordering of the state and the law or the elevation of a *tyrannos* were often alternative solutions for the same set of problems. The social and economic policies of both the aesymnetes and the tyrants, at least on the mainland, sought to prevent the sale of peasant land to the urban nobility and the immigration of peasants into the city. In some places they attempted to restrict the purchase of slaves, the consumption of luxuries, brokerage (middlemen's) trade, and grain exports—all measures characterizing an essentially petit-bourgeois economic policy which corresponds to that of the medieval "city economy" to be discussed later [sec. *iv*: 10E below].

The tyrants perceived themselves, and were perceived everywhere, as specifically "illegitimate" rulers. This differentiated their entire position, both in its religious and its political aspects, from the old city-kingships. Quite regularly they were supporters of new emotional cults, especially of the cult of Dionysos, in contrast to the ritualistic cults of the nobility. As a rule they sought to preserve the external form of their commune's constitution, and thereby their claim to legality. At its downfall, their regime usually left the patrician stratum much weakened, and therefore under compulsion to purchase the cooperation of the commoners, which was necessary for the expulsion of the tyrant, with far-reaching concessions to the *demos*. In Athens, the middle-class democracy of Cleisthenes followed the expulsion of the Peisistratids. In some places, it is true, a merchant plutocracy succeeded the tyrants. This early type of *tyrannis* built on *economic* class conflicts had the effect, at least on the Greek mainland, of facilitating a timocratic or democratic solution to the status struggles, of which it frequently was the precursor. The successful or unsuccessful attempts to establish tyrannies in the late Hellenic period, by contrast, were outgrowths of the expansionary policy of the *demos* and had their origin in the *military* interests of that group, which will be discussed later. Victorious army leaders like Alcibiades and Lysander tried to establish tyrannies of this type.[25] On the Greek mainland such attempts remained unsuccessful until the Hellenistic period, and the military empire-formations of the *demos* there disintegrated again, for reasons to be discussed later [sec. vii below]. In Sicily, by contrast, both the early expansionist maritime policy in the Tyrrhenian Sea and the later national defense against Carthage were led by tyrants who created an interlocal military monarchy supported by mercenary armies in addition to the burgher levies and resorting to the most ruthless measures of an oriental type, such as compulsory mass naturalization of mercenaries and resettlement of the population of subjugated cities. Rome, finally, where in the early republican period various developments that might have led to a *tyrannis* had failed, ultimately fell prey to a military monarchy, in the wake of the great conquests, for internal social and economic reasons which will be discussed separately.

8. *Illegitimate Rulership: The Medieval* Signoria

In the Middle Ages, the city *tyrannis* remained largely, if not entirely, confined to Italy. The Italian *signoria*, which Eduard Meyer has likened to the ancient *tyrannis*,[26] does indeed have certain traits in common with the latter. It, too, was predominantly the creation of one

wealthy family in opposition to other members of the status group; it was the first political power in Western Europe which based its regime on a rational administration with (increasingly) *appointed* officials; it also in most cases retained certain forms of the traditional communal constitution. But beyond this, important differences have to be noted. Firstly, while we do indeed find that frequently a *signoria* developed directly out of the status struggle, very often it first appeared only after the victory of the *popolo*, and in some instances only a considerable while later. Furthermore, while the *signoria* in most cases developed directly out of the legal offices of the *popolo*, the city *tyrannis* in Hellenic Antiquity normally represented only one of the intermediate phenomena between the patrician rule and timocracy or democracy.

The formal development of the various Italian *signorie* took a number of different courses, as Ernst Salzer, in particular, has shown very clearly.[27] One group of *signorie*, an entire series, was the direct product of revolts of the *popolo* and developed out of its new offices. The *capitano del popolo*, the *podestà della mercadanza*, or also the *podestà* of the commune came to be elected by the *popolo* for increasingly longer periods or even for life. Such long-term supreme officials are found as early as the middle of the thirteenth century in Piacenza, Parma, Lodi, and Milan. By the end of that century, the rule of the Visconti in Milan was already hereditary in practice, as was that of the Scala in Verona and the Este in Modena. Parallel to the development toward tenure for life and initially *de facto*, later legal, inheritability of the office, went an expansion of the sphere of jurisdiction of the supreme official. Beginning as an "arbitral,"[28] purely political penal power, it developed into a general commission (*arbitrium generale*) to issue all kinds of orders in competition with the council and the commune, and finally into a rulership (*dominium*) with the right to govern the city *libero arbitrio*, to fill the offices, and to issue decrees which had the power of laws.

This assignment of powers had two different political sources which, however, frequently coincided in substance. One was the problem posed by party governments—above all, the constant threat to the very survival of the state, and thereby also to the economic *status quo* and especially to land ownership, which emanated from the defeated party. The installation of party captains with unlimited powers was made necessary especially by the existence of a nobility accustomed to war and by the constant fear of conspiracies. The second source is to be found in the external wars, the threat of subjugation by neighboring communes or princes. Wherever the latter factor predominated, it usually was the creation of a special military commander, the *capitano della guerra*, who

was either a foreign prince or a *condottiere*, that provided the source of the *signoria*, and not the party leadership of the *capitano del popolo*. Under such conditions, the voluntary subjection of a city under the rulership of a prince in order to secure his aid against external threats often was effected in a manner which narrowly limited the rights of the *dominus*. Within the city a power seeker normally could most easily gain support from the broad lower strata of craftsmen ordinarily excluded from active participation in the administration. In part this was so because for these groups a change did not signify any loss, while the presence of a princely court promised economic advantages, and in part because the masses everywhere are emotionally responsive to the display of personal power. As a rule, the aspirants to the *signoria* therefore made use of the "parliaments" to effect the transfer of power.[29] But occasionally, when threatened by political or economic opponents, the patrician families or the merchant class also used the instrument of a *signoria*, which initially was nowhere viewed as the permanent establishment of a monarchy. Cities such as Genoa repeatedly imposed very restrictive conditions upon powerful monarchs under whose *dominium* they committed themselves, including above all limitations upon their military power and firmly fixed money payments, and at times they even dismissed such "protectors." When the *dominus* was a foreign monarch this usually succeeded; thus Genoa at one time dismissed the king of France. But it rarely succeeded against a *signore* who had once taken up residence in the city.

9. *The Pacification of the Burghers and the Legitimation of the* Signoria

It is noteworthy that in the course of time both the power of the burghers to resist and their inclination to do so declined. The *signori* based their regime on mercenary armies and increasingly also on connections with the legitimate authorities. In Italy, except for Venice and Genoa, the hereditary *signoria* constituted the form of city government definitively legitimized by imperial and papal recognition after the subjection of Florence with the help of Spanish troops [in 1530]. The declining resistance of the burghers, however, must be explained by a number of separate factors. Here as everywhere, the very existence of a princely court created its own support in the form of growing strata in the nobility and the bourgeoisie with social and economic vested interests in its survival. The increasing refinement of wants and the slowing down of economic expansion together with a growing vulnerability to

warlike disturbances of the higher bourgeois strata's economic interests; the general decline in political aspirations of the economically active groups, associated with increasing competition and growing economic and social stability, and the consequent exclusive devotion of these groups to gainful economic activity or the peaceful enjoyment of *rentier* incomes; and finally, the general policy of the princes who furthered both these developments to their own advantage—all these were responsible for the rapid decline of interest in the political fate of the city. Both the large monarchies, like the French, and the *signorie* of single cities could everywhere count on the interest of the lower strata in the pacification of the city and in a regulation of economic conduct which professed to safeguard the "living" of the small burgher. The French cities were subjected to the rule of the crown with the help of these petit-bourgeois interests, and in Italy similar tendencies propped up the *signorie*.

The most important element, however, was an essentially political development: the pacification of the citizenry through its preoccupation with economic concerns, its declining habituation to military service and, finally, through the deliberate disarming of the urban population by the princes. It is true that this was not always their policy from the very beginning; in fact, some princes developed the first rational recruitment systems. But these soon developed into drafts of the poor only, if that was not their initial character; while this was in accord with the general type of patrimonial army formation, it was thoroughly foreign to the spirit of the republican burgher army. But the field had already to a large extent been cleared for the princes by the transition to the use of mercenary armies and to the capitalistic method of employing entrepreneurs (*condottieri*) to raise and lead the troops, changes necessitated by the increasing economic indispensability of the burghers and by the growing need for professional training in military matters. These factors had already been working toward the pacification and disarmament of the burghers during the time of the free communes. An additional element was provided by the personal and political connections of the city princes with the great dynasties, against whose power any uprising of the burghers would have had no chance of success. Ultimately, thus, it was the same series of factors, the general significance of which we have discussed before, which provided the *signoria* with the chance to develop into a hereditary patrimonial princeship: the increasing economic preoccupation of the burghers, the military disqualification of the educated strata of the bourgeoisie, and the rationalization of military technique in the direction of a professional army, combined with the development of status groups of noblemen, *rentiers*, and prebendaries

with vested economic or social interests in the existence of a princely court. Wherever these chances were utilized, the *signoria* thereby entered into the circle of legitimate powers.

The policies of the *signoria* share one tendency, of preeminent interest here, with those of the ancient *tyrannis*: the tendency to break up the political and economic monopoly position of the city in relation to the countryside. As in Antiquity, it was very often the rural population with whose aid the aspirant to power compelled the transfer of the rule—for instance, in 1328 in Padua.[30] To its own economic advantage and for political reasons, the free urban citizenry had often destroyed the manorial system of the countryside after its victory over the patriciate, freeing the peasantry and furthering the free transfer of land to the highest bidder. It was under the rule of the *popolo grasso* that massive acquisitions by the burghers of landed property from the feudal lords took place, and that in Tuscany the manorial constitution based on compulsory labor services of the peasantry was replaced by the [yield-sharing] *mezzadria* tenancy, an institution peculiarly adapted to the relations between primarily urban landowners whose only ties to the countryside consist of a *villegiatura* and their rural tenant farmers.[31] Yet, the rural population—even the free peasant landowners—remained excluded from all participation in political power. As the *mezzadria* was tailored to the economic interests of urban landowners, so the urban policy toward the countryside was adapted to the interests of the urban consumer and, after the victory of the guilds, also to those of the urban producers. The policy of the princes nowhere changed this immediately, and in some places never at all. The famous physiocratic policy of Grand Duke Leopold of Tuscany in the eighteenth century was influenced by certain natural-law concepts and was not, or at least not primarily, a policy of agrarian interests.[32] Nevertheless, the policy of the princes, which on the whole was directed to the balancing of interests and the avoidance of sharp collisions, was certainly no longer the policy of an urban citizenry using the countryside merely as a means towards its own ends.

Often, and ultimately in the majority of cases, the dominion of the city princes encompassed several cities. They did not, however, create out of these hitherto independent urban territories unitary states in the modern sense. Quite to the contrary, the individual cities tied together under the rule of a single prince frequently continued to have both the right and the occasion to communicate with each other through ambassadors. Their constitutions certainly were not standardized, nor did they become [subordinate] municipalities which fulfilled certain state functions merely by virtue of a delegation of powers from the state. A

development of this kind occurred only gradually, in conjunction with the similar transformation of the great modern patrimonial states. Representations of the Estates—such as were known in the Sicilian kingdom already in the Middle Ages, but also in other old patrimonial monarchies—were almost completely absent in the principalities which developed out of city territories. The important organizational innovations of the *signorie* are to be found in other developments, namely: (1) in the appearance of princely officials employed for indefinite periods at the side of the communal officials elected for short tenures, and (2) in the development of collegiate central agencies, above all for financial and military functions. These constituted indeed important steps toward the rationalization of administration. The establishment of a rational princely administration under the urban *signoria* was technically aided by the fact that many communes had in their own financial and military interest already created a volume of statistical records unusual for that time, and that the art of account- and record-keeping had received its technical development in the urban banking houses. A more important influence in the indubitable rationalization of administration, however, probably stemmed from the example of Venice on the one hand, and of the Sicilian kingdom on the other—an influence which probably worked more through stimulation than by way of direct adoption.

10. *Urban Autonomy, Capitalism, and Patrimonial Bureaucracy: A Summary*

The circular path of the Italian cities from a stage in which they were component parts of patrimonial or feudal structures, through a period of independence obtained by revolution with a government of local notables and then of the craft guilds, followed by the *signoria* and finally again by a position as component parts of relatively rational patrimonial associations—this cycle has no exact counterpart in the Occident. In particular, there is no counterpart for the *signoria;* at best one could find a parallel for the immediately preceding stage, that of the *capitaneus populi,* in some of the most powerful burgomasters north of the Alps. In one respect, however, the circular type of development was universal: In the Carolingian period, the cities were nothing—or almost nothing—but administrative districts, differentiated from other administrative units only by certain peculiarities of their status structure, and in the modern patrimonial state they were again very close to this

position, distinguished only by certain corporate privileges. In the intermediate period, they were everywhere to some degree "communes" with autonomous political rights and an autonomous economic policy.

The development in Antiquity was similar. Yet, neither modern capitalism nor the "state" as we know it developed on the basis of the ancient city, whereas the medieval city, though not the only significant antecedent developmental stage and certainly not itself the carrier of these developments, is inseparably linked as one of the crucial factors with the rise of both phenomena. Hence, in spite of all external similarities, we should be able to discern some very far-reaching *differences* between the ancient and the medieval city development. This problem we will turn to next.

These differences will be most easily recognized if we juxtapose the city types of both periods in their most characteristic forms. Before we approach this comparison, however, we should stress that among the medieval cities themselves there were also very significant structural differences, which so far we have dealt with only *en passant*. But for the moment we shall only recapitulate the *overall* situation of the medieval cities at the time of their greatest independence, a period in which we may hope to find their specific traits most fully developed.

At the apogee of urban autonomy the attainments of the medieval cities display an extraordinary variety of forms which can be summarized under the following headings.

A. POLITICAL AUTONOMY

The medieval urban commune gained political independence and, in some cases, conducted an expansionist foreign policy, maintaining a permanent military force, concluding alliances, conducting long wars, holding large land areas and occasionally other cities in complete subjection, and acquiring overseas colonies. With respect to overseas colonies, only two Italian maritime cities [Venice and Genoa] succeeded in the long run; domination over great land masses and international political importance was obtained for certain periods by some communes in northern and central Italy and in Switzerland, and to a far lesser degree by the Flemish and some of the North-German Hansa cities, and by very few others. But the great majority of cities never exercised territorial rule beyond the immediate rural environment and a few small towns nearby; this holds for the cities of southern Italy and Sicily, for the Spanish cities but for a short, and for the French cities but for a longer intermezzo of territorial expansion, and from the very begin-

ning for the English and German cities (with the exception of the North-German and Flemish cities already mentioned, some South-German and Swiss ones, and a number of western German cities during the short period of the [13th century] town leagues). It is true that many of these cities maintained a permanent force of town soldiers (in France until a very late period), or else, and this is the normal case, that they had a conscripted burgher militia which defended the walls and sometimes was strong enough to enforce the *Landfrieden* (territorial "peace") in confederation with other cities, to destroy the castles of robber barons and to intervene in the feuds of the country. But none of them sought to engage in international politics over long periods in the manner of the Italian and Hanseatic cities.

Most of these cities sent reprensentatives either to the Estates of the realm or of their local territory, and not infrequently, because of their financial power, they acquired the decisive voice in these bodies even if they were assigned a formally subordinate position. The most important example are the Commons of England, even though they constituted a representation not so much of urban communes as of local corporations of the various status groups. But many cities did not exercise even such rights (the details of the legal history would take us too far afield). On the Continent, the modern patrimonial bureaucratic state eventually deprived most of them of their political autonomy as well as of their military powers, except for police purposes. Only where, as in Germany, the patrimonial state developed in the form of rather small structures, did it have to permit the independent political survival of some of the city states.

A special course of development is to be noted also in England, due there to the absence of a patrimonial bureaucracy. Under the tight organization of the central administration, the individual English cities had never developed separate and individual political ambitions because they defended their interests in Parliament as a group. They had formed trade cartels, but not political town leagues as on the Continent. They constituted corporations of a privileged stratum of notables, and their good will was financially indispensable to the state. During the Tudor rule, the crown had sought to destroy their privileges, but the collapse of the Stuarts put an end to this. From that time on they remained corporations with the right to elect parliamentary representatives, and both the "Kingdom of Influence" and the noble cliques utilized the often ridiculously small and easily purchasable electoral colleges ["rotten boroughs"], which was all many of them represented, to obtain compliant parliamentary majorities.

B. AUTONOMOUS LAW CREATION

Autonomous law creation by the city, and within it again by the [old] guilds and the [later] "crafts," was a right fully exercised by the politically independent Italian cities, and at times by the Spanish, English, and a considerable part of the French and German cities although it was not always expressly granted to them by charter. To problems of urban landownership, market relations, and trade, the city courts, with burghers as lay judges (*Schöffen*), applied a uniform law specific to all burghers of the given city. The law itself might be based on custom or autonomous legislation, or on imitation, adoption, or imposition in the founding charter of another city's legal system. City courts increasingly excluded from the trial procedure such irrational and magical means of evidence as duels, ordeals, and clan oaths, in favor of rational procedures of presenting evidence. This development, however, should not be thought of as running a straight course: at times the adherence to a special trial procedure in the city courts signified the conservation of older legal forms in the face of rational innovations by the royal courts, as in England (absence of the jury), or the preservation of medieval law against the penetration of Roman law, as on the Continent. In the latter case the legal institutions adaptable to capitalism had their origin precisely in the urban law systems (it being in the cities that early capitalist interests had some autonomy), and not in the Roman (or Germanic) "law of the land" (*Landrecht*).

The city governments, for their part, sought to establish the rule that the guilds and "crafts" could not legislate [for their own courts] without the magistrates' consent, or they at least tried to limit such legislation to the guilds' assigned area of jurisdiction. For all cities which had to reckon with a political or manorial city lord—and this means, for all outside of Italy—both the extent of urban autonomy and the distribution of legislative power between the council and the craft guilds was forever unstable and a question of power.

The developing patrimonial bureaucratic state everywhere increasingly curtailed the autonomy of the cities. In England the Tudors were the first systematically to assert the principle that the cities as well as the "crafts" were corporately organized state institutions for definite purposes, with rights which could not exceed the privileges outlined in the charter, and with legislative powers binding only citizens who were members of the corporation. Any offense against these restrictions was used as an opportunity to have the charters cashiered in a *quo warranto* action (a fate which London experienced as late as under James II). In this view, as we saw, the city was not a "territorial body"

but a privileged association of the local status groups (*ständischer Verband*), in the administration of which the Privy Council continuously interfered. In France, the cities were in the course of the sixteenth century deprived of all judicial powers, except for police matters, and for all financially important acts permission of the state authorities came to be required. In Central Europe, the autonomy of the cities under the authority of the territorial princes was as a rule completely destroyed.

C. AUTOCEPHALY

Few cities other than those of Italy achieved full autocephaly: i.e., none but their own judicial and administrative agencies. Non-Italian cities often obtained it only for the lower [non-capital] jurisdiction, normally with the reservation of appeal to the royal or supreme territorial court. Wherever the passing of judgment was in the hands of lay judges (*Schöffen*) taken from the citizenry, the identity of the judicial overlord was a matter primarily of fiscal interest, and the cities often did not see any need to appropriate or purchase the formal jurisdiction. What mattered to them was that the city be a separate judicial district, with lay judges chosen from their midst. At least for the lower jurisdiction, and partially also for the capital jurisdiction, this right was obtained in relatively early times. Independent election of the lay judges or co-optation by the officiating panel without interference from the lord was achieved by most cities. Also important was the attainment of the privilege that a burgher be responsible only to the court of his city.

The development of the urban administrative agency, the Council, we cannot investigate here. The existence of such a body, provided with far-reaching administrative powers, was the identifying mark of every city commune in western and northern Europe at the height of the Middle Ages. The manner of its composition varied endlessly. It was determined to a great extent by the actual power position of the various groups: the patrician families (the owners of land rents and monetary wealth, the financiers and occasional merchants), the bourgeois merchants, often enrolled in the "crafts" (either long-distance traders or large retailers and putting-out entrepreneurs for industrial products), and, finally, the purely artisan "crafts" properly so called. The balance of *economic* power between the burghers and the political or manorial lord of the city, on the other hand, determined the degree to which the latter continued to participate in the nominations to the council, and thus to what extent the city remained partially heterocephalous. The directly relevant factor was the lord's need for money, for this made possible the purchase of his urban rights; the obverse of this, of

course, was the financial strength of the cities. However, the financial needs of the city lords and the financial power of the city were not alone decisive [for their relative strength] if the city lords possessed *political* means of power. In France the royal government—which under Philip Augustus [r. 1180–1223] had still been allied with the cities—and to a small extent also other feudal lords obtained already in the thirteenth century through their mounting money requirements the right, in the form of *pariage* contracts, to participate in the filling of administrative positions, control rights over the conduct of office of the urban magistrates, especially in the field of fiscal administration, which was of particular interest to the king, and the right of confirming the elected consuls in their offices.[38] By the fifteenth century the royal *prévôt* presided over the burgher assembly. In the age of Richelieu and Louis XIV, finally, the offices of the city were completely in the hands of the royal *intendant*, and the financial troubles of the state led to the filling of both city and state offices by sale.

The patrimonial-bureaucratic state transformed the administrative agencies of the city into corporate representations of the privileged status groups whose jurisdiction applied only to the circle of their corporate interests, but without significance for the functions of state administration. The English state, which had to retain the autocephaly of the city corporations because they were electoral bodies for Parliament, simply by-passed the city when it wished to have local associations execute those functions which our municipalities fulfill nowadays and made the parish—to which not only the privileged corporation members, but all qualified inhabitants belonged—or some other newly created association the executor of these tasks. Most of the time, however, the patrimonial bureaucracy simply transformed the urban magistrates into agencies of the sovereign alongside all others.

D. TAXING AUTONOMY

Next, we consider the problem of the city's taxation power over its burghers, and its freedom from taxation and other charges by outside powers. The former they obtained to very varied extent; the control rights of the city lord were often preserved to some degree, although at times they were completely abolished. In England the cities never possessed full taxing autonomy and always needed the consent of the crown for all new taxes. Full freedom from rent (*Zins*) and tax obligations toward the outside was rarely achieved. Cities not politically autonomous obtained this freedom only when they could farm the tax obligation, paying off the city lord either once and for all or, more

frequently, through periodical lump sums, and could then take the collection of the royal taxes under their own management (*firma burgi* in England). The elimination of obligations to the outside everywhere succeeded most completely with respect to personal duties deriving from the former personal subjection of burghers to judicial or manorial lords.

While after its victory the typical patrimonial-bureaucratic state differentiated the city from the countryside for taxation purposes, seeking to hit production and consumption equally through a specifically urban tax, the excise, it at the same time deprived the cities almost entirely of their autonomous taxing power. In England the imposition of taxes on the cities as corporate bodies had little significance, since most of the new administrative tasks fell on other types of communities. In France the crown appropriated one half of the urban excise (*octroi*) from Mazarin's ministership on, all city financial operations and the internal taxation having been brought under state control already earlier. In Central Europe the urban agencies were in this respect, too, transformed into almost pure state organs.

E. MARKET RIGHTS AND AUTONOMOUS URBAN ECONOMIC POLICY

The right to hold markets; autonomous trade and craft regulation and monopolistic powers of exclusion. — The market was part of every medieval city, and the supervision over the market had everywhere in considerable measure been taken out of the hands of the city lord by the council. In later periods, the regulation of trade and production was concentrated either in the hands of the municipal authorities or in those of the craft associations, depending upon the local power structure; the city lord continued to be largely excluded.

The urban policy of economic regulation comprised [a wide range of activities and motivations].[84] Quality control over production was exercised partly in the interest of enhancing the reputation—and thus the export interests—of the trades, and partly in the interest of the urban consumers. Price control was basically exercised in the interest of the consumers. Another goal was the protection of the "living" of the small burghers, pursued by means of restrictions imposed upon the number of apprentices and journeymen, and at times also upon the number of masters; with the narrowing of subsistence opportunities, the monopolization of master positions for native sons, especially for masters' sons, intensified. Wherever the craft guilds directly controlled economic regulation, they attempted to counteract the development of capitalistic dependency on outsiders and large entrepreneurs by prohibiting the putting-out system, imposing controls on capital loans,

regulating and organizing the supply of raw materials and, at times, also the sale of the finished products. Above all else, however, the city sought to prevent competition from the countryside under its domination; hence it sought to suppress the establishment of rural industrial enterprises and to force the peasantry (in the interest of the urban producers) to purchase its requirements in the city and (in the interest of the urban consumers) to sell its output on the market of the city and only there. Also in the interest of the consumers (and occasionally in that of industrial users of raw materials), it tried to prevent "forestalling" of wares outside the urban market. Finally, in the interest of its merchant population, the city sought to impose "staple" and brokerage monopolies for goods passing through its own territory, while at the same time trying to gain free-trade privileges abroad.

These core points of the economic policy of the so-called "city economy" (*Stadtwirtschaftspolitik*), varying according to the manifold compromise possibilities of conflicting interests, can in their principal features be found almost everywhere. The direction taken by the policy of any particular city was determined not only by the internal power relationship of the interested parties, but also by the range of economic opportunities open to them. The expansion of this range in the first period of settlement initiated policies directed toward a widening of the market; its constriction after the end of the Middle Ages was accompanied by tendencies toward monopolization. But beyond these generalities each city had interests of its own which collided with those of competitors; especially among the long-distance trade cities of the South, a life-and-death struggle prevailed.

The patrimonial-bureaucratic state did not at all intend a basic break with the policies of the "city economy" stage of development after the subjugation of the cities. Quite to the contrary: In the interest of its revenues, the state was as much concerned with the economic prosperity of the cities and their industries and with the maintenance of population size through the preservation of urban "livings" as it was, in the interest of a mercantilist trade policy, with the stimulation of foreign trade; the measures for the latter it could copy, at least in part, from the urban long-distance trade policies. The patrimonial state sought to balance the conflicting interests of the cities and other groups, and in particular attempted to reconcile the petit-bourgeois approach of protecting the "living" with policies friendly to capitalist stirrings. Almost up to the eve of the French Revolution, it violated the principles of the traditional economic policy only where the local monopolies and privileges of the burghers obstructed its own, ever more capitalistically oriented, policy of monopolies and privileges. It is quite true that in

individual instances even this could lead to a very drastic disruption of the burghers' economic privileges, but only in exceptional local cases did it indicate a deliberate rupture with the traditional approach. Nevertheless, the autonomy of urban economic policy and regulation was lost, and indirectly this could, of course, have considerable significance.

Yet more decisive was the inability of the city to bring military-political means of power into the service of its interests, such as the patrimonial-bureaucratic prince could apply. Even the new economic opportunities opened by the policies of the patrimonial state could only rarely be exploited by the cities as public bodies, as they could be—and were—exploited by the princes themselves. It lies in the nature of the case that these opportunities were open only to individuals, above all to socially privileged individuals; thus we find that in the typical, monopolistically privileged, domestic and overseas undertakings of English and French patrimonialism, relatively many members of the landed nobility and of the higher officialdom participated beside the kings themselves, but relatively very few burgher elements. Occasionally, it is true, certain cities—such as Frankfurt—participated in spite of such obstacles for city account in speculative foreign undertakings, at times on a very large scale. But in most cases this turned out to be very much to their disadvantage, since a single failure was bound to hit them much more severely than it would a large political unit.

The economic decline of numerous cities, especially after the sixteenth century, can only in part be explained by a shift in the trade routes (it also occurred at precisely the same time in England), and also only in part by the establishment of large home industries based on non-urban labor. To the greatest part it must be explained by other, more general conditions. Foremost among these is the fact that the traditional forms of enterprise integrated in the "city economy" no longer were the ones which could generate the really great profits, and, further, that both the politically oriented and the commercial and industrial capitalist undertakings simply no longer found a useful support in policies of the "city economy" type, just as had happened earlier in the case of feudal military technology. Even where these undertakings were formally located in the city, they could no longer be sustained by an entrepreneurdom tied locally to the individual burgher association. The new capitalist undertakings settled in the new locations suitable for them, and for help in the defense of his interests—insofar as he required any at all—the entrepreneur now appealed to powers other than a local burgher association. Just as in England the Dissenters, who played so important a role in the capitalistic development, remained outside of the ruling city corporation in consequence of the Test Acts,[85]

so the great modern commercial and industrial cities of England arose entirely outside of the precincts—and thus of the monopoly-power spheres—of the old privileged corporations. It is for this reason that they frequently displayed a completely archaic judicial structure: The old manorial courts, the "court baron" and "court leet," existed in Liverpool [into the seventeenth century] and in Manchester up until the modern reform, the manorial lords having merely been bought out as lords of the court.[36]

F. ATTITUDE TOWARD NON-CITIZEN STRATA

The specific political and economic characteristics of the medieval city also determined its attitude to non-citizen strata, an attitude which shows very different features in different cities. They all shared, to begin with a common element, the economic contrast to the specifically non-urban political and feudal-manorial structures, which can be summarized in the antithesis: market versus *oikos*. This antithesis should not be thought of simply as an economic "struggle" between political or manorial lords and the city. This did occur, of course, wherever the city, in the interest of expanding its power, admitted politically or manorially dependent persons against the wish of their masters inside the walls or, even worse, as non-resident members into the burgher association. The latter expedient was soon made impossible, at least in the Nordic cities, by princely leagues or royal prohibition. But the *economic* development of the city as such was nowhere contested as a matter of principle; the objections arose rather against the city's *political* independence, and in specific cases—which were not rare—over economic issues because particular economic interests of the feudal nobility clashed with the commercial policies and monopolistic tendencies of the cities. The feudal military interests, the kings in the forefront, of course viewed with the highest misgivings the development of autonomous fortresses within their political territory. The German kings in general, except for very short periods, never abandoned such misgivings. The French and English kings, by contrast, were at times quite friendly toward the cities, partly for political reasons associated with their struggle against the barons, partly because of the importance of urban financial power.

Neither did the tendency of the urban market economy to dissolve manorial and, indirectly, feudal structures—which indeed asserted itself with varying degrees of success—necessarily assume the form of a "struggle" of the cities against other interests. Quite to the contrary: over broad areas there were strong common interests. Both political and manorial lords were extremely interested in the monetary revenues

which they might be able to obtain from their peasant subjects, and it was the city which provided the latter with a local market for their products and hence with the possibility of paying their dues in money rather than in services or products, or else the city provided the lord with the opportunity to turn his in-kind income into money instead of consuming it himself, through sale either on the local market or abroad via the increasingly capitalistic long-distance trade. The political and manorial lords made energetic use of these possibilities, either by demanding money rents from their peasants, or by utilizing the market-stimulated self-interest of the peasants in higher production through the creation of larger farming units which in turn could deliver a higher share of the output as marketable rents-in-kind. Also, the more strongly local and long-distance trade developed, the more money revenues could the feudal nobility derive from the exceedingly large variety of tributes levied on this traffic; western Germany provides a good example even in the Middle Ages.[87]

For all these reasons, the foundation of cities was from the viewpoint of the founders primarily a business undertaking, the creation of opportunities for money revenues. Economic interests of this kind motivated the innumerable "city"-foundations by the nobility in the East, especially in Poland, even at the time of the Jewish persecutions—often fail-starts whose citizenry, frequently numbering only a few hundreds, at times was still in the nineteenth century up to ninety per cent Jewish. This specifically medieval and North European type of city foundation as a "business" undertaking constitutes, as we shall see, a direct antithesis to the military fortress-town foundations represented by the ancient polis. The conversion of almost all personal and material claims of the manorial and judicial lords into rent claims, and the resulting (in part fully *de jure*, in part merely *de facto*, yet far-reaching) economic freedom of the peasantry—which did not come forth wherever the city development was weak—was the consequence of the fact that the lordly political and manorial revenues in the territories of intensive city development could increasingly be fed from the market sale of peasant products or of peasant deliveries in kind, and beyond this from sources of the market economy, all of which replaced the direct exploitation of personal service obligations of the subjects or the allocation of delivery obligations for household wants in the manner of the ancient *oikos* economy. Both the lord and, to a lesser degree, his dependents now increasingly supplied their requirements through the money economy. Another important element in this transformation of the landlord-peasant relationship was the buying out of the rural nobility by the urban burghers, who then converted the estates to rational forms of economic operation. This process, however, met with barriers

wherever the feudal associations required eligibility to hold a fief (*Lehensfähigkeit*) for the ownership of "noble" land, a condition which the urban patriciate could satisfy almost nowhere north of the Alps.

The existence of a "money economy" itself, at any rate, did not create a clash of economic interests between the political or manorial lords and the cities; to some extent, as we have seen, it even created a community of interests. A purely economic collision arose only where the lords, in order to increase their incomes, sought to enter non-agricultural market production on their own, an attempt which naturally could be made only where a suitable labor force was available. Wherever this occurred, the struggle of the cities against such industrial production activities of the rural lords did indeed break out, frequently flaring up with particular intensity only during the patrimonial-bureaucratic period of modern history. In the Middle Ages, by contrast, this was hardly an important issue, and the factual dissolution of the old manorial association and of peasant bondage frequently proceeded without any struggle at all as the consequence of the advance of the money economy. This was the case in England. Elsewhere, to be sure, the cities directly and deliberately furthered this development; this as we saw, is what happened in the Florentine power sphere.

The patrimonial-bureaucratic state sought to harmonize the contrasting interests of the nobility and the cities. However, since it wanted to use the nobility as officers and civil servants, it prohibited the purchase of noble estates by non-nobles, including the urban citizenry.

G. THE CITY AND THE CHURCH

On this last issue the ecclesiastic, and especially the monastic seigneuries were during the Middle Ages much more on a collision course with the cities than the secular lords. In general the clerics were, beside the Jews, the major specifically alien body within the city, especially after the separation of state and church in the Investiture Struggle. For their estates, as church property, they claimed far-reaching freedom from the public burdens and also "immunity," i.e., exemption from the spheres of jurisdiction of all officials, including the urban magistrates. As an Estate, the clerics themselves did not share in the military and other personal obligations of the burghers. At the same time, these burden-free properties, and thereby also the number of persons exempted from the jurisdiction of the urban authorities, continuously increased through the gifts of pious burghers. Moreover, in their lay brothers the monasteries had a labor force free of the obligation to support families, which therefore could easily underbid any non-monastic competition if, as was quite frequent, they were used in commercial industrial produc-

tion for the cloister's account. Also, the cloisters and religious foundations, like the *waqf* of medieval Islam, had on a very considerable scale brought into their possession the permanent sources of money rent in the Middle Ages: market halls, stalls of all kinds, shambles, mills and the like, which thereby were not only withdrawn from the urban tax roll but also exempted from the economic regulation of the city; on top of this, they frequently even claimed monopoly rights for these installations. Even in military respects the immunity of the walled cloisters could be dangerous to the city. Finally, the ecclesiastic court, enjoined to uphold the prohibition of usury, was everywhere a threat to bourgeois enterprise. Against the accumulation of landed property in *mortmain* the citizenry sought to protect itself through prohibitions, just as the princes and the nobility did through the "amortization laws."

On the other hand, however, a part of the urban trades found important profit opportunities in the religious festivals, especially if the city had a sanctuary which was the goal of pilgrimages and where indulgences were granted. And the religious endowments, insofar as they were open to the burghers, provided places of maintenance for the aged and for spinster daughters. For this reason the relations between the clergy and monasteries and the citizenry were by the end of the Middle Ages by no means so completely unfriendly, in spite of all collisions, that this element alone would suffice to provide an "economic explanation" of the Reformation. The ecclesiastic and monastic institutions were in fact not at all as inviolable for the city commune as the Canon Law would have had it. It has been pointed out quite correctly that in Germany the religious endowments and monasteries had lost their most interested protector against the laity when the power of the kings atrophied after the Investiture Struggle, and that the *avouerie*,[38] which they had thrown off, was very easily revived (even if in somewhat changed form) if they attempted to engage strongly in economic activities. In many cases the city council managed to subject them to a tutelary power very similar to that of the old *avoué* by pressuring them under the most diverse pretexts and titles to accept "curators" and "attorneys," who then conducted the administration of the ecclesiastic properties in accordance with the interests of the burghers.

The position relative to the burgher association of the clerics as a status group varied greatly. In some cases the clergy simply remained outside the city corporation, but even where this was not the case, it formed an uncomfortable and unassimilable alien body with its ineradicable status privileges. Within its territories the Reformation put an end to this state of things, but the cities, which shortly after were subjugated by the patrimonial-bureaucratic state, were no longer in a position to derive a benefit from this solution.

In this last respect the development in Antiquity had taken an entirely different course. The further back we go in time, the more the economic position of the temples resembles that of the churches, and especially of the monasteries, in the early Middle Ages, the peculiarities of which could be observed with particular clarity in the Venetian colonies [cf. above, sec. iii:2]. But the direction of the further development was not, as in the Middle Ages, towards an increasing separation of state and church and a growing independence of the ecclesiastic dominions; instead, it took precisely the opposite course. The urban patrician families appropriated the priestly positions as sources of fee revenues and power, and the rule of the *demos* turned them altogether into state offices, transforming them into prebends which ordinarily were sold at auction. Democracy thus destroyed the political influence of the priests and transferred the economic administration of the sanctuaries to the commune. The great temples of Apollo at Delphi and of Athena at Athens were the treasure houses of the Hellenic state and deposit banks for the slaves;[38] some of them also remained large landowners. But an economic competition of the temples with the bourgeois crafts did not appear in the ancient cities. A secularization of the sanctuaries' holdings did not and could not occur in the ancient world, but in substance (if not always in form) the "secularization" of the trades that once had been concentrated in the temples was carried out incomparably more radically in Antiquity than in the Middle Ages. The absence of monasteries, and of an autonomous interlocal church organization in general, was the essential reason for this difference.

Conflicts of the urban citizenry with the seigneurial powers were as widespread in Antiquity as they were in the Middle Ages and at the beginning of the modern period. The ancient city, too, had a peasant policy and an agrarian policy which destroyed feudalism. But the [spatial] dimensions of these policies were so much larger in Antiquity, and their bearing on the internal development of the cities so heterogeneous as compared to the Middle Ages, that here the difference between the two periods becomes very clear. This difference we shall now have to discuss in the general context.

NOTES

1. In Brun's reform, the urban nobility and the upper "crafts" were united in the corporation of the "Constabulary" (*Konstaffel*), which in case of war provided the mounted force. The *Konstaffel* had 13 representatives on the council, as had the 13 minor "crafts" of the small artisans. Cf. A. Largiadèr, *Geschichte von Stadt und Landschaft Zürich* (2 vols.; Zürich: Rentsch 1945), I, 133f.

2. *Paratici*: the "paraders;" a synonym for *arti*, the "crafts," perhaps deriving

from the practice of guild processions. Cf. *Dizionario Enciclopedico Italiano*, IX (1958), 40.

3. "They [i.e., the resolutions of the *popolo*] should nullify all statutes and should always be consi red last." From a Brescia statute instructing the *podestà*, ca. 1250; "Statuti Bresciani del secolo XIII," in *Historiae Patriae Monumenta*, XVI² (Torino, 1876), 1584⁰⁸.

4. *Mercanzia* was the term used in Florence, *domus mercatorum* or its Italian equivalent, *casa dei mercanti*, in Verona for the "merchants court". Cf. A. Doren, *Italienische Wirtschaftsgeschichte* (Jena: G. Fischer, 1934), 412ff.

5. The description seems to be based on the captaincy of Ghiberto di Gente in Parma, 1253. Cf. Ernst Salzer, *Über die Anfänge der Signorie in Oberitalien* ("Historische Studien," vol. 14; Berlin: Ebering, 1900), 150–157.

6. The *ciompi* were the dependent artisans of the Florentine crafts in general, and more narrowly the unskilled laborers of the *Arte della Lana*, the guild of the woolens trades. In the uprising of July, 1378 the lower artisan strata obtained the formation of three new *arti* to represent their interests: two for the skilled laborers of the woolens industry and some other trades, and one for the *ciompi* proper. The new guilds were to be given a one-third share in the government, but as that "long hot summer" continued with further unrest, the new guilds of the skilled workers joined with the entrepreneurial guilds to crush the *ciompi* after a second uprising one month later; their *arte* was abolished and the men reincorporated into the *Lana*. The other two new guilds survived, with a share in the city regime, until 1384 when they, too, were abolished and the members were forced to rejoin their original associations. For an early description of this "first proletarian revolution," see Machiavelli's *Florentine Histories*, bk. III; cf. also A. Doren, *Das Florentiner Zunftwesen vom 14. bis zum 16. Jahrhundert* (Stuttgart: Cotta, 1908), 221–236, and for the events culminating in the revolt, Gene A. Brucker, *Florentine Politics and Society 1343–1378* (Princeton: Princeton University Press, 1962), chs. VII–VIII.

7. Conte Romolo Broglio d'Ajano, "Lotte sociali a Perugia nel secolo XIV," *Vierteljahrschrift für Social- und Wirtschaftsgeschichte*, VIII (1910), 337–349. This case p. 334, the power seizure by the *arti minori* in 1378, p. 347.

8. Broglio d'Ajano, *op. cit.*, 340f. The *cimatori* were the shearers of cloth.

9. Salzer, *Über die Anfänge der Signorie*, *op. cit.*, 97, fn. 3.

10. Eduard Meyer, *Kleine Schriften* (first ed.; Halle: Niemeyer, 1910), I, 373. Both the tribunes and the aediles were officials of the *plebs*, in contrast to the "curule" magistrates—the consuls and praetors—who were officials of the entire community.

11. The *potestas sacrosancta* of the tribune is contrasted to the *potestas legitima* of the communal magistrate by Mommsen, *Römisches Staatsrecht*, II (3rd ed., 1877), 276f.; at least in name, religion provided the tribune with a surrogate for the inviolability based on law of the "legitimate" magistrates. The actual surrogate, of course, was the violent self-help of the plebeians.

12. *Auspicium imperiumque*, or the "authority to conduct, as the representative of the community, the business of the latter with the gods and with mankind," were the two aspects of *full* powers of communal office according to Mommsen. As representatives of only part of this community, the plebeian tribunes had only part of these powers. Cf. Mommsen, *Römisches Staatsrecht*, I, 73; II, 269ff., 272.

13. I.e., from the latter part of the second century B.C. on. Tiberius Sempronius Gracchus was plebeian tribune in 133 B.C., and his brother Gaius in 123 B.C. For Weber's reading of the Gracchian period, see *GAzSW*, 238ff., 253.

14. Augustus and later *principes* assumed the tribunitian powers (although not the tribunate itself) for the entire length of their reign; other offices of the republican period, such as the consulship, they held only intermittently and for short periods. Cf. Mommsen, *Römisches Staatsrecht*, II, 84 and fn. 4.

15. Second half of the eighth century B.C. The war ended with the Spartan conquest of the Messenian plain, which to the largest part was turned into Helotic land.

16. According to Plutarch (*Lycurgus*, ch. 28), the ephors each year declared war upon the Helots "so that their being murdered [by the *krypteia*—see the next note] should not violate sacred law;" the story is now generally thought to be apocryphal. On the respective status of the Helots, Spartan state slaves assigned to work the land of individual warriors, and the Perioeci, political subjects with a certain amount of autonomy, cf. Ehrenberg, *The Greek State*, 29, 36f.

17. Plutarch (*loc. cit.*) relates that the ephors periodically sent into the countryside armed groups of the most agile youths who would hide in the daytime and roam the roads at night, killing any Helots they met; this was known as the *krypteia* (secret service). This story was at one time interpreted as referring to a special police force for the suppression of the Helots, but nowadays seems to be generally discounted; the *krypteia*, which other ancient sources also mention, is now thought to have been a special hardening and initiation period in the education of Spartan youth—see art. "Krypteia" in Pauly-Wissowa, *RE*, XI (1922), cols 2031–32. Weber's identification of the institution with a "spying system" perhaps derives from the misreading of a passage in Eduard Meyer, *Geschichte des Altertums* (Stuttgart: Cotta, 1893), II, 563 (III, 518 in the post-war 3rd edition, Basel: Schwabe, 1954), where the suggestive name is mentioned almost in the same breath with a comparison of Venice and Sparta for their general police state qualities.

18. Thucydides, *History of the Peloponnesian War*, bk. I, ch. 6.

19. Weber here takes sides in a dispute of his day, connected with the problem of the Lycurgan constitution of Sparta, about the early or late, legitimate or revolutionary origin of the ephorate. In particular, the entire section seems to be a point by point argument with Szanto's art. "Ephoroi" in Pauly-Wissowa, *RE*, V (1905), cols. 2860–64, and against the position taken by Eduard Meyer in "Lykurgos von Sparta," *Forschungen zur alten Geschichte* (Halle: Niemeyer, 1892), I, 244–261. A similar emphasis on the revolutionary (but not on the altogether rationally instituted) nature of the historical ephorate, in part backed with the same arguments, is defended by Victor Meyer, "Spartiaten und Lakedamonier," *Hermes*, LIX (1924) 35ff. (now reprinted in *Polis und Imperium*, Zurich: Artemis, 1965) and *id.*, *Neugründer des Staates* (München: Beck, 1925), 44ff.

20. I.e., to the rural and urban territorial districts, the Attic *demoi*. Ehrenberg calls them "urban and country boroughs" (*The Greek State*, 31).

21. On the difference between *psephismata* and *nomoi*, and on the role of the *nomothetai*, cf. Ehrenberg, *The Greek State*, 56f. and the bibliography, 250; for the *heliaia*, cf. *ibid.*, 72.

22. On the relationship between the Athenian Council of Five Hundred (*boule*) and the Assembly (*ekklesia*), cf. A.H.M. Jones, *Athenian Democracy*, 105–122. A *probouleuma* or "pre-consultation" in the *boule* was required in most cases before a matter could be decided in the Ecclesia.

23. For a brief analysis of the Greek *tyrannis*, see now A. Andrewes, *The Greek Tyrants* (New York: Harper Torchbooks, 1963).

24. Charondas of Katanê (Catania) on Sicily, of uncertain date, seventh or

sixth century B.C.; his codification for Katanē was widely used in later city foundations. Solon of Athens, ca. 638–559 B.C.; on his reforms and their background, especially the economic aspects, cf. A. French, *The Growth of the Athenian Economy* (London: Routledge & Kegan Paul, 1964), 10–29; also Andrewes, *op. cit.*, ch. VII.

25. The opposing commanders of the Athenian and Spartan armies during the final phase of the Peloponnesian war, which ended with Lysander's victory at Aigospotamoi (405 B.C.) and his seizure of Athens (404 B.C.). Alcibiades, after a checkered career alternately in Athens and in the service of her enemies had himself created commander with unlimited powers (*strategos autokrator*) in 407 B.C., but was deposed and exiled in the same year after losing a battle to Lysander. The latter, militarily more successful, used his position as Spartan sea commander (*nauarchos*) to build a personal power base in the conquered cities, but ultimately failed to translate this into permanent rule in his home state where he was deposed in 403 B.C.

26. Eduard Meyer, *Geschichte des Altertums*, II, 613 (in the postwar re-issue: III, 566 fn. 1).

27. Salzer, *Die Anfänge der Signorie*, *op. cit.*, *passim*. The four main offices serving as springboards for the establishment of a *signoria*—those of the *podestà* of the commune, the captain of the *popolo*, the closely related *podestà* of the merchant court, and the military commander (*capitano della guerra*)—are taken up one by one *ibid.*, 26ff.

28. I.e., a judicial power unrestricted by the city statutes and not requiring the collaboration of the regular authorities normally needed (*sine illis de curia et collegio*), which, however, was limited to certain types of incidents, usually political ones, such as a rebellion. Cf. Salzer, *op. cit.*, 76 (for the *podestà*) and 171 (for the *capitano del popolo*).

29. The *parlamentum*, *contio*, or *arengum* was the general assembly of the citizenry (direct democracy), not—as the name might suggest—a "city parliament" of the modern type. The counterpart of the latter would be the "representative" assembly of the late medieval city council.

30. Submission of Padua to Can grande della Scala, *signore* of Verona. This surrender, after a struggle of almost two decades, was effected against the resistant parties within the city by Marsilio de Carrara, head of the Padovan "signorial" family, with the help of the peasants from the *contado*. Cf. Robert Davidsohn, "Beiträge zur Geschichte des Reiches und Oberitaliens," *Mitteilungen des Instituts für österreichische Geschichtsforschung*, XXXVII (1917), 402; now also J. K. Hyde, *Padua in the Age of Dante* (Manchester University Press, 1966), 280 and *passim*.

31. On the *mezzadria* tenure in Tuscany, a *métayage* (crop-sharing) form of land holding, cf. Robert Davidsohn, *Geschichte von Florenz*, I (Berlin: Mittler, 1896), 777ff.

32. The Habsburg successor of the Medici, Grand Duke Leopold I of Tuscany (r. 1765–1790), the later Emperor Leopold II (r. 1790–1792). Like his brother, Emperor Joseph II, he was much influenced by physiocratic doctrines, in the spirit of which he effected major reforms in the Grand Duchy. Cf. Hermann Büchi, *Finanzen und Finanzpolitik Toskanas im Zeitalter der Aufklärung (1737–1790) im Rahmen der Wirtschaftspolitik* ("Historische Studien," vol. 124; Berlin: Ebering, 1915).

33. Rights of *pariage*, or condominion, which were contracted voluntarily or under duress with many cities, monasteries or small city lords, in exchange for promises of protection or abatement of tax claims. The financial weakness of the

French crown became, in combination with military strength, an instrumental factor for obtaining such rights when translated into onerous tax burdens on which the cities defaulted, thus providing the king with a pretext for asserting control claims. Already Philip II Augustus during the long wars with the Angevins, but especially Louis IX (r. 1226–1270) greatly extended the royal domain through *par age* contracts. Cf. Robert Holtzmann, *Französische Verfassungsgeschichte* (Munich: Oldenbourg, 1910), 280ff.; art. "Cosignieurie" in *Grande Encyclopédie*, XII, 1129f.

34. For a less compressed summary of these policies, cf. A. B. Hibbert, "The Economic Policies of Towns," in *Cambridge Economic History of Europe*, III (Cambridge, 1963), 157–229.

35. The "Corporation Act" of 1661 and the "Test Act" of 1672 required all members of corporations and other officials, within a stated period after election or appointment, to receive Communion according to the rites of the Church of England and to sign a declaration against transubstantiation.

36. Liverpool had purchased all remaining manorial rights in 1672, and shortly thereafter began a vigorous economic development, whereas the Manchester "court leet"—the governing body of the town—remained the property of a baronial family until 1845, when the municipality bought itself off for the tidy sum of £200,000. Cf. J. Hatschek, *Englische Verfassungsgeschichte*, 700f.; arts. "Liverpool" and "Manchester" in *Encyclopedia Britannica*.

37. E.g., the fantastic Rhine river tolls of the thirteenth century: the *furiosa Teutonicorum insania*.

38. In early medieval Europe, the *Vogt* or *avoué* (i.e., "advocate") was the secular legal officer of a church or monastery, appointed by the crown and rewarded with a benefice out of the church patrimony. Outside of the towns, the office was, with the waning of royal power, increasingly appropriated by the nobility, both functions and rewards substantially expanding at the expense of the churches. On the development of the *avouerie*, see Marc Bloch, *Feudal Society*, trans. L. A. Manyon (Chicago: University of Chicago Press, 1961), 404ff.

39. On the banking role of the Greek temples, cf. above, ch. XV:102; see also F. M. Heichelheim, *An Ancient Economic History*, II, 70–74; Ehrenberg, *The Greek State*, 84f. and the bibliography 252.

V

Ancient and Medieval Democracy[1]

The special position of the medieval city in the history of political development does not, in the last analysis, derive from the essentially economic contrasts between the urban burghers and the non-urban strata and their economic life styles. The crucial element was, rather, the general position of the city within the total framework of the

medieval political and status associations. It is this aspect which differentiates the typical medieval city most sharply from the ancient city, but it is also with respect to this criterion that we can distinguish within the medieval period two types, albeit with somewhat fluid transitional forms, which nevertheless in their purest examples are very distinctly different: A southern European type, found especially in Italy and southern France, which in spite of all differences is much closer to the ancient polis than the other type, that of northern France, Germany, and England, which again in spite of a great variety of forms represents a unity with respect to the criterion now under consideration. We therefore have once again to turn to a comparison of the medieval city type with that of Antiquity and, wherever suitable, with those of other periods, in order to get a coherent picture of the basic causes for these differences.

The knightly patriciate of the southern European cities owned castles and estates outside the cities just as did that of Antiquity, for which we have several times already cited the example of Miltiades' [estates in the Chersonese]. The possessions and castles of the [Genoese] Grimaldi are found all along the coast line of Provence. Towards the North such conditions become much rarer, and in the typical central or northern European city of later times they were entirely absent. On the other hand, the medieval city also knew almost nothing of such phenomena as a populace which, like the Attic *demos*, expected and received municipal gratuities and pensions based entirely on the political power of the state [i.e., on the tributes exacted abroad and similar revenues]. Direct distribution of the economic yield of municipal properties, similar to the distribution of the profit from the Laureion mines[2] to the burghers of Athens, did, however, exist in medieval cities as it does in modern communities.

Origin of the Ancient Lower Class: Debtors and Slaves

The contrast between the lowest strata [of Antiquity and those of the Middle Ages] is very sharp. The ancient city experienced as the chief danger arising from economic differentiation, which all parties therefore sought to combat with varying means, the emergence of a class of full citizens, descendants of families with full citizenship rights, who were economically ruined, in debt, without property, no longer capable of equipping themselves for service in the army, and who hoped for a revolution or a tyranny from which they could demand a redistribution of land, a cancellation of debts, or support out of public

means: grain distributions, free admission to festivities, dramatic performances and circus fights, or direct doles from public funds to make possible their attendance at such performances. It is true that such strata were not entirely unknown in the Middle Ages; they could be found also in more recent times in the South of the United States, where the slave-holding plutocracy was confronted by the unpropertied "poor white trash." In the Middle Ages the debt-ridden *déclassé* strata of the nobility, for instance in Venice, were as much an object of concern as in Rome at the time of Catilina. But on the whole this problem played a very small role in the Middle Ages, above all in the democratic cities. It certainly was not the starting point for class struggles, as it typically was in Antiquity. For the class struggles of early Antiquity took place between the urban patriciate as *creditors* and the peasants as *debtors* or as dispossessed debt slaves. The *civis proletarius*, the "descendant"—namely, of a full citizen—was the typical *déclassé*.[3] In the later period this role fell to debt-ridden *Junkers*, like Catilina, who confronted the propertied strata and became the leaders of the radical revolutionary parties. The interests of the negatively privileged strata of the ancient polis were essentially *debtor* interests. But also *consumer* interests. Those interests, on the other hand, which in the Middle Ages constitute the pivot of city politics during the democratic period, the *producer* interests of the artisans, increasingly recede into the background in later Antiquity, although the early period of the rise of ancient Democracy had also been characterized by artisan-type policies concerned with a "fair living." The fully developed Democracy of the Hellenic cities, but also the fully developed rule of *honoratiores* in Rome, take into account little more than trading and consumer interests, at least as far as the urban population is concerned. The export prohibitions for grain, which the ancient polis had in common with the medieval city and the mercantilist state, did not suffice in Antiquity; hence the economic policy of that period was dominated by direct public provision for grain supplies. The grain gifts of friendly princes provided the main impetus in Athens for a revision of the citizenship rolls in order to exclude those not entitled to a share in the distribution.[4] Crop failures in the grain areas of the Pontus forced Athens to remit the tribute of the confederates, which shows to what extent economic capacity was ruled by the price of bread. Direct grain purchases by the polis are also found in ancient Greece, but grain tributes imposed on the provinces on a huge scale for free distribution to the urban citizenry appear only in the late republican period in Rome.

In the Middle Ages, the typical needy person was a poor artisan, a craftsman without work. In Antiquity, he was a "proletarian," a

former landowner who was politically *déclassé* because he no longer owned any real estate. Antiquity, too, knew an "unemployment" problem for its artisans; as the typical remedy it used the great public construction projects, such as those executed by Pericles.

The mass employment of slave labor in the trades affected their social position in Antiquity. To be sure, slavery was a permanent feature also in a number of medieval cities. In the Mediterranean maritime cities a real slave trade existed even to the very end of the Middle Ages and, on the other end of the continuum, as continental a city as Moscow, prior to the abolition of serfdom [1861], showed most of the characteristics of a large Oriental city of the time, say, of Diocletian: it was a place where rents derived from the ownership of land and souls, as well as office revenues, were consumed. But in the typical city of the medieval Occident, slave labor played a rapidly diminishing economic role, and ultimately none at all. Nowhere would the powerful craft guilds have tolerated the development of an artisan stratum of slaves, paying a "body-rent" to their master, as competitors of the free crafts. This is precisely what happened in Antiquity. There, any accumulation of wealth invariably signified an accumulation of slaves, and every war produced huge numbers of captives who swamped the slave markets.

In part these slaves were utilized for *consumption* purposes, i.e., in the personal service of the owners. The possession of slaves was one of the basic prerequisites for a conduct of life appropriate to the social standing of a full citizen in Antiquity. In the hoplite period, a time of chronic warfare, he could dispense with slave labor as little as the knight of the Middle Ages could do without that of the peasants. A man who had to live without any slaves was definitely a "proletarian" (in the ancient meaning of the word). The eminent families of the Roman nobility "consumed" the services of great numbers of slaves, who were engaged in the conduct of the great households in a very detailed functional division of labor and also produced a considerable part of the household needs in the manner of the *oikos* economy. Food and clothing for the slaves, however, were to the largest part obtained in the money economy. In Athens the household as a rule supplied itself entirely through the money economy, and this was even more true for the Hellenistic East. However, of Pericles [i.e., in the fifth century B.C.] it was still thought noteworthy to stress that he, for the sake of his popularity with the artisans, attempted to supply his needs whenever possible by purchase in the market rather than within the economy of his household.

At the same time commercial *production* in the ancient city was also to a considerable part in the hands of slaves. The *ergasteria* we

have discussed earlier; beside them appear independently established unfree artisans and small merchants. It should be obvious that the side-by-side employment of slaves and free citizens, such as we find in the mixed piecework groups laboring at the construction of the Erechtheion,[5] must have had a socially degrading effect on the evaluation of work, and that the economic competition of the slaves must also have been noticeable. For all that, the fullest expansion of the exploitation of slaves in ancient Greece fell precisely in the periods of Democracy.

2. *Constituencies of the City: Ancient Territorial Units versus Medieval Craft Associations*

This proximity of slave labor and free labor apparently also nipped in the bud any possibility of a development of craft guilds in Antiquity. It may be assumed, even though it cannot be definitively proven, that in the early days of the polis there existed beginnings of occupational associations. To all appearances these were organizations of the militarily important old war crafts, such as the *centuriae fabrum* in Rome and the *demiourgoi* in Athens at the time of the status struggles. But these beginnings of political organization disappeared without leaving a trace precisely during the democratic period, and, given the social structure of the crafts at that time, it could hardly have been otherwise. The ancient small burgher could be a member of a mystery congregation (as in Greece) or a *collegium* (as later in Rome) together with slaves,[6] but he could not join with them in an association which, like the craft guilds of the Middle Ages, claimed political rights.

The medieval *popolo*, in contrast to the patriciate, was organized on the craft guild principle. But precisely during the rule of the *demos* in the classical period of Antiquity, all traces of craft organizations are absent, in spite of the incipient development noted for an earlier period. The ancient "democratic" city was organized, instead, by "demes" (*demoi*) or "tribes" (*tribus*), that is, according to territorial and in fact (formally) primarily rural districts. This is a characteristic which, in turn, was entirely absent in the medieval city. To be sure, the subdivision of the *interior* of the city into wards was common not only to the cities of Antiquity and the Middle Ages, but to the Oriental and Far Eastern city as well. But the exclusive founding of all political organization on territorial communities and, above all, the extension of this principle to the entire *countryside* under the political rule of the city, so that formally the *village* became a direct subdivision of the *city*—this phenomenon was unknown in the Middle Ages and also in the cities

of all other areas. The "deme" divisions essentially coincided with village districts, historically formed or created *ad hoc*, and—like villages—the "demes" were equipped with a commons and with local authorities. The historical uniqueness of this type of *city*-constitution, which prevailed especially during the democratic period of the ancient polis, simply cannot be stressed too strongly.

By contrast, craft organizations as constituencies of the city are found in Antiquity only in the early period, and then only alongside other status corporations. They were used primarily for election purposes: so, in Rome, the *centuriae* of the *fabri* [craftsmen] alongside the *centuriae* of the *equites* [knights] in the old military class organization, and perhaps in early Athens—though this is entirely conjectural—the *demiourgoi* of a pre-Solonic compromise among the status groups.[1] The origins of such organizations could have been voluntary associations, as was certainly true for the very old *collegium mercatorum*, with its professional god Mercurius, which was taken into account in the political constitution of Rome. Or again, they could have their source in liturgical associations formed for military purposes, for the ancient city did, after all, originally rely for the satisfaction of public requirements on the involuntary services of the burghers.

Individual phenomena of a "city guild" type are indeed found in Antiquity. The cult association of the dancers of Apollo in Miletus, for instance, had an official status of a city-governmental kind (although its specific powers are not known), as is shown by the fact that the name of its president supplied the eponymic designation for the year. In one respect it finds its closest parallel in the city guilds of the medieval North, in another in the craft guilds of the magical dancers among American Indian tribes, of the magicians (Brahmans) in India, and of the Levites in Israel. But this cult association should not be pictured as a guest tribe of professional ecstatics. In historical times it probably was a club of *honoratiores* qualified to participate in the Apollo processions; its nearest medieval correspondence would thus be the *Richerzeche* of Cologne, with the difference that the ruling political burgher association is, in a manner typical of Antiquity (but not of the Middle Ages), identified with a separate cult community. If in late Antiquity, in Lydia, colleges of craftsmen are again found with *hereditary* wardens, which seem to have taken the place of the [political-tribal units, the] phylae, then we can almost certainly say that they must have had their origin in old craft-specialized guest tribes and thus represent a development more reminiscent of India than of the Occident. In the Occident an occupational organization of craftsmen first reappeared in the late Roman and early medieval *officia* and *artificia* of the manorial handi-

crafts. Later, during the transition to the Middle Ages, we find associations of urban handicraft workers producing for the market but personally tied to a master to whom they owed a "body rent"; these associations, however, which seem only to have served for the collection of the dues, may have had their origin in liturgical organizations formed by the lords. Alongside these groupings, which disappeared in time, we find those voluntary unions of *free* artisans—perhaps just as old as the former—which were organized for the purpose of monopolizing economic opportunities, and which later were to play the decisive role in the movement of the bourgeoisie against the patrician houses.

Nothing at all similar is found in the classic Democracy of Antiquity. Liturgical craft guilds, which may have existed in the early period of city development (even though not even traces of such units can be documented with any assurance apart from those Roman military and electoral associations), reappear only in the liturgical monarchies of late Antiquity. Free and voluntary unions were active in all possible spheres of life especially during the period of classical Democracy, but, as far as can be seen, they nowhere obtained or aspired to the character of craft guilds. Hence they are of no concern in the present context. If they had anywhere sought for the economic character of craft guilds, they would have had to disregard the distinction between free and unfree members, just as the medieval city later did, in spite of the existence of great masses of unfree artisans. But this would have required the renunciation of all *political* aspirations, which in turn would have produced important disadvantages in the economic sphere, the nature of which we shall soon discuss. The ancient Democracy was a "guild" of the *free* burghers only, and this determined its political functioning in all respects. Free craft guilds or similar unions therefore first began to form, as far as is known, precisely at the time when the political role of the ancient polis had definitely come to an end. But the idea of suppressing, expelling, or in some other way effectively limiting the number of the unfree and the free but not fully enfranchised craft workers (freedmen, metics) was one which ancient Democracy could no longer even consider since it was so obviously impracticable. The beginnings of such policies, which in a very typical way show themselves during the period of the status struggles and especially during the rule of the *aisymnetai* and *tyrannoi*, later vanish entirely precisely after the victory of Democracy. The extent to which the slaves of private masters were employed side-by-side with free citizens and metics on the public construction projects and in the production of state supplies during the very period when the rule of the *demos* was absolute seems to show that these operations could not have been con-

ducted without them—although it probably also shows that their owners were unwilling to forego the profits obtainable from their utilization on the public projects and had the power to prevent their exclusion. At least on the public projects the slaves would otherwise certainly not have been used. The productive capacities of the free trades operated by full citizens thus were not sufficient for major state needs.

The great structural difference between the fully developed ancient and medieval city, during the period of the rule of the *demos* here and of the *popolo* there, is manifested in this [neglect of artisan producer interests]. In the ancient city of early Democracy, dominated by the hoplite army, the town-dwelling craftsman—i.e., a man not settled on a "citizen's parcel" (*kleros*) and not economically capable of self-equipment for military service—played a politically negligible role. In the Middle Ages the city was led by the *popolo grasso*, the *grande bourgeoisie* of the large entrepreneurs, *and* by the small capitalists, the tradesmen of the *popolo minuto*. But within the ancient citizenry these strata had no—or at least no significant—power. If ancient capitalism was *politically* oriented, so was ancient Democracy. In the case of ancient capitalism, the interests were directed toward state supply contracts, state construction and armament, state loans (a political factor in Rome as early as the Punic wars), state expansion and booty in the form of slaves, land, tributes, and privileges in the subject cities with respect to the purchase of land, the lending of money on land, trade and deliveries. The political orientation of ancient Democracy was determined by the peasantry as long as it provided the core of the hoplite armies, whose interest was in the military acquisition of land for settlement purposes, and by the urban *petite bourgeoisie* with its interest in the direct and indirect revenues obtainable from dependent communes: the state building programs, the allowances paid for attending theater performances and *heliaia* court sessions, the grain and other distributions offered by the state at the expense of the subjugated peoples. Restrictive craft guild policies in the medieval manner would never have been permitted, in view of their consumer interests in cheap supplies of craft products, by the landowning strata which made up the bulk of the hoplite army at the time of its triumph in the compromises between the status groups under Cleisthenes in Athens and the *decemviri* in Rome.[8] And the later sovereign *demos* in Hellas, which stood under the influence of more specifically urban interests, no longer showed any interest in such policies and probably, as we have noted, also was no longer in a position to enact them.

The political aims and means of ancient Democracy thus were fundamentally different from those of the medieval *bourgeoisie*. This

also finds expression in the difference, mentioned several times already, between the political subdivisions of cities in the two periods.

In the Middle Ages the patrician houses did not vanish outright, but instead were often forced to enroll in the craft guilds, the new constituencies of the citizenry. This signified that they could be outvoted within these units by the middle classes and had thus formally lost part of their influence. Often, of course, the effect of such measures was to drive the craft guilds onto a path which turned them into plutocratic corporations of *rentiers*, such as the London "liveries." Nevertheless, such developments always signified an increase in the power of a specifically *urban* stratum either directly participating in commerce and the trades or indirectly interested in it: of the *bourgeoisie* in the modern sense.

In Antiquity, on the other hand, the old *personal* patrician family associations (the *gentes*, phylae and phratries) were replaced or joined by [*territorial*] subdivisions of the city state, the *demoi* and *tribus*, and these bodies or their representatives assumed all political power. This had two consequences. Firstly, it signified the dissipation of the influence of the patrician families, for their holdings, as is natural for land obtained through mortgage lending and debt foreclosure, were typically dispersed all over the territory and could now no longer be brought to exert concentrated political weight in a single constituency, but were reduced to diffuse effect on the individual *demoi* where the component parcels happened to be situated. There, in the "deme," the holding was now registered and taxed; this signified a far greater curtailment of the political power of large holdings than would today the incorporation of the manorial districts (*Gutsbezirke*) in eastern Germany into the rural communes.[9] Furthermore, and most importantly, the division of the entire city territory into *demoi* signified that henceforth all council positions and offices would be filled with representatives of these units, as happened in Hellas, or at least that the voting bodies would be organized according to *tribus*, as happened in Rome with the thirty-one rural and four urban *tribus* in the *comitia tributa*.[10] At least according to the original intention, this was to secure the dominance and the rule over the city not of town-dwelling, but of rural strata. Thus the revolutionary reorganization was *not* to signify a rise to political power of the urban, economically active burgherdom, as in the case of the medieval *popolo*, but the exact opposite: the political rise of the peasantry. This is to say: while in the Middle Ages the carrier of "democracy" was from the very beginning the stratum of the urban tradesmen, in the Cleisthenian period of Antiquity it was the peasantry.

3. *Excursus on Athenian* versus *Roman Constituencies*

Only in Rome, however, was this of factual importance also in the long run. For in Athens membership in a "deme" was a permanent and hereditary quality, independent of residency, landownership and occupation; one was born into it just like one was born into the phratry and the clan. The descendants of a member of the Paianian "deme"—such as, e.g., those of Demosthenes—remained for all centuries legally attached to this district, were taxed by it and drawn by lot for its offices, regardless of whether they retained any connections at all to the district through residence or landownership. This, of course, deprived the *demoi* of their character of local peasant associations as soon as a few generations of migration to the city had gone by. All kinds of urban tradespeople would by that time count as members of a rural *demos*. In fact the *demoi* became purely personal subdivisions of the citizenry, just like the phylae. As a result the burghers of Athens, who could always be present in the popular assembly, the *ekklesia*, were favored not only on this score but also increasingly came to constitute the majority within the formally rural *demoi* as the city grew.

The development in Rome was different, even though at one time a similar principle seems to have applied to the four old urban *tribus*. However, each of the later rural *tribus* comprised only those citizens who actually owned land there at any given time. With the abandonment of this property and the purchase of new property elsewhere, one changed one's *tribus*. The *gens* Claudia, for instance, in later times no longer belonged to the *tribus* which it had given its name. Just as in Athens—and actually much more so, because of the so much larger territorial expanse—this arrangement favored those *tribus* members who could attend the *comitia*, and that means those who lived in Rome. In contrast to Athens, however, such benefits accrued only to people who held land in the rural *tribus*, and then only if their properties were of such size that they could afford to live in the city while leaving the actual farming of their lands to others—in other words, the beneficiaries were landowning *rentiers*. Great and small *rentier* landlords thus dominated the Roman *comitia* after the victory of the *plebs*. The superior strength of the town-dwelling landed nobility in Rome and of the urban *demagogos* in Athens helped to perpetuate this difference between the two cities.

The *plebs* of Rome was not a *popolo*, a union of the craft guilds of artisans and traders, but rather a status association of the rural landowners capable of serving in full armour, of whom the town-dwellers alone as a rule dominated politics. The plebeians originally were not at

all smallholders in the modern sense, and even less a peasantry in the medieval sense, but rather the landowning stratum of the countryside which was economically capable of full military service: if socially not a "gentry," then at least a "yeomanry" with middle-class character in regard to size of landholdings and style of life at the time of the rise of the *plebs*. In other words: a stratum of "agrarian burghers."

In the course of expansion of the Roman state, the influence of the city-dwelling agrarian *rentiers* increased. By contrast, the entire urban artisan population remained organized in the four urban *tribus*, and therefore without political influence. The Roman office nobility always preserved this organizational principle, and even the Gracchian reformers were far from wanting to change it in favor of a "Democracy" of the Hellenic type. This "agrarian" character of the Roman army made possible the continued domination of the great city-dwelling senatorial families. Whereas Attic Democracy appointed its executive Council, the *boule*, by lot, and destroyed the veto power of the Areopagus, the old council composed of former officials and corresponding to the Senate, in Rome the Senate was retained as the directing agency of the city and no attempt was ever made to change this. The command of the troops always fell to officers from the urban noble families during the great expansion period. The Gracchian reform party of the late republican period, like all typical ancient social-reform movements, was above all interested in safeguarding the military capacity of the polity; it sought to check the proletarianization of the rural landowners through the land purchases of large landholders, and to strengthen their number; in order to maintain thereby the strength of the self-equipping burgher army. It, too, was thus by origin a rural party—in fact, so much so that the Gracchi, in order to obtain anything at all along these lines, felt constrained to seek an ally against the office nobility in the "knights" (*equites*),[11] the capitalist stratum interested in farming the state revenues and in state supply contracts which, because of its commercial activities, was excluded from participation in the offices.[12]

4. *Economic Policies and Military Interests*

It has been asserted, probably correctly, that the Periclean construction policy served also to provide employment for the Athenian artisans.[13] Since the building programs were financed from the tributes paid to the hegemonial city by the confederates, it was these who were the ultimate source of such earning opportunities. However, the benefits by no means accrued only to craftsmen with full citizenship, for the inscrip-

tions show that metics and slaves also found employment at these projects. The real "unemployment benefits" of the lower strata during the Periclean period were, rather, sailor's wages and booty—above all, booty from sea wars. This is the reason why the *demos* was always so easily won for war. These *déclassé* burghers were economically dispensable and had nothing to lose. But an employment and output policy oriented around independent craft producers never appeared as a significant element in the entire ancient democratic development.

If the economic policy of the ancient city is thus seen to be pursuing primarily the interests of urban consumers, then this can certainly also be said of the medieval city. But the measures taken were much more drastic in Antiquity, obviously because it seemed impossible to leave the provisioning with grain of cities such as Athens and Rome in the hands of private commerce. Occasionally we find also in Antiquity measures favoring the production of some especially important export goods, but these were never mainly directed at the artisan branches of production. And nowhere were the politics of an ancient city dominated by such producer interests. The interests with a decisive influence on the policies of the old maritime cities were, rather, in the early period those of the town-dwelling seigneurial and knightly patriciate, which is found everywhere, in sea trade and piracy whence it derived its wealth, and later, in the early period of Democracy, those of the rural hoplite proprietors, a stratum which in this form is found only in Mediterranean Antiquity. Still later the urban policies were determined by the interests of the owners of money and slaves, on the one hand, and by those of the urban *petit-bourgeois* strata on the other, both of which had a stake, though differing in kind, in state contracts and in military spoils, either as large or small entrepreneurs, or as receivers of state handouts, or again as warriors and sailors.

In these respects the medieval city democracies behaved in a fundamentally different manner. The causes for this difference were present and effective already at the founding of the medieval cities; they were connected both with geographic circumstances and with military factors based on general cultural developments. The ancient Mediterranean cities were not confronted at the time of their emergence by *non*-urban political and military power structures of any significance and, most importantly, of a high technical level; in fact, the cities themselves were at that time the bearers of the most highly developed military techniques. This was true for the knightly *phalanx* of the patrician clan city, and even more so later for the city of the disciplined hoplite formations. Wherever the situation was in this military respect similar in the Middle Ages, as in the case of the early medieval southern European maritime

cities and of the Italian city republics of the urban nobility, the development also shows relatively far-reaching similarities to that of Antiquity. In the early medieval city state of southern Europe, the aristocratic structure of urban organization was predetermined by the aristocratic character of military technique. Especially the maritime cities, but also those relatively poor inland cities—such as Bern—which held possession of large subject territories ruled by the urban *rentier* patriciate, displayed the fewest tendencies toward democratic development.

The industrial inland cities, by contrast, and in particular the cities of continental northern Europe, found themselves confronted in the Middle Ages by the military and administrative organization of the kings and their castle-seated knightly vassals distributed all over the wide inland terrain. To a high percentage, which increases toward the North and the interior, these cities were dependent from the moment of their foundation on concessions from the political and seigneurial power-holders integrated into the feudal military and office structure. Increasingly as time went on, they were given "city" status not because of any political or military interests of a local defense association, but for purely *economic* motives of the founder alone who, as the wielder of power, expected for himself revenues from tolls and other traffic charges and from taxes. The establishment of a city became for the lords primarily an economic undertaking, a business proposition rather than a military measure—or at least, wherever military aspects had played any role, they tended to recede more and more into the background. The urban autonomy of varying extent, which was the specific characteristic of the medieval Occidental city, developed only because and insofar as the non-urban power-holders did not yet possess a trained apparatus of officials able to meet the need for an urban administration even to the limited extent required by their *own* interest in the economic development of the city. This was the only element which *everywhere* was decisive. The early medieval princely administration and courts did not have the specialized knowledge, continuity, and training in rational objectiveness which would have given it the capacity to order and direct the affairs of urban craft and commercial interests—affairs that were so far removed from the social habits and time-consuming preoccupations of the knightly personnel of these bodies. The interest of the power-holders in the early period was only in money revenues. If the burghers managed to satisfy these interests, all probabilities were in favor of the non-urban power-holders refraining from interference with the burghers' affairs. This was especially true since such interference might have harmed the attractiveness of one's own city foundation in the competition with those of other power-holders, and thus one's own revenues. The competi-

tion between the non-urban powers, in particular the conflict of the central power with the great vassals and the hierocratic power of the church, came to the aid of the cities, especially since an alliance of any one of the contending powers with the money power of the burghers could provide it with a decisive advantage. Hence, the more unitary the organization of the larger political association, the less was the development of urban political autonomy. For all feudal powers without exception, beginning with the kings, viewed the development of the cities with utter distrust. Only the lack of a bureaucratic apparatus and their money requirements forced the French kings from Philip Augustus on, and the English kings after Edward II, to seek support in the cities, just as the same factors had earlier induced the German kings to seek support from the bishops and the wealth of the church. After the onset of the Investiture Struggle, which deprived the German kings of this support, we find also in Germany short periods during which the Salic kings courted the cities. But as soon as their political and financial resources permitted the royal or provincial patrimonial powers to develop the necessary administrative apparatus, they tried to destroy the autonomy of the cities again.

The historical interlude of urban autonomy was thus in medieval city development caused by entirely different conditions than in Antiquity. The typical ancient city, its ruling strata, its capitalism, its democratic interests—all these were politically and militarily oriented, and the more so, the more their specifically ancient aspects come to the fore. The downfall of the patriciate and the transition to Democracy were caused by a change in military technique. It was the self-equipped disciplined hoplite army which carried the struggle against the nobility, ousting it militarily and then also politically. Its success was of varying dimensions. At times it led to the complete destruction of the nobility, as in Sparta. Or it led to the formal removal of status differences, to satisfaction of the demand for rational and more easily accessible justice, safeguards for the legal status of persons, and elimination of the rigors in the debt law, while *de facto*—if in changed form—the preeminence of the nobility was preserved: as in Rome. Or again, it led to the incorporation of the nobility into the *demoi* and to a timocratic government of the city state: as in Cleisthenian Athens. In most cases some of the authoritarian institutions of the patrician state were preserved as long as the influence of the rural hoplite elements was predominant. Great variety prevailed also in the intensity of militarization of institutions. The Spartan hoplite community treated all land belonging to the warriors and the unfree population living on it as communal property, and granted each warrior who had established his military qualification

the claim to a land rent. No other polis went quite that far, but restrictions on the alienability of the warrior lots (*kleroi*), the inherited land of members of the city guild, seem to have been fairly widespread and survived in rudiments into the later period. However, even this practice was probably never universal and was later eliminated everywhere. All other land was encumbered only by the inheritance rights of the sons[14] and otherwise freely alienable. In Sparta, land accumulation, although forbidden in the hands of the male Spartiates, was admissible in those of their women, and this ultimately transformed the economic basis of the warrior association of the perhaps 8,000 original full citizens, the *homoioi* ("equals"), so much that finally only a few hundred could afford the full military training and the membership fee for the *syssitia*, on which full citizenship rested. In Athens, development took the opposite course: here the enactment of free transferability of land in combination with the "deme" constitution furthered the breaking up of the land into small lots, which corresponded to the requirements of the expanding market-gardening culture. In Rome the free transferability of land, which existed from the time of the Twelve Tables, had again different consequences in that it led to the destruction of the village-type of rural settlement.[15] In Hellas, hoplite democracy waned in all those areas where military strength came to be based primarily on naval power—as in Athens definitively after the defeat at the hand of the Boeotians at Koroneia in 447 B.C.[16] From that time on, the former rigorous military training was neglected, the remainders of the old authoritarian institutions were abolished, and both policies and institutions of the city came under the full domination of the *town*-dwelling *demos*.

Such transformations based on purely military factors were unknown in the medieval city. The victory of the *popolo* rested primarily on economic foundations. And the specifically medieval city type, the artisan inland city, was altogether economically oriented. The feudal powers of the Middle Ages were not by origin city-kings and city nobles. Unlike the nobility of Antiquity, they were not interested in putting into their service specific instruments of military technique offered only by the city. For, apart from the maritime cities with their war fleets, the cities of the Middle Ages were not as such the bearers of specific military power instruments. Quite to the contrary: Whereas in Antiquity the hoplite army and its training, and thus military interests, increasingly came to constitute the pivot of all urban organization, in the Middle Ages most burgher privileges began with the limitation of the burgher's military duties to garrison service. The economic interests of the medieval townsmen lay in peaceful gain through commerce and the trades, and this was most pronouncedly so for the lower strata of the urban citizenry,

as is shown especially by the contrast between the policies of the *popolo minuto* and those of the upper strata in Italy. The political situation of the medieval townsman determined his path, which was that of a *homo oeconomicus*, whereas in Antiquity the polis preserved during its heyday its character as the technically most advanced military association: The ancient townsman was a *homo politicus*.

In the northern European cities, as we have seen, the *ministeriales* and knights as a status group were often directly excluded from the city. The non-knightly landowners were either mere city subjects or, at times, passive guest-burghers under the protection of the city; sometimes they were guild-organized gardeners and vintners, but they were almost never politically or socially significant. As a general rule, and increasingly so over time, the countryside was a mere object of the economic policy of medieval cities without a voice of its own. The typical medieval city was nowhere in a position even to entertain the notion of a policy of colonizing expansion.[17]

5. *Serfs, Clients and Freedmen: Their Political and Economic Role*

Here we reach a very important point: the comparison of the status structure of the ancient and the medieval city. In addition to the slaves, which we have already discussed, the ancient polis knew a number of *status* strata which in the Middle Ages are either found only in the early period or not at all, or which appear only outside of the city. Among these we count: 1. the serfs; 2. the debt slaves and debt servants; 3. the clients; 4. the freedmen. The first three groups in general belong to the period prior to the hoplite democracy and later are found only in remnants of rapidly diminishing importance. The freedmen (emancipated slaves), by contrast, play an increasingly important role precisely in the later period.

1. THE SERFS. In historical times, patrimonial serfdom (*Hörigkeit*) appears in the area of the ancient polis primarily in conquered territories. In the early feudal period of city development, however, it must have been very widely diffused. Like the position of serfs throughout the world, which has always been similar in certain fundamental aspects while widely varying in the details, that of the ancient serf was in principle not different from that of his medieval counterpart. Everywhere the serf was in the main exploited economically. Serfdom was most completely preserved in the Hellenic area wherever the polis or-

ganization was not completely carried through, as in [southern] Italy, and also in cities which were constituted so rigorously as warrior organizations that the serfs were considered the possession of the state rather than that of individual masters. Outside these areas, serfdom disappeared almost everywhere during the period of hoplite democracy. It revived during the Hellenistic period in the western areas of the Orient, which at that time were being organized in the polis form. Large territories, which retained their tribal constitution, were assigned to the individual cities whose burghers formed a Greek (or Hellenized) garrison in the interest of the post-Alexandrian territorial kings. However, initially this bondage of the non-Hellenic rural population (the ἔθνη, or "tribes") was purely political and hence quite different from the patrimonial dependency of the early epoch; it no longer belongs to the description of the autonomous cities.[18]

2. DEBT SERVANTS[19] played a very significant role as labor power in Antiquity. They were economically "declassed" burghers, whose situation provided *the* specifically social issue in the early status struggles between the urban patriciate and the rural hoplites. Various compromises to resolve the problems of these downgraded peasant strata were worked out in the aisymnetic codifications of the Greeks,[20] in the Roman Twelve Tables, in the laws on seizure of persons for unpaid debts,[21] and in the policies of the tyrants. The solutions varied greatly. The debt servants did not come from serf strata, but were free landowners who with their families and lands had been sentenced to permanent enslavement or to private debt bondage, or who had voluntarily entered into debt bondage in order to avoid enslavement. They were put to economic use, frequently as farmers on their own land for the account of the creditor. The peril posed by such strata can be seen from the fact that the Twelve Tables prescribed that enslaved debtors could not be held in the country but had to be sold abroad ["*trans Tiberim*"].

3. THE CLIENTS[22] must be distinguished both from debt servants and serfs. In contrast to the latter, they were not despised as men under the power of others, but rather formed the followership of a patron; this relationship was one of mutual "fidelity," such that it put a legal suit between patron and client under a religious taboo. The contrast to debt bondage is shown by the fact that the economic exploitation of the client relationship by a patron was considered an offence against decency. The clients were personal and political, but not economic, means of power of the patron. Their relationship to the lord was regulated by the *fides*, the observance of which was guarded not by a judge but by a moral code, and the violation of which had sacral consequences (the violator became an *infamis*). Clientage stemmed from the time of

knightly warfare and the rule of the nobility, and the clients originally were the attendants of the lord who followed him into battle, were obligated to render gifts and support in case of need, perhaps occasionally also labor services, and were provided with a parcel of land and represented before the courts by him. They were not the lord's servants, but what the Middle Ages would have called his *ministeriales*, with the difference, however, that they were not men of a knightly style and with knightly rank, but small people with peasant holdings—a stratum of plebeian war-fief holders.

The client thus was a person who had no share in the land holdings and the local communities, and therefore in the military association, and who had entered (in Rome through the *applicatio*) into a tutelary relation with the head (*pater*) of a patrician family or with the king and in turn was assigned (the technical term in Rome was *adtribuere*) military equipment and land by this patron. In most cases this relationship was inherited from his ancestors. This was the old meaning of clientage. And just as in the Middle Ages the rule of the nobility gave rise to the *Muntmannen*, so in Antiquity under equivalent circumstances the small peasantry found itself induced to enter clientage in great masses, if only to secure representation before the courts by a nobleman. In Rome this was probably the source of the freer forms of clientage of the later period. But the old clientage, at least in Rome, put the client entirely in the hand of the patron. As late as 134 B.C. Scipio, as commander of an army, could still summon his clients to military service.[23] In the period of the Civil Wars this role [of a private military following] was taken over by the *coloni* (small leaseholders) of the great landowners.

In Rome the clients had a vote in the military assembly, and according to tradition (Livy) they constituted an important support for the patricians. The institution of clientage was probably never legally and formally abolished. But the triumph of hoplite technology eliminated its former military significance also in Rome, and in later times clientage survives only as an institution securing the patron a certain social influence. Hellenic Democracy, by contrast, completely destroyed clientage. The medieval city knew the institution only in the form of the tutelary power (*Muntwaltschaft*) of a full citizen over a guest citizen who applies for his protection. This clientage for representation in the courts vanished along with patrician domination.

4. THE FREEDMEN, finally, were a numerically significant stratum which played a role of considerable importance in the ancient city. They were in the main exploited economically. In the [Greek] inscription material carefully examined by Italian investigators, about one

half of the manumitted were women.[24] In those cases manumission is likely to have usually served the purpose of making possible a valid marriage, and thus probably was obtained through purchase by the bridegroom *in spe*. Beyond this we find in the inscriptions an especially large number of freedmen who had been house servants, and thus owed their freedom to personal favor. The seemingly large proportion of such individuals is probably deceptive, since for precisely this category of freedmen the chance of being mentioned in the inscriptions was naturally much greater than for other groups. On the other hand it seems quite plausible to assume, with Galderini,[25] that the number of emancipations of household slaves was increasing during periods of political and economic decline and decreasing during periods of economic prosperity: The constriction of profit opportunities would lead the master to reduce the size of his household and at the same time to shift the risk of hard times onto the slave, who now would be forced to maintain himself in addition to paying off his manumission price to the master. The agricultural writers[26] mention manumission as a bonus for good service on the estate. Furthermore, a master may often have manumitted a household slave instead of utilizing him in his service because, as Strack has pointed out, he could thus rid himself of the legal, even if only limited, liability for his actions.[27]

However, other slave strata must have been at least equally important [as a source for the class of freedmen]. The slave permitted by his master to conduct an independent business enterprise in return for the payment of fees was in the best position to accumulate money toward the purchase of his freedom, just as this was true in the case of the Russian serf [similarly released from direct service]. For the master, at any rate, the services and fees which the freedman had to contract for certainly played the crucial role in the decision to grant manumission. The freedman and his descendants remained in a patrimonial relationship to the family of the former owner, which was dissolved only by the passage of several generations. He not only owed the master the contracted services and fees—which were often quite steep—but his inheritable property was, at his death, as in the case of the unfree of the Middle Ages, to a considerable extent at the mercy of the patron. In addition he was under the obligation of *pietas*, i.e., bound to the most varied forms of personal obedience which enhanced the social position of the master and directly increased his political power. The consequence was that during the rule of the *demos*, for instance in Athens, the freedmen were completely excluded from the citizenship rights and counted among the metics. But in Rome, where the power of the office nobility was never really broken, the freedmen were considered citizens,

though on the insistence of the *plebs* they were restricted to the four urban *tribus*—a demand which the office nobility granted out of fear that the freedmen might otherwise constitute the basis for attempts to create a *tyrannis*. At least to the mind of the ancients such an attempt was made when the *censor* Appius Claudius undertook [in 308 B.C.] to give the freedmen an equal vote with the rest of the citizens by distributing them through all the *tribus*. But this characteristic undertaking we cannot interpret, as does Eduard Meyer,* as an attempt to create a "Periclean" demagogy, for the rule of Pericles rested not on freedmen—in Athens excluded from all citizenship rights precisely by Democracy—but on the interests of the guild of *full* citizens in the *political* expansion of the city. The freedmen, by contrast, were *homines oeconomici*—a stratum of peaceable businessmen who were much closer to the economic *bourgeoisie* of the Middle Ages and modern times than any full citizen of an ancient Democracy. Hence the question in Rome was, rather, whether a "people's captaincy" of the medieval type was to be set up with their help, and the rejection of Appius Claudius' attempt signified that, as before, the peasant army and the normally dominant urban office nobility were to remain the decisive factors.

Let us dwell a little more on the situation of the freedmen, who were, in a certain way, the most "modern" of the ancient social strata, the one which most closely approximated a *bourgeoisie*. Nowhere did the freedmen gain access to the city offices and the priesthood, nowhere did they enjoy full *connubium*, and nowhere did they obtain participation in the military exercises (membership in the *gymnasion*)—even though in cases of extreme need they were called to arms—and in the administration of justice. In Rome they could not become "knights," and almost everywhere they were disadvantaged *vis-à-vis* the fully free citizens in some aspects of trial procedure. Their special legal situation had the economic consequence that they were excluded not only from the citizenship emoluments granted by the state or otherwise based on political status, but also from the acquisition of land and hence from the possession of mortgages. Revenues from *land* rent thus remained the characteristic monopoly of full citizens precisely under Democracy. In Rome, where the freedmen did have citizenship, but of an inferior type, their exclusion from the census status of an *eques* (knight) signified that they could not participate (at least as entrepreneurs on own account) in the great tax farms and the state contracts which were monopolized by that status group. They thus confronted [the *grande bourgeoisie* of] the *equites* as some kind of plebeian *bourgeoisie*. The exclusion from landownership and the tax farming enterprises in effect meant that the freedmen found themselves barred from the typically

ancient, politically oriented type of capitalism, and by the same token pushed onto the path of a relatively modern, bourgeois manner of gaining a livelihood. Accordingly we find them to be the most important bearers of those forms of economic activity which display "modern" features. As a group, the freedmen can be best likened to our petty-capitalist middle classes (which at times may accumulate considerable wealth), in strong contrast to the typical Hellenic *demos* of full citizens who monopolized the politically conditioned *rentier* incomes: state pensions, *per diem* attendance fees, mortgage interest and land rents. The work training of slavery in combination with the possibility of purchasing one's freedom was a powerful spur for the acquisitive urge of the unfree in Antiquity, just as more recently in Russia. The interests of the ancient *demos*, by contrast, were military and political. As a stratum with purely economic interests, the freedmen provided an ideal public for the cult of Augustus as the "Bringer of the Peace." The dignity of the *Augustales*, which was created by the first Princeps, played somewhat the same role as in our time the title of "Purveyor to His Majesty the King."[29]

In the Middle Ages a separate status group of the freedmen is found only in the early, pre-urban period. Within the cities the stratum of serfs, whose inheritance reverted partly or entirely to their masters, was held within narrow limits already in the earliest period of city development through the principle that "*Stadtluft macht frei*,"[30] and also through the city privileges of the emperors which forbade the lords to enforce their claims on the inheritance of townsmen. Under the domination of the craft guilds urban serfs disappeared altogether. While for the ancient city, which was essentially a military association, a constitution based on guild organizations would have been inconceivable because it would have had to comprise free-born together with manumitted and unfree artisans, the medieval craft guild constitution was based precisely on the rejection of extra-urban status differences.

6. *The Polis as a Warrior Guild* versus *the Medieval Commercial Inland City*

The ancient polis, we might summarize, from the time of the creation of the disciplined hoplite formations, was a *guild of warriors*. Wherever a city wished to carry out an active land-based foreign policy it had to follow the example of the Spartiates on a greater or lesser scale—namely, to turn burghers into a trained hoplite army. Argos and Thebes, during the period of their expansion, also created contingents of

warrior *virtuosi*, units which in the Theban case [of the "Sacred Bar of Boeotia] were additionally strengthened by ties of personal friendship.[31] Cities which possessed no such troops but had to rely on the army of burgher hoplites, like Athens, were on land restricted to defensive strategy. But everywhere the burgher hoplites formed the predominant class of full citizens after the downfall of the patricians. Neither in medieval Europe nor anywhere else can an analogous stratum be found.

If Sparta was a permanent military camp, this was to some extent also true of most other Greek cities. During the early period of the hoplite polis, the cities therefore developed an increasing closure toward the outside, which contrasted to the far-reaching freedom of movement prevailing in Hesiod's days [probably late eighth century B.C.],[32] and frequently they also imposed restrictions on the transferability of the warrior lots. This institution, however, decayed very early in most cities and then became altogether superfluous as paid mercenaries or, in the maritime cities, naval service gained in importance. Yet, even then military service remained ultimately decisive for [participation in] political rule in the city, which retained its character as a militaristic guild. In Athens it was precisely the radical Democracy which supported an expansion policy—fantastic in the light of the small active population—that extended as far abroad as Egypt and Sicily. Internally, the polis as a militaristic association was absolutely sovereign. In every respect the citizenry dealt with the individual just as it chose. Inept economic conduct, especially squandering of the inherited warrior lot (the *bona paterna avitaque* of the Roman disemancipation formula),[33] adultery, poor education of the son, mistreatment of the parents, disrespect for the gods (*asebeia*), insolent violence (*hybris*)—in short, any kind of behaviour which might endanger the military and political morals and discipline or provoke the wrath of the gods to the disadvantage of the polis, was sternly punished, in spite of the famous assurance in Pericles' funeral oration (as reported by Thucydides): that in Athens every man was permitted to live as he wished.[34] In Rome similar transgressions led to the intervention of the *censor*. As a matter of principle, thus, there certainly was no freedom of personal conduct, and wherever it did exist *de facto*, it was purchased, as in Athens, at the price of diminished efficiency of the burgher militia. Economically, too, the Hellenic city had complete disposal over the property of the individual: if it ran into debt, the city could still in the Hellenistic period pawn the property and even the person of the burgher to the municipal creditors.

The burgher remained primarily a soldier. In addition to a water well, market (*agora*), town hall (*archeion*) and theatre, a true city

needed—according to Pausanias—also a [military exercise ground, the] *gymnasion.*[35] It was nowhere lacking. In the market and the *gymnasion* the citizen spent the largest part of his time. In classical Athens the claims upon his time by the *ekklesia,* jury court service, council service and service in the state offices in rotation, and above all by service in the military campaigns—summer after summer for many decades—were of proportions which no other differentiated culture in history has ever experienced before or after.

All accumulations of burgher wealth of any significance were subject to the claims of the polis of Democracy. The liturgical duties of the "trierarchy," which involved the outfitting, provisioning and commanding of war-ships, and of the "hierarchy," which consisted of setting up the great festivals and theater performances, the forced loans in emergency situations, the Attic institution of *antidosis*[36]—all these subjected bourgeois accumulation of wealth to great instability. The absolute arbitrariness of justice administered by the people's courts—civil trials in front of hundreds of jurymen untrained in the law—imperilled the safeguards of the formal law so much that it is the mere continued existence of wealth which is to be marvelled at, rather than the violent reversals of fortunes which occurred after every political mishap. The latter were the more threatening to the wealthy since one of the most important property components, their slave holdings, would in such cases usually shrink due to massive escapes.[37] At the same time, the polis democracy was in need of the capitalists for its supply and construction contracts and for the farming of its tax collection. But a purely national class of capitalists, such as Rome had in the equestrian order, the Hellenic cities never developed. The individual city states were too small to offer sufficient chances of gain, and most cities, in contrast to Rome, sought to stimulate competition among contractors and tax farmers by admitting and attracting foreign applicants.

Landed property, slaves (usually in rather modest numbers) who paid a tribute to the owner or were rented out as laborers (Nikias),[38] ownership of ships, and capital participation in trade—these were the typical investment forms of burgher wealth. Citizens of the hegemonial cities also had opportunities for investment in foreign mortgages and landed property. Such investments in land abroad were possible only where the local land monopoly of the ruling burgher guilds had been broken. The acquisition of foreign land by the polis, which was then leased to Athenians or assigned to Attic cleruchs, and admission of the Athenians to land ownership in the subject cities, consequently, were among the essential aims of the Athenian policy of maritime rule. Hence, under Democracy, too, land and human possessions were de-

cisive for the economic situation of the burgher. War, which could overthrow all these property relations, was chronic, and, in contrast to the chivalrous conduct of war in the patrician period, it was now pursued with extraordinary ruthlessness. Almost every victorious battle was followed by the mass slaughter of the prisoners, and almost every conquest of a city ended with the killing or enslavement of the entire population. Each victory brought a sudden increase in the supply of slaves. A *demos* of this type could not possibly be oriented towards pacific economic acquisition based on rational and continuous economic activity.

In this respect the medieval urban citizenry behaved in a thoroughly different way even during the first period of development. The medieval phenomena most closely related to those described above are found in the maritime cities, in Venice and, above all, in Genoa, whose wealth depended on their colonial power overseas. But even in these instances we are dealing primarily with plantation and manorial properties on the one hand, and with trading privileges and craft settlements on the other, but not—as in Antiquity—with cleruchies, revenues from military pay, or doles distributed to the mass of the citizens out of tributes exacted abroad. The industrial inland city of the Middle Ages, finally, is altogether alien to the ancient type. It is true, of course, that after the victory of the *popolo* the entrepreneurial stratum of the upper guilds was often extraordinarily war-minded. But the decisive motivations here were the elimination of bothersome competitors, the domination of the trade routes or their liberation from tolls, and the gaining of trade monopolies and staple rights. It is also true that the medieval city, too, knew large-scale redistributions of the land holdings, both in the wake of foreign victories and of internal upheavals resulting in a change of the ruling party in the city. Especially in Italy: Landed properties of the vanquished party would be leased or purchased outright from the state agency administering enemy holdings by the momentarily victorious party, and each subjugation of a foreign commune would be utilized to increase the opportunities for land purchases by the victorious citizenry. But the radicalism of these ownership changes cannot be compared to the immense property revolutions which, even into the late period of the ancient city, accompanied each internal revolution and each victorious foreign or civil war. And above all, land acquisition itself no longer stood in the foreground of the economic interests driving for political expansion.

Under the domination of the craft guilds, the medieval city was a structure oriented immeasurably much more than any city of Antiquity —at least during the epoch of the independent polis—towards acquisition through rational economic activity. Only the demise of city auton-

omy in the Hellenistic and late Roman period can be said to have reduced this difference somewhat, in that it destroyed the chances of creating economic opportunities for the burghers by means of an urban military policy. To be sure, in the Middle Ages, too, cities could at times be bearers of technological advance in land warfare—such as Florence, in whose army artillery was first employed. Even the [twelfth century] burgher levies of the Lombards against Frederick I represented an important innovation in military technique. But on the whole, the knightly armies remained at least equal to the city armies, and on the average—especially in the flatlands[30]—they were definitely superior. Military strength might be a support for the economic activities of the city burghers, but in landlocked areas it could not serve as the foundation for these endeavors. Since the seat of the most potent military powers lay outside the cities, the medieval burgher was forced to rely for the pursuit of his economic interests on rational economic means.

7. *Ancient City States and Impediments to Empire Formation*

Four great power formations were created by the ancient polis: the Sicilian empire of Dionysios, the Attic Confederacy, the Carthaginian and the Roman-Italic empire. The Peloponnesian and Boeotian confederacies we can ignore since their status as great powers was ephemeral. Each of these four formations rested on a different base. The empire of Dionysios was a pure military monarchy based on a mercenary army and only in a subsidiary manner on the burgher levy. It is thus not typical and of no specific interest for us. The Attic Confederacy was a creation of Democracy, and thus of a burgher guild. This fact inevitably brought about a policy of exclusive rights for citizens and caused the complete subordination of the allied democratic burgher guilds of the confederate cities to that of the hegemonial city. Since the level of the membership tributes of the confederacy had not been fixed in advance by agreement, but was determined unilaterally in Athens—even if not by the *demos* itself, but by an elected commission that negotiated in an adversary procedure—and since, further, all lawsuits of the confederates were tried before the Athenian courts, the small citizens guild of the capital became the unrestricted ruler of the wide empire. This was especially true once the contributions of own ships and manpower contingents by the confederates had come to be replaced, with only a few exceptions, by monetary contributions, and the entire naval service had thereby become the preserve of the citizenry

of the hegemonial polis.[40] A single decisive dest uction of the fleet of this *demos* thereafter was bound to b ing about the collapse of its rule over the confederacy.

The great-power position of the city of Ca thage rested on mercena y armies, while the polis itself was ruled in a strictly plutoc atic pattern by great patrician houses who combined, in the typical ancient manner, gains from trade and naval warfare with large land holdings, which here consisted of plantations operated capitalistically with slave labor. (It was only in connection with the expansiona y policy that the city went over to the minting of coins.) The relationship of the army leaders, to whose persons and fates the armies and their chances fo booty were tied, with the patrician houses of the city could never be without those tensions which down to [the Imperial general] Wallenstein [in the Thirty Years War] have always prevailed between the leaders of privately recruited armies and those who hire them. This persistent mistrust weakened the military operations, so that the tactical superiority of the professional mercenary army could not be permanently maintained against the Italic burgher levies once there, too, a permanent single commander was put in charge and the military skills of the cor rals and soldiers had risen to the level of the mercenary army.

The suspicions of the Carthaginian plutoc acy and the Spartan epho s against the victorious field commander finds a correspondence in the behavior of the Attic *demos* and the use it made of the institution of ost acism. The fear of the ruling strata that in the case of the development of a military monarchy they would have to sha e the state of servitude of the subjugated foreign peoples paralyzed the expansion power of the ancient polis. Furthermore, all ancient hoplite communities shared the disinclination, based on the self-inte est of powerful, economically profitable political monopolies, to open the citizens association by relaxing the restrictions on membership and merging their burgher rights with those of a number of other individual polis communities into a universal citizenship of an empire. All incipient developments toward inter-city community formation and citizenship rights could never quite overcome this basic tendency. For upon the citizen's membership in the individual military burgher-guild depended all his rights, his prestige and ideological pride in being a burgher, as well as his economic opportunities. The rigid mutual exclusiveness of the cult communities was a further powerful check on any unitary state formation. That these developments could be overcome is shown by the Boeotian League, which developed a common Boeotian citizenship, common officials, a legislative assembly made up of representatives of the individual citizenries, a common coinage and a common army, while retaining the

autonomy of the individual cities. However, this was an almost completely isolated case within the Hellenic world. The Peloponnesian League signified nothing similar, and the relationships in all other confederacies were shaped along precisely the opposite lines.[41] It was a very special set of social conditions that permitted the Roman commune to conduct a policy which, in this respect, diverged considerably from the standard type of Antiquity.

In Rome, incomparably much more than in any other ancient polis, a stratum of *honoratiores* of strongly feudal stamp remained and, with only temporary challenges, time and again reconstituted itself as the bearer of rulership. This found a very clear reflection also in the development of the institutions. The victory of the *plebs* had not brought about a "deme" constitution in the Hellenic sense. While formally it gave domination to the peasants living in the *tribus*, in fact the rule fell into the hands of those owners of rural land rents who were permanently resident in the city and therefore could continuously participate in its political life. They alone were economically "dispensable" and thus capable of filling political offices. In the Senate, as the assembly of the high officials, they were the core of the developing office nobility. In addition, feudal and semi-feudal dependency relations retained unusual strength and significance. Clientage as an institution, although increasingly deprived of its former military character, played an important role in Rome down into the very late period. Furthermore, as we have seen, the freedmen remained substantively under almost slavery-like jurisdictional authority of their former owners: Caesar could have one of his freedmen executed without provoking any objections. The Roman office nobility ever more pronouncedly, as time went on, came to be a stratum which, in terms of the size of its landed possessions, would find a weak analogy only in the early Greek interlocal nobility, in such figures as Miltiades, who at the time were decried as "tyrants." The age of Cato Maior [second century B.C.] still reckoned with estates of moderate dimensions, although they were far larger than the estate which Alcibiades inherited or the rural estates assumed to be of normal size by Xenophon.[42] But undoubtedly the individual noble families were already at that time cumulating in their hands great numbers of such holdings; beyond this, they participated directly in such commercial undertakings as their status position permitted, while through their slaves and freedmen they were indirectly also partners in business affairs of all kinds everywhere in the world which were not in accord with their status. None of the Hellenic noble strata could even distantly approach the economic and social level of the Roman patriciate of the late republic. On the expanding estates of the Roman nobility an ever growing number of small tenant-farmers

(*coloni*) was settled, outfitted by the lord and closely supervised in their economic management, who after each crisis found themselves more deeply in debt until their position on the land and of complete dependency on the lord had *de facto* become hereditary. In the Civil Wars they were levied by the party leaders to provide military support—just as the clients of the army leader had been called up in the Numantian war [a century earlier].

But it was not only individual persons who stood in client relationship in great numbers. The victorious field commander took allied cities and countries under his personal protection, and this patronage remained in his family. Thus the Claudians held Sparta and Pergamon in clientage, and other families had other cities under their patronage, receiving their ambassadors and representing their wishes in the Senate. Nowhere else in the world has political patronage of this kind been consolidated in the hands of individual, formally private families. Long before the monarchy, private rulership powers existed here such as are ordinarily possessed only by monarchs.

Democracy was never able to breach this power of the office nobility based on all kinds of clientage relationships. Rome never reached the point where an attempt to crush the power of the noble houses in the Attic manner could be thought of—namely, by incorporation of the clans into territorial units like the "demes" and elevation of these units into constituencies of the political association. Nor was any attempt ever made to constitute, as in Attic Democracy after the destruction of the power of the Areopagus, a committee of the *demos* as the administrative agency and a college of jurors, drawn by lot from the entire citizenry, as the judicial authority. In Rome the Senate—the institution which as representation of the office nobility most closely corresponded to the Areopagus—kept control over the administration firmly in its hands. As a permanent body it was at an advantage vis-à-vis the annually changing elective officials, and even the victorious military monarchy did not immediately attempt to thrust these patrician houses aside, but only disarmed them and restricted them to the administration of pacified provinces.

The patrimonial structure of the Roman ruling stratum found expression also in the manner of conduct of official business. Initially the office staff was probably provided by the officials themselves. In the civilian administration the appointment of the subalterns was later largely taken out of their hands, but the military commander must to a considerable extent have been aided in the execution of his duties by his clients and freedmen as well as by a free following of personal and political friends from allied patrician houses, for on campaigns it was

considered permissible to delegate official duties to personal appointees. The *princeps* of the early period of military monarchy also conducted his administration to a large part with the help of his freedmen, who at that time indeed reached the apex of their power. Later this was subject to increasing restrictions. But especially under the rule of the Claudians, who had always had a large clientele, the employment of dependents reached such proportions that one Claudian emperor could threaten the Senate with the plan also formally to put the entire administration into the hands of his personal subjects. Just like the patriciate of the late republic, the *princeps* found the fulcrum of his economic power in his manorial land holdings, which especially under Nero grew to huge dimensions, and in such territories as Egypt which, even if they were not legally his personal domains (as has been maintained), were in fact administered in a patrimonial fashion. These patrimonial and feudal traits of the Roman republic and its administrative establishment of *honoratiores*, which still exerted their effect in such late periods, were a characteristic with an almost unbroken tradition from far back when, to be sure, they were confined to much smaller dimensions. This was the source of important differences between Rome and the Hellenic world.

Typical differences appear also in the style of life. In Hellas, as we saw, the nobleman began in the time of chariot warfare to exercise in the ring. The *agon* (contest), a product of the individual knightly combat and the glorification of knightly heroism, was the source of the most important traits of Hellenic education. The Middle Ages had their tournaments, but in spite of similarities—such as that in both cases chariots and horses occupy the foreground—the very significant difference remains that in Hellas certain official festivities were always celebrated only in this form, as *agones*. The advance of hoplite military techniques merely caused the content of the *agon* to expand. now all disciplines which were drilled in the *gymnasion*—spear combat, wrestling, fist-fighting, and above all foot racing—assumed this form and were thereby made socially acceptable. The ritual chants in honor of the gods were supplemented by *agones* in poetry. To be sure, the aristocrat shone through the quality of his possessions: the horses and chariots which he sent into the race. Nevertheless, at least formally, the plebeian disciplines had to be acknowledged as of equal rank. The *agon* came to be organized with prizes, umpires and rules of the game, and permeated all spheres of life. Beside the Homeric epics, it developed into the most important national bond of the Hellenic world as against that of the "barbarians." Already the earliest appearances of Greeks on works of the plastic arts seem to show nakedness—the absence of all clothing

except arms—as a trait specific to them. From Sparta, the place of the most intensive military training, this spread over the entire Greek world; even the loincloth fell away.

No other community on earth ever developed an institution like the *agon* to such importance, to the point where it dominated all interests, the practice of the arts and of conversation up to the Platonic "dialectical" contests. To the final days of the Byzantine Empire, circus parties were the form in which the masses organized their disagreements and the carriers of revolutions in Constantinople and Alexandria.

The Italic peoples never knew this institution, at least not in the form which it had taken in the classic period of Hellas. In Etruria, the city nobility of the *Lucumones*[42] ruled over despised plebeians and had paid athletes perform at its festivals. In Rome, too, the ruling nobility rejected such "mingling-with-the-masses": its prestige feelings would never have suffered the utter lack of distance and solemnity involved in the naked gymnastics sessions of those "*Graeculi*," as little as it would ever have stooped to the Greeks' cultic chant-and-dance, their Dionysian orgiastic cults, or the *abalienatio mentis* of ecstasy. In Roman political life the rhetoric and give-and-take of the *agora* and *ekklesia* played as little a role as the competitions of the *gymnasion*. Speech-making came up only later, and then mostly in the Senate, where it was completely different in character from the rhetorical art of the Attic popular leaders. Tradition and experience of the Elders, the former officeholders above all, determined politics. Old age, rather than youth, set the tone of social forms and the character of dignity. Rational deliberations, rather than the rhetorically stirred lust for booty of the *demos* or the emotional excitement of the young warriors, tipped the balance in Roman politics. Rome remained under the direction of the experience, the deliberation, and the feudal power of the *honoratiores*.

NOTES

1. This subtitle does not appear in the separate 1921 publication of the "City," which was divided into only four sections; the text here simply continued.

2. Silver mines in southeastern Attica which belonged to the state. The distribution of the revenues was discontinued in 483 B.C., when Themistocles persuaded the *demos* to apply them to the building of the fleet. Cf. Ehrenberg, *The Greek State*, 85; *GAzSW*, 18.

3. In explaining the proletarian as one who is only a "descendant" (*proles*)—but not one of the inheritors—of a full citizen, Weber deliberately reverses the usual "etymology" of the term, current already among the Ancients, which explains the *proletarius* as one who *has* nothing to offer to the state but his *proles*

or descendants. Cf. also *GAzSW*, 194, 215. In a recent appraisal of Weber's contribution to historiography, a German classical historian called this an "ingenious interpretation . . . [which] historical science has neglected very much to its own detriment." See Alfred Heuss, "Max We rs Bedeutung für die Geschichte," *Historische Zeitschrift*, vol. 201 (1965), 552.

4. In 444 B.C. a large shipment of grain from the Libyan king Psammetichos induced a rash of prosecutions under a Periclean law of 451 B.C. which had excluded from citizenship all burghers with a foreign-born mother. According to Plutarch (*Pericles*, ch. 37) about 5,000 were denied citizenship status and sold into slavery at this occasion, while 14,040 inhabitants we e confi med as citizens entitled to the emoluments of the grain distribution. Other grain gifts seem to have caused similar incidents. Cf. Ed. Meyer, *Geschichte des Altertums*, IV/1 (5th ed.; Basel: Schwabe, 1954),665.

5. A construction lag in the building of this temple on the Acropolis brought the appointment of an investigatory commission in 409 B.C. to eport on progress, fragments of whose report (together with expense accounts for the project) are extant on a marble slab. In this rare document, which among other things also gives wage rates, full citizens a e shown working even unde the foremanship of slaves. For Weber's view on the problem of slavery in Hellas in gene al (and a further discussion of this document), cf. *GAzSW*, 139–146; fo mo e recent discussions in English, see A.H.M. Jones, *Athenian Democracy*, 10–20 and ch. IV, *passim*, and Victor Ehrenberg, *The People of Aristophanes: A Sociology of Old Attic Comedy* (New York: Schocken Books, 1962), ch. VII.

6. "Mystery congregations" in Hellas: for instance, the orgiastic cults of Demeter and Dionysos; on the participation of slaves see, e.g., Ehrenberg, *The People of Aristophanes, op. cit.*, 174, 189f. The Roman *collegia* were cult and funeral societies, sometimes purely social clubs, of the *petite bourgeoisie;* see art. "Collegium" in Pauly-Wissowa, *RE*, IV (1901), cols. 380–480, esp. 385ff.

7. The *centuriae* ("hundreds"), originally merely a my units, were the voting units of the Roman people assembled in its military array (*comitia centuriata*). Betides the five *centuriae* of non-combattants (*fabri*, musicians and reserve) and the sixteen units of the mounted force, it consisted of 172 *centuriae* of f t soldie s in five "classes" determined on the basis of wealth. The unequal manpower strength of the individual units worked to the disadvantage of the poorer classes. The possible derivation of the *centuriae fabrum* from olde *collegia* of these trades was suggested by Mommsen, *Römisches Staatsrecht*, III, 287, but disputed by other historians (cf. Kornemann in Pauly-Wissowa, *RE*, IV (1901), 442). A pre-Solonic creation of a status g oup of *demiourgoi* is ascribed to the mythical hero Theseus by Plutarch (*Theseus*, ch. 25), but the historicity of its existence is doubtful; on this, see also *GAzSW*, 107, 116f., 122f.

8. The *decemviri legibus scribendis*, the perhaps legendary two colleges of ten who w ote the code of the Twelve Tables, ca. 450 B.C.

9. In Prussia (and some other German states), large individual o several contiguous landed estates were in Weber's day often exempted from the territorial administrative organizations at the lowest level (the rural communes o *Gemeinden*) and formed separate "estate districts" in which the *Junker* owner, o one of their numbe , took over the public-law functions of the communes. The *Gutsbezirke* survived the 1918 revolution and were not abolished until 1927, when they still numbe ed some 12,000.

10. The assembly of the Roman people in the tribal array (*comitia tributa*), younger than the assembly in the military array (*comitia centuriata*), was originally used fo the electioo of lesser officials, and increasingly also for legislative

functions. On the division of functions between the different assemblies, see Mommsen, *Römisches Staatsrecht*, III, 300–368; G. W. Botsford, *The Roman Assemblies* (New York: Macmillan, 1909), chs. X–XIV.

11. The standard translation "knight" for the Latin *eques* is somewhat unfortunate because of the inappropriate feudal associations of the English term; the *equites* were the upper commercial classes who derived their name and their political, economic and social prerogatives from the fact that they were wealthy enough to do their military service on horseback.

12. In one of the measures taken to gain the support of the commercial middle class, Gaius Gracchus restricted the jury roll for the extortion court (*quaestio repetundarum*, for which see above, sec. iii:3, n. 13), from which fifty lay judges were chosen in each trial, to the *equites*. This measure was rescinded in the Sullan reform, when the bench again reverted to the senatorial nobility.

13. See, e.g., Plutarch, *Pericles*, chs. 13–14, where the trades that were to benefit are enumerated; cf. also the discussion in French, *The Growth of the Athenian Economy*, 153ff., where this passage is quoted.

14. "*Erbanwartschaften der Sippen*" in the text. However, elsewhere Weber unambiguously states that there were no reversion or subsidiary inheritance rights of the sib with respect to purchased land, while there probably was a limitation on testamentary disposal in favor of the sons (cf. *GAzSW*, 128–133, also 11of. on the *kleros*); hence we assume this to be a misreading of "*der Söhne*."

15. As Weber says elsewhere, the village was destroyed in favor of dispersed settlement "of, *sit venia verbo*, an 'Americanistic' character" on individual homesteads (*GAzSW*, 203). The thesis of an original village-type settlement structure seems to be a polemical assertion based on Weber's early studies of the Roman rural constitution. Cf. *GAzSW*, 195f. 222f. 229f., where this is spelled out in greater detail.

16. One factor in this correlation of maritime power with the rise of the property-less urban strata, which Weber stresses elsewhere, is the fact that naval service, in contrast to service in the hoplite army, "presupposes only negligible expenditures on self-equipment" of the citizen; see *GAzSW*, 40.

17. Weber is thinking of the type of "colonization" characteristic of Antiquity: the foundation of "daughter-cities" through the settlement of groups of citizens on a foreign shore. *Medieval* colonization and colonizing city foundation, especially in the Slavic territories of eastern Germany, in general was the work of the landowning nobility and of the knightly orders.

18. On the polis foundations of the Seleucid empire, and their relationship to the "tribal" territories, see also *GAzSW*, 160ff.; Ehrenberg, *The Greek State*, ch. III:3, *passim*.

19. *Schuldknechte*. Weber apparently uses this term both for the full debt slave and the *nexus* who was working off a debt. On the *nexum* (debt bondage) contract, cf. "Soc. of Law," above, ch. VIII:ii, n. 33; also *GAzSW*, 192, 210, 220.

20. E.g., the Solonic debt cancellation and repurchase of citizens sold abroad, discussed in *GAzSW* 117f., 133ff.; cf. also French, *The Growth of the Athenian Economy*, 10–18.

21. E.g., the Roman *lex Poetelia* of 326 B.C., mentioned above, "Soc. of Law," ch. VIII:ii, n. 38.

22. On the Roman *clientes*, cf. *GAzSW*, 202–209.

23. The younger Scipio Africanus, in the campaign against Numantia in Spain; see also *GAzSW*, 206.

24. Amedeo Giuseppe Calderini, *La manomissione e la condizione dei liberti in Grecia* (Milano, Ulrico Hoepli Ed., 1908), 200ff.

25. Calderini, *op. cit.*, 49 and *passim*.

26. The Roman *scriptores rei rusticae*, writers of manuals on estate management: Cato Major of the mid-second century B.C. Varro, a contemporary of Cicero and Caesar; Columella of the early empire; and Palladius of the fourth century A.D. Weber made a close study of these authors for his early work, *Die römische Agrargeschichte in ihrer Bedeutung für das Staats- und Privatrecht* (Stuttgart: Enke, 1891). The above statement is probably derived from Columella's *de re rustica*, bk. I, ch. viii.

27. Max L. Strack, "Die Freigelassenen in ihrer Bedeutung für die Gesellschaft der Alten," *Historische Zeitschrift*, vol. 112 (1914), 1–28, esp. 26. For a discussion in English of the slave-owner's legal liabilities, see W. W. Buckland, *The Roman Law of Slavery. The Condition of the Slave in Private Law from Augustus to Justinian* (Cambridge: The University Press, 1908).

28. Ed. Meyer, *Geschichte des Altertums*, I (Stuttgart, 1910), 204, 332f.

29. Appointment to the board of the *seviri Augustales* was a dignity of the provincial municipalities which was primarily conferred upon well-to-do freedmen, upon application and against payment of a "fee for the honor" (*summa pro honore*). In addition to enriching the treasury, the incumbents had to arrange and finance games; their compensation was the title and a ring-side seat in the local circus. The archetypal *Augustalis* was Trimalchio, the vainglorious *nouveau riche* so savagely depicted in Petron's *Satyricon*. Mommsen called the institution "a fictitious municipality . . . in which nothing was real but the expense and the pomp;" it was created to give these strata a semblance of participation in the municipal offices from which they were otherwise excluded. Cf. Mommsen, *Römisches Staatsrecht*, III, 452–457; art. "Augustales" in Pauly-Wissowa, *RE*, II (1896), 2350ff.

30. Cf. above, sec. ii:1, n. 3.

31. The ἱερὸς λόχος of 300 warriors, a famous elite unit and the permanent garrison of the Theban acropolis, is said to have been made up of pairs of lovers —a fact which is thought to have contributed to their bravery; see Plutarch, *Pelopidas*, ch. 18ff.

32. Hesiod relates that his father had migrated from Asia Minor to Boeotia and settled there as a small landowner (*Works and Days*, 633–40); this is often taken as evidence for the free transferability of land and freedom of personal movement in an early period. See also *GAzSW*, 110.

33. The "paternal and ancestral goods;" the formula used in a trial to have an adult put under tutelage apparently mentions squandering of these as one of the causes for this action. Cf. *GAzSW*, 198.

34. Thucydides, *Peloponnesian War*, bk. II, ch. 37.

35. Pausanias, *Description of Greece*, bk. X, ch. 4:1.

36. The curious Athenian procedure for protesting a tax assessment or the imposition of a litur ical duty. On a day especially set for this purpose, the prospective taxpayer or *trierarchos* had the right to indicate another citizen who, in his opinion, was more liable or financially more capable of bearing the burden in question. The latter then had the choice either to accept the burden or to exchange his entire wealth against that of the protesting citizen, who then became liable himself, or, finally, to put the matter up to a court to decide—in which case both parties could seize each other's wealth until the matter had been settled. Cf. art. "Antidosis" in Pauly-Wissowa, *RE*, I (1894), 2396–2398.

37. According to Thucydides (*Pelop. War*, bk. VII, ch. 27), 20,000 Athen-

ian slaves, "to the largest part artisans," escaped after the Spartan occupation of Decelea in 413 B.C. Modern authorities disagree as to whether or not this number must be spread over the entire nine-year occupation; cf. Ehrenberg, *The People of Aristophanes*, 185f., French, *The Growth of the Athenian Economy*, 138f.

38. Rich Athenian statesman and army leader during the middle phase of the Peloponnesian war; he is said to have owned 1,000 slaves: *GAzSW*, 137, 178; Plutarch, *Nikias*, ch. 4; Xenophon, *Vectigalia*, IV. 14–15.

39. I.e., in contrast to mountainous areas, as in Switzerland, where burgher and peasant armies first achieved some success against the knightly cavalry (e.g., defeat of the Habsburgs by the Swiss cantons at Morgarten, Sempach and Näfels in 1315, 1386 and 1388). Cf. also *GAzSW*, 259, n. 3.

40. On the economic aspects and the tributary arrangements of the first Attic (or Delian –after its early headquarters) Confederacy, 478–404 B.C., see French, *The Growth of the Athenian Economy*, 82–106 and the literature cited 186f.

41. For an analysis of the various Hellenic leagues and confederacies, cf. Ehrenberg, *The Greek State*, 112–131. This author, incidentally, denies the existence of a federal citizenship in the Boeotian League (*ibid.*, 123).

42. Alcibiades (born ca. 450 B.C.), who was in his day considered a very well-off young man, inherited an estate estimated at roughly 75 acres (*GAzSW*, 137), about half the size of the estates discussed by Cato (*GAzSW*, 210). Both Xenophon (ca. 430–360 B.C.) and the elder Cato (234–149 B.C.) left treatises on estate-management. About the former, however, Weber observes (*GAzSW*, 148) that he understood no more of agriculture "than a retired Prussian officer who settles down on a *Rittergut*," a comparison not intended to be complimentary.

43. Latinized Etruscan designation for kings or local barons; of uncertain meaning (art. "Lucumo," Pauly-Wissowa, *RE*, XIII (1927), 1706). Their athletes were, "in the opinion of specialists, by their very physiognomies identified as professionals who . . . performed against payment before the lords as a viewing public" (*GAzSW*, 125).

Appendices

APPENDIX I

TYPES OF SOCIAL ACTION AND GROUPS

The terminology of the second, and older, part of *Wirtschaft und Gesellschaft* is that published in the 1913 essay on "Some Categories of Interpretive Sociology" (*Logos*, IV, reprinted in *GAzW*). In the older manuscript, "social action" is *Gemeinschaftshandeln*, whereas in the newer Part One it is *soziales Handeln*; in the older Part Two, *Gemeinschaft* is a general term for "social group." The following is a translation of the definitions of *Gemeinschaftshandeln*, *Gesellschaftshandeln* (rationally regulated action), *Vergesellschaftung* (association), *Zweckverein* (voluntary association), *Gelegenheitsvergesellschaftung* (*ad hoc* agreement or association), *Massenhandeln* (collective behavior), *Einverständnishandeln* (consensual action), *Anstalt* (compulsory association or institution), and *Verband* (organization) from the *Logos* essay. The page numbers after the excerpts refer to the reprint in *GAzW*.

We shall speak of *Gemeinschaftshandeln* (social action) when human action is *meaningfully* related to the behavior of other persons. Social action does not occur when two cyclists, for example, collide unintentionally; however, it does occur when they try to avoid the collision or sock one another afterwards or negotiate to settle the matter peacefully. Social action is not the only type that is pertinent for causal explanation. However, it is the primary object of interpretive sociology. An important (but not indispensable) component of social action is its meaningful orientation to the *expectation* that others will act in a certain way, and to the presumable chances of success for one's own action resulting therefrom. Action can be understood rather clearly—and this is an important type of explanation—when there is an objective chance (i.e., more or less probability as expressed in a "judgment of objective possibility") that these expectations are indeed well-founded. . . . In particular,

instrumentally rational action is oriented toward such expectations. In principle, it appears at first sight irrelevant whether a person's action is guided by the expectation that certain natural events will occur, with or without his purposive intervention, or that human beings will act in a certain way. But if a person acts subjectively rational, his expectations in relation to the behavior of others may also be based on the assumption that he can expect a subjectively meaningful behavior on their part. In other words, he may believe that he can, with different degrees of probability, predict their behavior from certain meaningful relationships. Specifically, his expectation may be subjectively based on an "understanding" with another actor (or others); he then believes that he has reason to expect compliance with the "agreement," according to the meaning which he himself attributes to it. This imparts to social action a specific quality, because it enlarges the realm of expectations within which the actor thinks he can orient his own actions rationally. However, the possible (subjective) meaning of social action is not exhausted by the orientation toward the presumable action of others. In the limiting case, action may be oriented to the "value" of an act (as a matter of duty, for example); then it is oriented not toward expectations but values. Similarly, expectations need not refer to actions but may also concern feeling states (for example, giving pleasure to a person). Empirically fluid is the transition from the ideal type of a meaningful relationship between one's own action and that of others to the case in which another person is merely an object (for example, an infant). For us, behavior that is oriented toward meaningful action is only the rational limiting case.

Always, however, "social action" (*Gemeinschaftshandeln*) is for us an individual's behavior, either historically observable or theoretically possible or likely, in relation to the actual or anticipated potential behavior of other individuals. . . . (*pp. 441–442*).

Social action is *Gesellschaftshandeln* (rationally regulated action) insofar as it is (1) meaningfully oriented toward rules which have been (2) established rationally with a view toward the expected behavior of the "associates" (*Vergesellschaftete*), and insofar as (3) the meaningful orientation is indeed instrumentally rational on the part of the actor. Very tentatively, established rules (in the purely empirical sense envisaged here) may be defined as follows: they are either (a) onesided demands of some persons toward others; in the rational limiting case, they are explicit orders; or (b) a mutual declaration to the effect that a certain kind of action will be undertaken or is to be expected; in the limiting case, this involves an explicit agreement. . . . (*pp. 442–443*).

The rational ideal type of *Vergesellschaftung* (association or con-

sociation) is for us the "voluntary association" (*Zweckverein*): a kind of *Gesellschaftshandeln* in which all participants have rationally agreed to the statute that defines the purposes and means of the association. . . . (*p.* 447).

An agreed-upon rational action (*Vergesellschaftung*) does not always result in the establishment of a voluntary association, which, according to our definition, must have (1) general rules and (2) a staff of its own. Agreed-upon rational action may be *ad hoc*: *Gelegenheitsvergesellschaftung*. For example, it may involve merely the quick execution of a revenge killing. In this case all characteristics of voluntary association are missing, with the exception of a rational plan (*Ordnung*), which is for us the decisive criterion. A convenient example for the progression from *Gelegenheitsvergesellschaftung* to the *Zweckverein* [from rational *ad hoc* agreement or association to continuous association] is the industrial cartel: It ranges from the simple, one-time agreement of various competitors not to lower their prices below a certain level to the "syndicate" with its huge assets, a sales organization of its own, and a complex organizational structure. . . . (*p.* 450).

All analogies with the "organism" and other similar biological concepts are condemned to sterility. In addition, it is by no means *only* social action (*Gemeinschaftshandeln*) which makes it appear "as if" action was determined by a consensual order; rather, such an effect can be produced equally and even more drastically by the various forms of "homogeneous" and "collective" behavior (*Massenhandeln*) which are not part of social action.

For "social action," in our terminology, involves the purposive (*sinnhafte*) orientation of the action of individuals to that of others. Hence, it is not sufficient that several persons behave in like manner; nor does every kind of interaction, including pure imitation, constitute social action. No matter how homogeneous the behavior of members of a "race" may be in some way, a "racial community" exists for us only if the actions of the members are purposively related to one another; in the most elementary case, we require that the members segregate themselves from the "racially alien" environment because other members also do it (regardless of the exact manner and the degree of segregation). When a large number of pedestrians react to a shower by opening their umbrellas, we do not deal with social action but with "homogeneous mass behavior." The same is true of behavior provoked by the mere "influence" of others, for example, in the case of a panic or when a mass of pedestrians succumbs to "mass suggestion" in a sudden crowding. In such cases in which the behavior of individuals is influenced by the mere fact that others behave in a certain way, we

shall speak of "mass-conditioned" or collective behavior (*massenbedingtes Sichverhalten*). For it cannot be doubted that the mere fact of the spontaneously acting mass, even if it is geographically separate and related only by the press, can influence the behavior of all individuals. It is not our present task to analyze these phenomena; rather, this is the subject matter of mass psychology. . . . (*pp. 454–455*).

Herrschaft (domination) does not mean that a superior elementary force asserts itself in one way or another; it refers to a meaningful interrelationship between those giving orders and those obeying, to the effect that the expectations toward which action is oriented on both sides can be reckoned upon. . . . (*p. 456*).

"Consensus" (*Einverständnis*) exists when expectations as to the behavior of others are realistic because of the objective probability that the others will accept these expectations as "valid" for themselves, even though no explicit agreement was made. The reasons for such behavior on the part of the others are irrelevant for the concept. Social action that rests on such likely consensus will be called "consensual action" (*Einverständnishandeln*).

Of course, the actual degree of consensus—in the sense of calculable probabilities—must not be confused with the subjective reliance of an individual that others will treat his expectations as valid. In the same way, the empirical validity of an agreed-upon order must not be confused with the subjective expectation that others will abide by its intended meaning. In both cases, however, a relationship of intelligible adequate causation obtains between average objective validity (as understood in terms of "objective possibility") and average subjective expectation.

In any given case, a person's action may only approximate a consensus or only pretend to one, just as it can happen with an explicit agreement. This will affect the degree and unambiguousness of the empirical validity of the consensus. Persons linked together through a consensus may deliberately violate it, just as "associates" may disregard their agreement. As the thief (in the example used earlier) orients his action to the legal order by concealment, so a disobedient person may "agree" on the facts of power by resorting to subterfuge. Hence, consensus must not be taken for "satisfaction" of those adhering to it. Fear of dire consequences may bring about "adaptation" to the normal meaning of oppressive rule; it may also lead to a personally undesirable but formally "free" agreement. Of course, persistent dissatisfaction endangers the stability of a coercive regime, but it does not invalidate the consensus as long as the powerholder can objectively count on the (adequate) execution of his commands. . . . (*pp. 457–458*).

Not every social action falls into the category of consensual action; it does so only if, in the average, it is indeed oriented toward the probability that a consensus exists. Racial segregation qualifies as an example if a person can take it more or less for granted that the participants will typically treat it as *obligatory;* otherwise, it would be an instance of mass behavior or simply of social action without consensus. . . . Of course, not every external "acting together" of several persons is social action or even consensual action. Collaboration is by no means essential for the concept of consensual action. For example, it is absent in all cases in which a person orients himself to the action of unknown others. . . . (*pp. 458–459*).

The transition from consensual action to agreed-upon rational action is fluid—after all, the latter merely constitutes the special case of regulated action. The consensual behavior of streetcar passengers who take the side of another passenger in an argument with the conductor turns into agreed-upon rational action if they subsequently decide on a joint complaint. Even more so, "association" (*Vergesellschaftung*) occurs whenever an arrangement is made in a purpose-rational manner, even though its extent and meaning may vary greatly. Thus, an association (or consociation) comes into being as soon as a newspaper (with a publisher, editor, staff and subscribers) is founded for members of a racial group who have segregated themselves consensually but without formal agreement; now the previously amorphous consensual action is *directed* with different degrees of effectiveness. The same happens when an "academy" in the manner of the *Crusca* [in Tuscany] and "schools" teaching grammatical rules are created for a language group, or when an apparatus with rational rules and a staff is established for a *Herrschaft.* Conversely, almost every association tends to create consensual action beyond the realm of its rational purposes (this will be called "consensual action determined by association"). Every bowling club creates conventions, that is, social action oriented toward consensus, which transcends the *Vergesellschaftung.* . . . (*pp. 460–461*).

By no means is it permissible to identify social action, consensus and association with the idea of being for or against one another. For us, consensus is not identical with exclusiveness toward others, nor, of course, is amorphous social action. It depends upon the individual case whether consensual action is "open" to others or whether and to what degree it is "closed" because the participants make joining impossible through a mere consensus or an agreement (*Vergesellschaftung*). A language group or a market are (vaguely) delimited in one way or another. As a rule, not every living person can be considered an actual or potential participant in the expectations of the consensus, but only an indeter-

minate number of persons. However, the members of a language group are usually not interested in excluding others from the consensus (although, of course, they may want to exclude them in a given conversation), and market interests often desire the "expansion" of the market. But it happens that a language (if it is sacred, secret or peculiar to a status group) or a market are "closed" monopolistically through consensus or association (*Vergesellschaftung*). On the other hand, even if there is normally a closure through association, as in the affairs of a political community, the powers-that-be may be interested in considerable openness (for immigrants). . . . (*pp.* 462–463).

"Compulsory associations" or "institutions" (*Anstalten*) are groups in which 1) membership depends on objective criteria regardless of the declared will of those included (in contrast to the "voluntary association"), and 2). rationally established rules and an enforcement apparatus codetermine individual action (in contrast to amorphous consensual groupings which lack a rationally established order). Thus, not every group into which a person is born or in which he is raised is an *Anstalt;* witness the language community or the household, both of which do without such rational rules. However, proper examples are that structure of the political community which is called "state" and the religious structure which is technically a "church."

Rationally regulated action is related to consensual action as the compulsory association is to the "organization" (*Verband*). "Organized action" is oriented toward consensus (not toward rational rules), that is, it is consensual action under which 1) membership is attributed consensually, without the participants' rational agreement, 2) an effective consensual order is imposed by certain persons (powerholders), in spite of the absence of rationally established rules, 3) these persons or others are prepared to use physical or psychic coercion against those who violate the consensus. . . . (*p.* 466).

APPENDIX II

PARLIAMENT AND GOVERNMENT IN A RECONSTRUCTED GERMANY

(*A Contribution to the Political Critique of Officialdom and Party Politics*)

Preface

This political treatise is a revision and enlargement of articles published in the *Frankfurter Zeitung* during the summer of 1917.[1] The essay does not provide any new information for constitutional experts, and it does not claim the protective authority of any science. A choice among ultimate commitments cannot be made with the tools of science. The arguments presented here cannot influence those for whom the historical tasks of the German nation do not rank above all issues of constitutional form, or who view these tasks in a radically different manner. Our arguments have certain presuppositions, from which they are directed against those who consider even the present times suitable for discrediting parliament in favor of other political powers. Unfortunately, such critique has been going on now for forty years among fairly large circles of literati inside and outside the university, continuing during the war. Very often it has been undertaken in the most arrogant and extravagant form, with disdainful venom and without any willingness to understand the preconditions of effective parliaments. It is true that the political achievements of the German parliaments are not beyond critique. But what is true of the *Reichstag* is also true of other political institutions, which those literati have always treated with great consideration and often adulation. If such dilettantes make a cheap sport out of attacking parliamentarism, it appears quite proper to scrutinize

their political acumen for once without much consideration for their feelings. It would be enjoyable to have an earnest joust with fair-minded opponents—no doubt, there are some—, but it would be contrary to German uprightness to show respect for circles from the midst of which the author and many others have time and again been labelled "demagogue," "un-German" or "foreign agent." No doubt, most of the literati in question were gullible, but this exactly is perhaps the most shameful aspect of such excesses.

It has been said that now is not the time to deal with domestic issues, because we are busy with more important things. "We?"—Who? That must mean those who stayed home. And what is it that should keep them so busy? Inveighing against the enemies? Wars are not won that way. The soldiers at the front don't make speeches against the enemies, and such railing, which increases with the distance from the trenches, is unworthy of a proud nation. Or should we make speeches and pass resolutions about what "we" must annex before "we" can conclude peace? On this particular score the following should be said on principle: If the army, which fights the German battles, would take the position that "whatever *we* have won with our blood must remain under German control," *we* who stayed home would have the right to say: "Consider that politically this might not be prudent." However, if the army insisted, *we* would have to be silent. But if "we" have no scruples to poison the soldiers' pride in their achievements by calling out to them, as it has happened time and again: "If such and such a war goal, which we conceived, is not reached, you will have bled in vain"—then this appears to me simply intolerable from a purely human point of view, and nothing but harmful to the will to hold out. Instead, it would be better to keep repeating just one thing: that Germany fights for her life against an army in which Africans, Ghurkas and all kinds of other barbarians from the most forsaken corners of the world stand poised at the frontiers ready to devastate our country. That happens to be true, that everybody can understand, and that would have preserved unity. Instead the literati are busying themselves with fabricating various "ideas," for which the soldiers are supposed to shed their blood and die. I do not believe that these vain doings have made it any easier for our soldiers to fulfill their difficult duties; they certainly have harmed greatly the possibilities of a sober political discussion.

It seems to me that *our* primary task at home consists in *making it possible* for the returning soldiers to rebuild that Germany which they have saved—with the ballot in their hands and through their elected representatives. Hence we must remove the obstacles posed by present conditions, so that the soldiers can begin reconstruction right after the

war instead of having to get involved in sterile controversies. No sophistry can conjure away the fact that [equal] suffrage and parliamentary government are the only means for this purpose. Insincere and outrageous is the complaint that a reform was being considered "without asking the soldiers"—when in fact only the reform would give them the opportunity to participate decisively in political affairs.

It is said further that every critique of our form of government would provide ammunition to the enemies. For twenty years this argument has been used to shut us up, until it was too late. What can we now lose abroad by such a critique? The enemies can congratulate themselves if the old evils should persist. Especially now, when the great war has reached the stage at which diplomacy begins to move again, it is high time to do everything that will prevent a repetition of the old mistakes. For the time being the prospects are unfortunately very limited. But the enemies know, or will come to know, that German Democracy cannot conclude a bad peace if it is to have any future.

He whose ultimate beliefs put *every* form of authoritarian government above *all* of the nation's political interests may openly do so. He cannot be argued with. However, we do not want to hear the nonsensical talk about the contrast between the "West European" and the "German" ideas of the state. We are dealing here with simple questions of [constitutional] techniques for formulating national policies. For a mass state, there are only a limited number of alternatives. For a rational politician the form of government appropriate at any given time is a technical question which depends upon the political tasks of the nation. It is merely a regrettable lack of faith in Germany's potentialities when it is asserted that the German spirit would be jeopardized if we shared useful techniques and institutions of government with other peoples. Moreover, parliamentarism has been neither alien to German history, nor have any of the contrasting systems been peculiar to Germany alone. Compelling circumstances will see to it that a German state with parliamentary government will be different from any other. It would not be sober politics, but politics in the literati-style, if this issue were turned into an object of national vanity. We do not know today whether an effective parliamentary reconstruction will take place in Germany. It may be thwarted by the Right or forfeited by the Left. This latter, too, is possible. The vital interests of the nation stand, of course, above democracy and parliamentarism. But if parliament were to fail and the old system were to return, this would indeed have far-reaching consequences. Even then one could be grateful to fate for being a German. But one would have to abandon forever any great

hopes for Germany's future, *irrespective* of the kind of peace we would have.

The author, who voted Conservative almost three decades ago and later voted Democratic, who then was given space in the [arch-conservative] *Kreuzzeitung* and now writes for liberal papers, is neither an active politician nor will he be one. For caution's sake, it may be added that he does not have connections of any kind with any German statesman. He has good reason to believe that no party, not even the Left, will identify with what he has to say; this applies in particular to what is personally most important to him (sec. *iv*, below), and this happens to be a matter about which the parties do *not* have divergent opinions. The author adheres to his political views because the events of the last decades convinced him long ago that every German policy, irrespective of its goals, is condemned to failure in view of the given constitutional setup and the nature of our political machinery, and that this will remain so if conditions do not change. Moreover, he considers it most unlikely that there will always be military leaders who can extricate the nation from political catastrophe through military deeds, at the price of tremendous sacrifices in blood.

In themselves, technical changes in the form of government do not make a nation vigorous or happy or valuable. They can only remove technical obstacles and thus are merely means for a given end. Perhaps it is regrettable that such bourgeois and prosaic matters, which we shall discuss here with deliberate self-limitation and exclusion of all of the great *substantive* cultural issues facing us, can be important at all. But this is the way things are. It has been proven in great as in little things: by the political developments of the recent decades, but also, very recently, by the utter failure of political leadership on the part of an exceptionally capable and decent bureaucrat [Georg Michaelis]—this was a kind of test for the analysis presented shortly before the event in the articles republished here.[2] Whoever is not convinced by these events will not be satisfied by any proof. If a politician changes the form of government, he takes into account the generations to come. But this little piece of occasional writing is merely intended to contribute to the debate of contemporary issues.

The long delay of publication in this form, which like-minded friends suggested to me, has been due to other preoccupations and then, since November, to the usual technical difficulties of going into print.

i

Bismarck's Legacy

The present condition of our parliamentary life is a legacy of Prince Bismarck's long domination and of the nation's attitude toward him since the last decade of his chancellorship. This attitude has no parallel in the reaction of any other great people toward a statesman of such stature. Nowhere else in the world has even the most unrestrained adulation of a politician made a proud nation sacrifice its substantive convictions so completely. On the other hand, policy differences with a statesman of such magnitude have rarely triggered such a great deal of hatred as erupted at the time on the extreme left and in the [Catholic] Center party. What were the reasons?

As often before, epochal events such as those of 1866 and 1870 have had their greatest impact upon the generation for which the victorious wars were an indelible experience of its youth, but which had no clear comprehension of the serious domestic tensions accompanying them. It was not until this generation grew up that Bismarck became a legend. The generation of political literati which entered public life from about 1878 on split in two unequal segments. The larger group admired not the greatness of Bismarck's sophisticated and commanding intellect, but exclusively the admixture of violence and cunning, the seeming or actual brutality of his political approach. The other group reacted with feeble resentment. This second variety disappeared quickly after his death, but the first has since been cultivated all the more. For a long time now, this dominant attitude has shaped not only the historical mythology of Conservative politicians, but also of genuinely enthusiastic literati and, of course, of those intellectual plebeians who by imitating Bismarck's gestures seek to legitimate themselves as partaking of his spirit. We know that Bismarck had the greatest contempt for this quite influential group, even though he was not averse to taking political advantage of these courtiers, just as he did of Mr. Busch and his ilk.[3] At the margin of a memorandum which we would call Pan-German (*alldeutsch*) today he once wrote: "Windy in content and puerile in form." This referred to a manuscript which he had requested as a specimen from a man who differed from today's representatives of this type by having served the nation courageously, not just by mouthing words. What

Bismarck thought about his Conservative peers he put down in his memoirs.

Bismarck had plenty of reason for thinking lowly of his peers. For what happened to him when he was forced out of office in 1890? In fairness, he could not expect sympathy from the Center party, to which he had tried to link the assassin Kullmann;* from the Social Democrats, whom he had hunted with the [local] banishment paragraph of the anti-socialist legislation; from the Progressives (*Freisinnige*), whom he had stigmatized as "enemies of the *Reich*." But what did the others do who had loudly applauded these actions? Conservative lackeys occupied the chairs of Prussian ministers and sat in the Federal offices. What did they do? They sat it out. "Just a new superior"—that was the end of the matter. Conservative politicians sat on the presidential chairs of the parliaments in the Empire and in Prussia. What words of sympathy did they find for the departing creator of the *Reich*? They did not utter one word. Which of the big parties constituting his following demanded any account of the reasons for his dismissal? They did not bestir themselves, they simply turned to the new sun. This event has no parallel in the annals of any proud people. But the contempt which it deserves can only be heightened by that enthusiasm for Bismarck on which the same parties later took a hereditary lease. For half a century the Prussian Conservatives have failed to show any "character" in their commitment to great political goals or any other ideals, such as men like Stahl and Gerlach and the members of the old Christian-Social movement, in their own way, did possess.* Only when their financial interests, their monopoly of office benefices, their office patronage or—and this is the same thing—their electoral privileges were at stake, did their governmental voting machine ruthlessly go into gear, even against the king. Then the whole sorry apparatus of "Christian," "monarchic" and "national" phraseology was set in motion—the same phrase-making that those gentlemen now condemn as "cant" on the part of the Anglo-Saxon politicians. When several years after Bismarck's dismissal their material interests were affected, especially by tariff issues, then, and only then, did they remember Bismarck as their man, and only since that time have they pretended quite seriously to be the guardians of his tradition. There are good reasons for assuming that Bismarck had only disdain for these manipulations. This is proven by private statements. Who can blame him for it? However, the shame about that caricature of political maturity provided by the nation in 1890 must not blur our recognition of the fact that in this undignified behavior of his partisans Bismarck tragically reaped his own harvest; for he had wanted—and deliberately accomplished—the political impotence of parliament and of the party leaders.

No statesman who took power without parliamentary responsibility ever had such a co-operative parliamentary ally with so many political talents as Bismarck had [in the National Liberals] between 1867 and 1878. It is quite possible to disagree with the political views of the National-Liberal leaders of that time. Of course, one cannot compare them to Bismarck with regard to diplomatic skill and intellectual energy; next to him, they appear at best as average, but this is true also of all other German politicians and of most foreign ones. At best, a genius appears once in several centuries. But we could thank fate if our government were now, and in the future, in the hands of politicians of their caliber. It is indeed one of the most barefaced distortions of the truth if political literati make the nation believe that up until now the German parliament has not managed to produce great political talents. It is outrageous that the present subservient fashion denies the status of representatives of the "German *Geist*" to such parliamentary leaders as Bennigsen, Stauffenberg and Völk or such democrats as the Prussian patriot Waldeck;* after all, the "German spirit" was at least as strong in the St. Paul's Church [in Frankfurt in 1848] as it has been in the bureaucracy, and certainly more so than in the inkpots of these gentlemen.

These men of the *Reichstag*'s prime period had one great advantage: They knew their own limitations and recognized both their past errors and Bismarck's tremendous intellectual superiority. Nowhere else did he have more passionate personal admirers than in their circles, even in those of the later [left-wing liberal] Secessionists. One fact in particular speaks for their personal stature: They were completely free of resentment against Bismarck's superiority. He who has know them must fully absolve all major figures among them from this charge. To all informed about the course of events, Bismarck's suspicion that these men ever thought of toppling him must appear to border on paranoia. Time and again I heard from their leaders that they would consider caesarism—government by a genius—the best political organization for Germany, if there would always be a new Bismarck. That was their sincere conviction. Of course, they had vigorously crossed swords with him in the past. For this very reason they also knew his limitations, and they were not ready to make any unmanly intellectual sacrifices. It is true that they tended to compromise with him to the point of self-denial in order to avoid a rupture; indeed, they went much further than tactical considerations towards the voters, who threatened to repudiate them on this score, would have permitted. The National-Liberal leaders shied away from a fight for greater parliamentary rights not only because they foresaw the Center party as its beneficiary, but also because they realized that such a conflict would paralyze for a long time Bismarck's

policies as well as the work of parliament. "Nothing succeeds any longer"—this was the familiar complaint in the eighties. The ultimate intent of these leaders, often expressed in their inner circle, was the salvaging, during the rule of this grandiose figure, of those institutions upon which depended the continuity of the Empire's leadership after adjustment to politicians of more usual qualifications.[d] Among these institutions they counted parliament—a parliament capable of actively participating in government and of attracting great political talents; they also wanted strong parties.

These National-Liberal leaders knew that the achievement of this goal did not depend on them alone. Frequently I heard it said from their midst during Bismarck's great turn-about of 1878: "No great political skills are necessary to destroy or to cripple a party which is in our precarious position. But if this happens, another big party interested in rational co-operation cannot be created in its stead; it would be necessary for the government to appeal to interest groups and to resort to the system of petty political patronage, and even then the most serious political disruptions would occur." As we have said above, one can differ on some of the policies of this party, but it was through its initiative that the position of the Imperial Chancellor was created in the constitution (Bennigsen's motion), the civil code was unified on a national basis (Lasker's motion), the *Reichsbank* was established (Bamberger's motion); indeed, we owe to this party most of the great *Reich* institutions, which are still proving their worth. After the fact, it is easy to criticize its tactics, which always had to consider its difficult position vis-à-vis Bismarck. One can explain its decline, among other factors, by pointing to the natural difficulties of a party of such purely political orientation, but burdened by the adherence to obsolete economic dogmas on the economic and welfare issues of the time—yet, in all these respects the conservative parties do not fare any better. The National-Liberal party's ideas about constitutional reform clashed with Bismarck's goals after 1866 not because of any shortsightedness, as has often been alleged, but because of "unitary" ideals—quite in Treitschke's sense—, ideals which we have abandoned in the meantime, in part for non-political reasons.[e] At any rate, the later developments have *completely vindicated* the basic political premises of the National-Liberals.

The National-Liberals could not fulfill their chosen political tasks and disintegrated, ultimately not because of any substantive reasons, but because Bismarck did not tolerate any autonomous power—neither within the ministries nor within parliament. It is true that he offered ministries to various parliamentary leaders, but all of them found out that from the beginning he had shrewdly made preparations which

would enable him to topple his new colleague at any moment by discrediting him on purely personal grounds. In the last analysis, this and nothing else motivated Bennigsen to decline such an offer [in 1877]. Bismarck's domestic politics aimed exclusively at preventing the consolidation of any strong and independent party. His primary means were the military budget and the anti-socialist legislation [of 1878–1890]; in addition, he manipulated quite deliberately and skillfully the clash of economic interests over tariff policies.

In military matters, the basic position of the National-Liberal politicians was, to my knowledge, the following. They were willing to keep the authorized strength of the army as large as it appeared necessary, and for this very reason they considered it a merely *technical* question. In this way, the old issues of the Prussian Constitutional Conflict [of 1862–1866] would be buried and at least this source of demagogic excitement would be eliminated for the benefit of the *Reich*.[9] The simple ascertainment of authorized strength in annual appropriation bills was all that was needed. None of these leaders ever doubted that in this fashion the necessary enlargement of the army would proceed without domestic and international turmoil and repercussions; in particular, the military would be able to ask for far higher appropriations in a much less dramatic manner than if this technical problem were to be mixed up with the domestic power interests of the bureaucracy, with the result that every seventh year the military questions would explode into a political sensation with catastrophic consequences for national stability and into a wild election campaign under the slogan: "Imperial Army versus Parliamentary Army." This was a highly deceptive slogan, for the army would not have been any more of a parliamentary institution with a one-year than with a seven-year appropriation. The more so since the seven-year appropriation remained largely fictional in any case. In 1887 the *Reichstag* was dissolved solely over the issue of whether the authorized military strength, on which all *bürgerliche* parties agreed, should be determined every three or every seven years; the three-year appropriation was declared to be "an assault on privileges of the Crown." But three years later, in 1890, a new bill on authorized military strength was presented to parliament, Windthorst, [the Center party leader],[10] did not fail to rebuke his opponents for this inconsistency, scornfully but with full justification. In this manner, the old and buried military issues of the Prussian Constitutional Conflict were transplanted to the federal level, and the role of the army became subject to party politics. One must not fail to recognize that precisely this was Bismarck's intention: in that demagogic slogan he saw a means of making the Emperor, who had lived through the Constitutional Conflict, suspect the

Reichstag and the liberal parties of hostility to the army, and at the same time of discrediting the National Liberals with their own voters as traitors of parliamentary budgetary rights, since they had accepted the seven-year appropriation (*Septennat*). Exactly the same can be said of the anti-socialist legislation. The National Liberals were willing to meet Bismarck more than half-way, and even the Progressives were amenable to provisions which would make a *general* criminal offense out of what they called "excitation to class hatred." But Bismarck wanted emergency legislation as such. During the public furor over the second attempt at the Emperor's life [in 1878] Bismarck dissolved the *Reichstag* without making any attempt to compose his differences with it, simply because he saw an opportunity to destroy the only powerful party of the time.[11]

Bismarck succeeded. And the consequences? Instead of having to compromise with a *parliamentary* party which was very close to him in spite of all opposition and which had co-ope ated with him since the founding of the *Reich*, Bismarck became permanently dependent upon the [Catholic] Center party, which hated him until the end of his life and which had a power base *outside* of parliament impregnable to his attack. When he later made his famous speech on the passing of the nation's youth (*Völkerfrühling*), Windthorst replied sarcastically, but again correctly, that he himself had destroyed the great party that had supported him in the past. When the National Liberals made specific proposals to safeguard the *Reichstag*'s right to raise revenues, Bismarck rejected this as leading to "parliamentary rule," but he was eventually forced to concede the same thing to the Center party in the worst possible form—in the "pay-off"-paragraph of the so-called Franckenstein clause, to which in Prussia the even worse *lex* Huene was added (which later on was eliminated again only with great difficulties).[12] Moreover, Bismarck had to swallow [as part of the price for these revenues] the major defeat of the state's authority in the struggle against the Catholic church, the *Kulturkampf*, which he had fought with completely unsuitable means and for which he denied responsibility in vain and with little honesty. On the other hand, in his anti-socialist laws he offered the most splendid election issue to the Social Democrats. To be turned into demagoguery, and very bad demagoguery at that, was also the fate of the Imperial welfare legislation in Bismarck's hands, however valuable this legislation may be thought in itself. He rejected protective labor legislation, which after all was indispensable to the preservation of the nation's population resources, as interference with the rights of the master—in part with incredibly trivial arguments. For the same reason he used the provisions of the anti-socialist legislation to have

the police destroy the trade unions, the only possible bearers of a down-to-earth interest representation of the working class. Thus he drove their members into the most extreme radicalism of pure party politics. On the other hand, Bismarck, in imitation of certain American practices, believed that he could create a positive attitude toward the state, and political gratitude, by granting welfare benefits out of public funds or compulsory private funds. A grave political error: every policy that ever banked on political gratitude has failed. In politics, too, the Biblical saying applies to the doing of good works: "They have forfeited their wages." We got benefits for the sick, the disabled, the veterans and the aged. This was certainly desirable. But we did not get the guarantees necessary for *preserving* physical and mental health, and for enabling those *sound in body and mind* to defend their interests soberly and with self-respect; in other words, precisely the *politically relevant* part of the working population was left out.

As in the *Kulturkampf*, Bismarck here overrode all major psychological considerations. Above all, in the treatment of the unions one point was overlooked that even today some politicians have not yet understood: A state that wants to base the spirit of its mass army on honor and solidarity must not forget that in everyday life and in the economic struggles of the workers the sentiments of honor and solidarity are the only decisive moral forces for the education of the masses, and that for this reason these sentiments must be given free rein. This and nothing else is the political meaning of "social democracy" in an age which, inevitably, will still remain capitalist for a long time. We are even today suffering from the consequences of this policy. Bismarck had created a political atmosphere about himself which in 1890 left him only the alternatives of unconditional surrender to Windthorst or of a *coup d'état*, if he was to remain in office. Thus it was no accident that the nation reacted with complete indifference to his resignation.

In view of the usual uncritical and, above all, unmanly glorification of Bismarck, it seemed high time to call attention, for a change, to this side of the matter. For the most influential part of the popular Bismarck literature has been written for the Christmas table of the philistine who prefers that completely nonpolitical kind of hero worship which has become so common with us. The Bismarck literature of this type caters to such sentimentality and presumes to serve its hero by veiling his limitations and by maligning his opponents. But in this manner one cannot educate the nation to develop habits of independent political thinking. It does not diminish Bismarck's giant stature to be fair toward his opponents and to point without embellishment to the consequences of his misanthropy; nor to point to the fact that since 1878 the nation

has been unaccustomed to sharing, through its elected representatives, in the determination of its political affairs. Such participation, after all, is the precondition for developing political judgment.

What then was Bismarck's legacy, as far as we are here interested in it? He left behind him a nation *without any political sophistication,* far below the level which in this regard it had reached twenty years before [i.e., in 1870]. Above all, he left behind him a nation *without any political will of its own,* accustomed to the idea that the great statesman at the helm would make the necessary political decisions. Furthermore, he left behind him a nation accustomed to fatalistic sufferance of all decisions made in the name of "monarchic government," because he had misused monarchic sentiments as a cover for his power interests in the struggle of the parties; a nation unprepared to look critically at the qualification of those who settled down in his empty chair and with astonishing lack of embarrassment took the reigns of government into their own hands. On this score by far the gravest damage was done. The great statesman did *not* leave behind any political tradition. He neither attracted nor even suffered independent political minds, not to speak of strong political personalities. On top of all this, it was the nation's misfortune that he harbored not only intense mistrust toward all even vaguely possible successors, but that he also had a son who indeed exceedingly mediocre political talents he overestimated to an astonishing degree.[13] A *completely powerless parliament* was the purely negative result of his tremendous prestige. It is well-known that after he had left office and personally suffered the consequence of this very condition, he accused himself of having made a mistake. However, this powerlessness of parliament also meant that its intellectual level was greatly depressed. The naive moralizing legend of our unpolitical literati reverses the causal relationship and maintains that parliament remained deservedly powerless *because* of the low level of parlimentary life. But simple facts and considerations reveal the actual state of affairs, which in any case is obvious to every soberly reflecting person. The level of parliament depends on whether it does not merely discuss great issues but decisively influences them; in other words, its quality depends on whether what happens there matters, or whether parliament is nothing but the unwillingly tolerated rubber stamp of a ruling bureaucracy.

ii

Bureaucracy and Political Leadership

1. *Bureaucracy and Politics*

In a modern state the actual ruler is necessarily and unavoidably the bureaucracy, since power is exercised neither through parliamentary speeches nor monarchical enunciations but through the routines of administration. This is true of both the military and civilian officialdom. Even the modern higher-ranking officer fights battles from the "office." Just as the so-called progress toward capitalism has been the unequivocal criterion for the modernization of the economy since medieval times, so the progress toward bureaucratic officialdom—characterized by formal employment, salary, pension, promotion, specialized training and functional division of labor, well-defined areas of jurisdiction, documentary procedures, hierarchical sub- and super-ordination—has been the equally unambiguous yardstick for the modernization of the state, whether monarchic or democratic; at least if the state is not a small canton with rotating administration, but comprises masses of people. The democratic state no less than the absolute state eliminates administration by feudal, patrimonial, patrician or other notables holding office in honorary or hereditary fashion, in favor of employed civil servants. It is they who decide on all our everyday needs and problems. In this regard the military power-holder, the officer, does not differ from the civilian official. The modern mass army, too, is a bureaucratic army, and the officer is a special type of official, distinct from the knight, the *condottiere,* the chieftain, or the Homeric hero. Military effectiveness rests on bureaucratic discipline. The advance of bureaucratism in municipal administration differs little from the general development; it is the more rapid, the larger the community is, or the more it loses local autonomy to technical and economic associations. In the Church the most important outcome [of the Vatican Council] of 1870 was not the much-discussed dogma of infallibility, but the universal episcopate [of the pope] which created the ecclesiastic bureaucracy (*Kaplanokratie*) and turned the bishop and the parish priest, in contrast to the Middle Ages, into mere officials of the central power, the Roman *Curia.* The same bureaucratic trend prevails in the big private enterprises of our time, the more so, the larger

they are. Private salaried employees grow statistically faster than the workers.

It is simply ridiculous if our literati believe that non-manual work in the private office is in the least different from that in a government office. Both are basically identical. Sociologically speaking, the modern state is an "enterprise" (*Betrieb*) just like a factory: This exactly is its historical peculiarity. Here as there the authority relations have the same roots. The relative independence of the artisan, the producer under the putting-out system, the free seigneurial peasant, the travelling associate in a *commenda* relationship, the knight and vassal rested on their ownership of the tools, supplies, finances and weapons with which they fulfilled their economic, political and military functions and maintained themselves. In contrast, the hierarchical dependence of the wage worker, the administrative and technical employee, the assistant in the academic institute *as well as* that of the civil servant and the soldier is due to the fact that in their case the means indispensable for the enterprise and for making a living are in the hands of the entrepreneur or the political ruler. The majority of the Russian soldiers, for example, did not want to continue the war [in 1917]. But they had no choice, for both the means of destruction and of maintenance were controlled by persons who used them to force the soldiers into the trenches, just as the capitalist owner of the means of production forces the workers into the factories and the mines. This all-important economic fact: the "separation" of the worker from the material means of production, destruction, administration, academic research, and finance in general is the common basis of the modern state, in its political, cultural and military sphere, and of the private capitalist economy. In both cases the disposition over these means is in the hands of that power whom the *bureaucratic apparatus* (of judges, officials, officers, supervisors, clerks and non-commissioned officers) directly obeys or to whom it is available in case of need. This apparatus is nowadays equally typical of all those organizations; its existence and function are inseparably cause and effect of this concentration of the means of operation—in fact, the apparatus is its very form. Increasing public ownership in the economic sphere today unavoidably means increasing bureaucratization.

The "progress" toward the bureaucratic state, adjudicating and administering according to rationally established law and regulation, is nowadays very closely related to the modern capitalist development. The modern capitalist enterprise rests primarily on *calculation* and presupposes a legal and administrative system, whose functioning can be rationally predicted, at least in principle, by virtue of its fixed general norms, just like the expected performance of a machine. The modern

capitalist enterprise cannot accept what is popularly called "*kadi*-justice": adjudication according to the judge's sense of equity in a given case or according to the other irrational means of law-finding that existed everywhere in the past and still exist in the Orient. The modern enterprise also finds incompatible the theocratic or patrimonial governments of Asia and of our own past, whose administrations operated in a patriarchal manner according to their own discretion and, for the rest, according to inviolably sacred but irrational tradition. The fact that *kadi*-justice and the corresponding administration are so often venal, precisely because of their irrational character, permitted the development, and often the exuberant prosperity, of the capitalism of traders and government purveyors and of all the pre-rational types known for four thousand years, especially the capitalism of the adventurer and booty-seeker, who lived from politics, war and administration. However, the specific features of modern capitalism, in contrast to these ancient forms of capitalist acquisition, the strictly rational organization of work embedded in rational technology, nowhere developed in such irrationally constructed states, and could never have arisen within them because these modern organizations, with their fixed capital and precise calculations, are much too vulnerable to irrationalities of law and administration. They could arise only in such circumstances as: 1) In England, where the development of the law was practically in the hands of the lawyers who, in the service of their capitalist clients, invented suitable forms for the transaction of business, and from whose midst the judges were recruited who were strictly bound to precedent, that means, to calculable schemes; or 2) where the judge, as in the bureaucratic state with its rational laws, is more or less an automaton of paragraphs: the legal documents, together with the costs and fees, are dropped in at the top with the expectation that the judgment will emerge at the bottom together with more or less sound arguments—an apparatus, that is, whose functioning is by and large *calculable* or predictable.[34]

2. *The Realities of Party Politics and the Fallacy of the Corporate State*

Within the political parties bureaucratization progresses in the same fashion as in the economy and public administration.

The existence of the parties is not recognized by any constitution or, at least in Germany, by any law, although they are today the most important political vehicles for those ruled by bureaucracy—the citizens. Parties are inherently voluntary organizations based on ever renewed re-

cruitment, no matter how many means they may employ to attach their clientele permanently. This distinguishes them from all organizations with a definite membership established by law or contract. Today the goal of the parties is always vote-getting in an election for political positions or a voting body. A hard core of interested members is directed by a leader or a group of notables; this core differs greatly in the degree of its hierarchical organization, yet is nowadays often bureaucratized; it finances the party with the support of rich sponsors, economic interests, office seekers, or dues-paying members. Most of the time several of these sources are utilized. The hard core also defines program and tactics and selects the candidates. Even in mass parties with very democratic constitutions, the voters and most of the rank and file members do not (or do only formally) participate in the drafting of the program and the selection of the candidates, for by their very nature such parties develop a salaried officialdom. The voters exert influence only to the extent that programs and candidates are adapted and selected according to their chances of receiving electoral support.

No moralizing complaint about the nature of campaigning and the inevitable control of minorities over programs and candidates can eliminate parties as such, or change their structure and methods more than superficially. The conditions for establishing an active party core (like those for establishing trade unions, for example) and the "rules of war" on the electoral battlefield can be regulated by law, as was done several times in the United States. But it is impossible to eliminate the struggle of the parties itself if an active parliamentary representation is to exist. However, some literati time and again entertain the confused notion that this is possible or ought to be done. In varying degrees of awareness, this notion underlies the many proposals to displace the parliaments based on universal (equal or graduated) suffrage by electoral bodies of an occupational nature, or to put them next to one another, with the corporate occupational groups serving at the same time as electoral assemblies for parliament. To begin with, this is an untenable proposition at a time when formal occupational identification—which in an electoral law would have to rely on external criteria—reveals next to nothing about economic and social function, when every technological discovery, every economic shift and every new field changes these functions and hence the meaning of formally identical jobs as well as the numerical relationships. Of course, this idea is also unsuitable for its avowed purpose. Even were it possible to represent all voters through occupational bodies such as chambers of commerce and agriculture, and to constitute the parliament from these bodies, the consequences would obviously be the following:

1) Beside these organizations fastened together with legal cramp-irons there would continue to exist the voluntary interest groups, just as the *Bund der Landwirte* (Farmers' League) and the various employers' associations parallel the chambers of commerce and agriculture. Further, the political parties, also based on free recruitment, would not think of disappearing, but would merely adjust their tactics to the new condition. This change would not be for the better: The influencing of elections in these corporate occupational organizations through financial backers and through the exploitation of capitalist dependencies would continue at least as uncontrolled as before.

2) The solution of the substantive tasks of these occupational organizations would be drawn into the whirl of political power and party struggles now that the composition of these organizations influences the parliamentary elections and job patronage; thus these organizations would be crowded with party representatives instead of competent experts.

3) Parliament would become a mere market place for compromises between purely economic interests, without any political orientation to overall interests. For the bureaucracy this would increase the opportunity and the temptation to play off opposed economic interests and to expand the system of log-rolling with job and contract patronage in order to preserve its own power. Any public control over the administration would be vitiated, since the decisive moves and compromises of the interested groups would be made behind the closed doors of the non-public associations and would be even less controllable than before. In parliament the shrewd businessman, not the political leader, would reap advantage from this situation; a "representative" body of this kind would be the least proper place imaginable for the solution of political problems according to truly political criteria. All of this is clear to those who understand these matters. It is also obvious to them that such arrangements would fail to diminish capitalist influences in the parties and parliament, or even to eliminate, or at least to clean up, the party machinery. The opposite would happen. The fact that the parties operate on the principle of free recruitment hinders their regulation by the state; this is not understood by those literati would would like to recognize only organizations established by public law, not the ones which establish themselves on the battlefield of today's social order.

In modern states political parties may be based primarily on two different principles. They may be essentially *organizations for job patronage,* as they have been in the United States since the end of the great differences about the interpretation of the Constitution. In this case they are merely interested in putting their leader into the top position so that he can turn over state offices to his following, the regular

and the campaign staffs of the party. Since the parties do not have substantive principles, they compete against one another by writing those demands into their programs from which they expect the greatest impact. This type of party is so distinct in the United States because of the absence of a parliamentary system; the popularly elected President of the Union controls—together with the Senators—the patronage of the vast number of federal jobs. Despite the resulting corruption this system was popular since it prevented the rise of a bureaucratic caste. It was technically feasible, as long as even the worst management by dilettanti could be tolerated in view of the limitless abundance of economic opportunities. The increasing necessity of replacing the untrained party protégé and sometime-official with the technically trained career official diminishes progressively the parties' benefices and results inescapably in a bureaucracy of the European kind.

The second type of party is primarily ideological (*Weltanschauungspartei*) and intended to accomplish the realization of *substantive* political ideals. In relatively pure form this type was represented in Germany by the Catholic Center party of the eighteen-seventies and the Social Democrats before they became bureaucratized. In general, parties combine both types: They have substantive goals which are set by tradition, hence modifiable only by degrees, but they also want to control job patronage. First of all, they want to put their leaders into the major *political* offices. If they are successful in the electoral struggle, the leaders and functionaries can provide their following with secure state jobs during the party's dominance. This is the rule in parliamentary states; therefore, the ideological parties, too, followed this path. In nonparliamentary states [such as Imperial Germany] the parties do not control the patronage of the top offices, but the most influential parties can usually pressure the dominant bureaucracy into conceding nonpolitical jobs to their protégés, next to the regular candidates recommended through their own connections with officials; hence, these parties can exercise "subaltern"-patronage.

In the course of the rationalization of campaign techniques during the last decades, all parties have moved towards bureaucratic organization. The individual parties have reached different stages of this development, but at least in mass states the general direction is clear. Joseph Chamberlain's "caucus" in England, the rise of the "machine," as it is significantly called, in the United States, and the growing importance of party officialdom everywhere, including Germany, are all stages of this process; in Germany it proceeds fastest in the Social Democratic party —quite naturally, since it is the most democratic party. For the Center party the clerical apparatus (*Kaplanokratie*) functions as party bureau-

cracy, and for the Conservative party in Prussia, since Puttkamer's ministry [1881–88], the county and local governmental apparatus of the *Landrat* and the *Amtsvorsteher,* irrespective of how openly or covertly it has been done. The power of the parties rests primarily on the organizational effectiveness of these bureaucracies. The mutual hostility of the party machines much more than programmatic differences accounts for the difficulties of merging parties. The fact that the *Reichstag* deputies Eugen Richter and Heinrich Rickert each retained his own local organization in the Progressive party foreshadowed its eventual split.[15]

3. *Bureaucratization and the Naiveté of the Literati*

Of course, there are many differences between the various kinds of bureaucracy: between the civilian and the military administration, between state and party, between community, church, bank, cartel, producers' co-operative, factory, and interest group (such as employers' associations or the *Bund der Landwirte*). The degree to which unpaid notables and interest groups participate also varies greatly. Neither the party boss nor the board members of a joint stock company are bureaucrats. Under the various forms of so-called "self-government," notables or elected representatives of the governed or the taxpayers may as a corporate group or as individual organs be conjoined with, or superor subordinated to, the bureaucracy and have co-determining, supervisory, advisory and sometimes executive functions. The last phenomenon occurs particularly in the municipal administrations. However, we are here not interested in these institutions, although they are not without practical significance. (Thus, we do not discuss here numerous institutions of which we can be proud in Germany and some of which are indeed exemplary. But it is a horrendous error of the literati if they fancy that the governing of a large state is basically the same as the self-government of any medium-sized city. Politics means conflict.) In our context it is decisive that in the administration of *mass associations* the trained career officials always form the core of the apparatus; their discipline is the absolute precondition of success. This is increasingly so, the larger the association is, the more complicated its tasks are, and above all, the more its existence depends on power—whether it involves a power struggle on the market, in the electoral arena or on the battlefield. This is especially true of the political parties. Doomed is the system of local party administration by notables, which still exists in France—whose parliamentary *misère* is due to the absence of bureaucratized parties—and partly in Germany. In the Middle Ages administration by

local notables dominated all kinds of associations, and it still prevails in small and medium-sized communities, but nowadays "respected citizens," "leading men of science," or whatever their label, can be used merely as advertisement, not as executors of the decisive everyday routines. For the same reason, various decorative dignitaries appear on the boards of joint-stock companies, princes of the Church are displayed at the Catholic conventions, real and pseudo-aristocrats at the meetings of the Farmers' League (*Bund der Landwirte*), and deserving historians, biologists and similar experts who usually are unsophisticated in political matters are drawn into the agitation of the Pan-German champions of war-gains and electoral privileges. Increasingly the real work in all organizations is done by the salaried employees and by functionaries of all kinds. Everything else has become window-dressing.

Just as the Italians and after them the English masterly developed the modern capitalist forms of economic organization, so the Byzantines, later the Italians, then the territorial states of the absolutist age, the French revolutionary centralization and finally, surpassing all of them, the Germans perfected the rational, functional and specialized bureaucratic organization of all forms of domination from factory to army and public administration. For the time being the Germans have been outdone only in the techniques of party organization, especially by the Americans. The present world war means the world-wide triumph of this form of life, which was advancing at any rate. Already before the war, the universities, polytechnical and business colleges, trade schools, military academies and specialized schools of all conceivable kinds (even for journalists.) reverberated with urgent demands propelled by the schools' recruitment interests and the graduates' mania for benefices: The professional examination was to be the precondition for all well-paying and, above all, secure positions in public and private bureaucracies; the diploma was to be the basis of all claims for social prestige (of *connubium* and social *commercium* with the circles that consider themselves "society"); the socially proper, guaranteed "salary" [rather than the "wage"], followed by a pension, was to be the form of compensation; finally, salary increases and promotion were to be dependent on seniority. The effects can be seen inside and outside of governmental institutions, but we are here only interested in the consequences for political life. It is this sober fact of universal bureaucratization that is behind the so-called "German ideas of 1914," behind what the literati euphemistically call the "socialism of the future," behind the slogans of "organized society," "cooperative economy," and all similar contemporary phrases. Even if they aim at the opposite, they always promote the rise of bureaucracy. It is true that bureaucracy is by far not the only modern

form of organization, just as the factory is by far not the only type of commercial enterprise, but both determine the character of the present age and of the foreseeable future. The future belongs to bureaucratization, and it is evident that in this regard the literati pursue their calling —to provide a salvo of applause to the up-and-coming powers—just as they did in the age of laissez-faire, both times with the same naiveté.

Bureaucracy is distinguished from other historical agencies of the modern rational order of life in that it is far more persistent and "escape-proof." History shows that wherever bureaucracy gained the upper hand, as in China, Egypt and, to a lesser extent, in the later Roman empire and Byzantium, it did not disappear again unless in the course of the total collapse of the supporting culture. Yet these were still, relatively speaking, highly irrational forms of bureaucracy: "Patrimonial bureaucracies." In contrast to these older forms, modern bureaucracy has one characteristic which makes its "escape-proof" nature much more definite: rational specialization and training. The Chinese mandarin was not a specialist but a "gentleman" with a literary and humanistic education. The Egyptian, Late-Roman or Byzantine official was much more of a bureaucrat in our sense of the word. But compared to the modern tasks, his were infinitely simple and limited; his attitude was in part tradition-bound, in part patriarchally, that means, irrationally oriented. Like the businessman of the past, he was a pure empiricist. The modern official receives a professional training which unavoidably increases in correspondence with the rational technology of modern life. All bureaucracies in the world proceed on this path. Our superiority on this score was due to the fact that before the war other bureaucracies had not gone as far. The old American patronage official, for example, was a campaign "expert" with the pertinent "know-how," but he was by no means an expertly trained official. Not democracy as such, as our literati allege, but lack of professional training was the source of corruption, which is as alien to the university-trained civil service now emerging as it is to the modern English bureaucracy, which increasingly replaces self-government through notables ("gentlemen"). Wherever the modern specialized official comes to predominate, his power proves practically indestructible since the whole organization of even the most elementary want satisfaction has been tailored to his mode of operation. A progressive elimination of private capitalism is theoretically conceivable, although it is surely not so easy as imagined in the dreams of some literati who do not know what it is all about; its elimination will certainly not be a consequence of this war. But let us assume that some time in the future it will be done away with. What would be the practical result? The destruction of the steel frame of modern industrial

work? No! The abolition of private capitalism would simply mean that also the *top management* of the nationalized or socialized enterprises would become bureaucratic. Are the daily working conditions of the salaried employees and the workers in the state-owned Prussian mines and railroads really perceptibly different from those in big business enterprises? It is true that there is even less freedom, since every power struggle with a state bureaucracy is hopeless and since there is no appeal to an agency which as a matter of principle would be interested in limiting the employer's power, such as there is in the case of a private enterprise. *That* would be the whole difference.

State bureaucracy would rule *alone* if private capitalism were eliminated. The private and public bureaucracies, which now work next to, and potentially against, each other and hence check one another to a degree, would be merged into a single hierarchy. This would be similar to the situation in ancient Egypt, but it would occur in a much more rational—and hence unbreakable—form.

An inanimate machine is mind objectified. Only this provides it with the power to force men into its service and to dominate their everyday working life as completely as is actually the case in the factory. Objectified intelligence is also that animated machine, the bureaucratic organization, with its specialization of trained skills, its division of jurisdiction, its rules and hierarchical relations of authority. Together with the inanimate machine it is busy fabricating the shell of bondage which men will perhaps be forced to inhabit some day, as powerless as the fellahs of ancient Egypt. This might happen *if* a technically superior administration *were to be the ultimate and sole value* in the ordering of their affairs, and that means: a rational bureaucratic administration, with the corresponding welfare benefits, for this bureaucracy can accomplish much better than any other structure of domination. This shell of bondage, which our unsuspecting literati praise so much, might perhaps be reinforced by fettering every individual to his job (notice the beginnings in the system of fringe benefits), to his class (through the increasing rigidity of the property distribution), and maybe to his occupation (through liturgic methods of satisfying state requirements, and that means: through burdening occupational associations with state functions). It would be made all the more indestructible if in the social sphere a status order were then to be imposed upon the ruled, linked to the bureaucracy and in truth subordinate to it, as in the forced-labor states of the past. An "organic" social stratification, similar to the Oriental-Egyptian type, would then arise, but in contrast to the latter it would be as austerely rational as a machine. Who would want to deny that such a potentiality lies in the womb of the future? In fact, this has

often been said before, and the very muddled anticipation of it also throws its shadow upon the productions of our literati. Let us assume for the moment that this possibility were our "inescapable" fate: Who would then not smile about the fear of our literati that the political and social development might bring us *too much* "individualism" or "democracy" or other such-like things, and about their anticipation that "true freedom" will light up only when the present "anarchy" of economic production and the "party machinations" of our parliaments will be abolished in favor of social "order" and "organic stratification"—that means, in favor of the pacifism of social impotence under the tutelage of the only really inescapable power: the bureaucracy in state and economy.

4. *The Political Limitations of Bureaucracy*[16]

Given the basic fact of the irresistible advance of bureaucratization, the question about the future forms of political organization can only be asked in the following way:

1. How can one possibly save *any remnants* of "individualist" freedom in any sense? After all, it is a gross self-deception to believe that without the achievements of the age of the Rights of Man any one of us, including the most conservative, can go on living his life. But this question shall not concern us here, for there is another one:

2. In view of the growing indispensability of the state bureaucracy and its corresponding increase in power, how can there be any guarantee that any powers will remain which can check and effectively control the tremendous influence of this stratum? How will democracy even in this limited sense be *at all possible*? However, this too is not the only question with which we are concerned here.

3. A third question, and the most important of all, is raised by a consideration of the inherent limitations of bureaucracy proper. It can easily be seen that its effectiveness has definite limitations in the public and governmental realm as well as in the private economy. The "directing mind," the "moving spirit"—that of the entrepreneur here and of the politician there—differs in substance from the civil-service mentality of the official. It is true that the entrepreneur, too, works in an office, just like the army leader, who is formally not different from other officers. If the president of a large enterprise is a salaried employee of a joint stock corporation, then he is *legally* an official like many others. In political life the same is true of the head of a political agency. The governing minister is *formally* a salaried official with pension rights. The fact

that according to all constitutions he can be dismissed or resign at any time differentiates his position from that of most, but not all other officials. Far more striking is the fact that he, and he alone, does not ne to prove formal specialized training. This indicates that the meaning of his position distinguishes him, after all, from other officials, as it does the entrepreneur and the corporation president in the private economy. Actually, it is more accurate to say that he is *supposed* to be something different. And so it is indeed. If a man in a leading position is an "official" in the spirit of his performance, no matter how qualified—a man, that is, who works dutifully and honorably according to rules and instruction—, then he is as useless at the helm of a private enterprise as of a government. Unfortunately, our own government has proven this point.

The difference is rooted only in part in the kind of performance expected. Independent decision-making and imaginative organizational capabilities in matters of detail are usually also demanded of the bureaucrat, and very often expected even in larger matters. The idea that the bureaucrat is absorbed in subaltern routine and that only the "director" performs the interesting, intellectually demanding tasks is a preconceived notion of the literati and only possible in a country that has no insight into the manner in which its affairs and the work of its officialdom are conducted. The difference lies, rather, in the kind of *responsibility*, and this does indeed determine the different demands addressed to both kinds of positions. An official who receives a directive which he considers wrong can and is supposed to object to it. If his superior insists on its execution, it is his duty and even his honor to carry it out as if it corresponded to his innermost conviction, and to demonstrate in this fashion that his sense of duty stands above his personal preference. It does not matter whether the imperative mandate originates from an "agency," a "corporate body" or an "assembly." This is the ethos of *office*. A political leader acting in this way would deserve contempt. He will often be compelled to make compromises, that means, to sacrifice the less important to the more important. If he does not succeed in demanding of his master, be he a monarch or the people: "You either give me now the authorization I want from you, or I will resign," he is a miserable *Klebe* [one who sticks to his post]—as Bismarck called this type—and not a leader. "To be above parties"—in truth, to remain outside the realm of the struggle for power—is the official's role, while this struggle for personal power, and the resulting personal responsibility, is the lifeblood of the politician as well as of the entrepreneur.

Since the resignation of Prince Bismarck Germany has been governed by "bureaucrats," a result of his elimination of all political talent. Germany continued to maintain a military and civilian bureaucracy

superior to all others in the world in terms of integrity, education, conscientiousness and intelligence. The military and, by and large, also the domestic performance during the war has proven what can be achieved with these means. But what about the *direction* of German [domestic and foreign] policy during recent decades? The most benign thing said about it was that "the victories of the German armies made up for its defeats." We will be silent about the sacrifices involved and ask instead about the reasons for these failures.

Abroad it is fancied that German "autocracy" is at fault. Inside Germany, thanks to the childish historical fantasies of our literati, it is frequently assumed, by contrast, that a conspiracy of international "democracy" brought about the unnatural world coalition against us. Abroad the hypocritical phrase of the "liberation" of the Germans from autocracy is employed. At home the vested interests—we shall get to know them—manipulate the equally hypocritical slogan of the necessity to protect the "German spirit" from contamination by "democracy," or they look for other scapegoats.

It has become customary, for instance, to criticize German diplomacy, probably unjustifiably. It appears likely that on the average it was about as good as that of other countries. A confusion is involved here. What was lacking was the *direction* of the state by a *politician*—not by a political genius, to be expected only once every few centuries, not even by a great political talent, but simply by a politician.

5. *The Limited Role of the Monarch*

This brings us straight to the discussion of those two powers which alone can be controlling and directing forces in the modern constitutional state, next to the all-encompassing officialdom: to the *monarch* and the *parliament*.

The position of the German dynasties will emerge unscathed from the war unless there is a great deal of imprudence and nothing is learnt from the mistakes of the past. Whoever has had an opportunity to get together with German Social Democrats could almost always get them to admit, after an intensive discussion, that "in itself" the constitutional monarchy was the suitable form of government for Germany in view of her special international situation. This was so long before August 4, 1914, and I do not speak here of "revisionists," parliamentary deputies, or trade unionists, but of regular party functionaries, in part very radical ones. One need only look for a moment at Russia in order to

understand that the transition to parliamentary monarchy, as the liberal politicians desired it, would have preserved the dynasty, destroyed the naked rule of the bureaucracy, and in the final result would have strengthened the country as much as it is now weakened by the present republic of literati, irrespective of its leaders' idealism.[17] In England it is well understood that the strength of British parliamentarism is related to the fact that the highest position in the state is occupied once and for all. We can discuss here neither the reasons for the importance of the mere existence of a monarch nor the question of whether only a monarch can play this role. For Germany at least we must reckon with the position of the monarch. We cannot be eager for an age of wars between pretenders and an era of counter-revolutions; for that our international position is too tenuous.

However, in the modern state the monarch can never and nowhere be a counterforce against the pervasive power of the bureaucrats. He cannot supervise the administration, for it is a professionally trained apparatus and the modern monarch is never an expert, with the possible exception of military matters. Above all, the monarch is never a *politician* with training obtained within the machinery of the parties or of diplomacy. Not only his education, but especially his constitutional position works against this. He does not gain his crown through a party contest, and the struggle for power is not his natural milieu, as it is for the politician. He does not personally experience the harsh realities of party life by descending into the political arena, but rather is removed from them through his privilege. There are born politicians, but they are rare. The monarch who is not one of them becomes a threat to his own and to the state's interests if he attempts to govern by himself, as did the Tsar, or to exert influence with political means—through "demagogy" in the broadest sense of the word—in speech and writing, for the sake of propagating his ideas or projecting his personality. He then endangers not only his crown—that would be his personal affair—but the survival of the state. However, this temptation—nay, necessity—arises inevitably for a modern monarch if he is confronted only by bureaucrats, that means, if parliament is powerless, as has been the case in Germany for decades. Even from a purely instrumental viewpoint this has severe drawbacks. If there is no powerful parliament, the monarch is today dependent upon the reports of officials for the supervision of the work of other officials. This is a vicious circle. The continuous war of the various ministries against one another, as was typical of Russia and also to some extent of Germany up to the present, is the natural consequence of such allegedly "monarchic" governments without a *political* leader. This conflict of "satraps" involves most of the time not

only differences of opinion, but personal rivalries; the clashes between the ministries serve their chiefs as vehicles in the competition for the ministerial positions. If these are treated merely as bureaucratic benefices, court intrigues, not substantive reasons or qualities of political leadership, determine incumbency. Everybody knows that personal power struggles are common in parliamentary states. The error lies in the assumption that monarchies are different in this regard. In truth, they have an additional problem. The monarch believes that he himself rules, whereas in fact behind this screen the bureaucracy enjoys the privilege of operating without controls and without being accountable to anybody. Flatterers surround the monarch with the romantic halo of power because he can replace the governing minister according to his discretion. However, monarchs like Edward VII of England and Leopold II of Belgium, who certainly were not outstanding personalities, wielded much greater power although *and because* they ruled in strictly parliamentary fashion and never played a conspicuous public role, or at least never appeared in public in other than parliamentary trappings. It is pure ignorance if such monarchs are treated as "shadow kings" in the phraseology of the literati, and it is stupidity if they turn the philistine gossip about their morals into a political yardstick. History will judge differently, even if their policies should ultimately fail—as so many great projects have come to naught. One of these two monarchs was even forced to change his court officials according to the parliamentary power constellation, but he brought together a world coalition; the other ruled only a small state, but he assembled a huge colonial empire (at least in comparison to our colonial fragments). Whoever wants to *lead* in politics, whether he be monarch or minister, must know how to play the modern instruments of power. The parliamentary system eliminates only the politically *incompetent* monarch—for the country's benefit. Is this a "night-watchman state"[18] that managed to attach to itself, despite its very small population, the best parts of all continents? How philistine is this hackneyed phrase that betrays so much of the resentment of the *Untertan*.

Let us now turn to parliament.

6. *Weak and Strong Parliaments, Negative and Positive Politics*

Modern parliaments are primarily representative bodies of those ruled with bureaucratic means. After all, a certain minimum of consent on the part of the ruled, at least of the socially important strata, is a pre-

condition of the durability of every, even the best organized, domination. Parliaments are today the means of manifesting this minimum consent. For certain actions of the public powers, enactment after previous deliberation in parliament is obligatory; this includes especially the budget. The control over the raising of revenues—the budget right—is the decisive power instrument of parliament, as it has been ever since the corporate privileges of the estates came into being. However, as long as a parliament can support the complaints of the citizens against the administration only by rejecting appropriations and other legislation or by introducing unenforcable motions, it is excluded from positive participation in the *direction* of political affairs. Then it can only engage in "negative politics," that means, it will confront the administrative chiefs as if it were a hostile power; as such it will be given only the indispensable minimum of information and will be considered a mere drag-chain, an assembly of impotent fault-finders and know-it-alls. In turn, the bureaucracy will then easily appear to parliament and its voters as a caste of careerists and henchmen who subject the people to their annoying and largely superfluous activities.

Things are different when parliament has accomplished the following: Either, that the administrative heads must be recruited from its midst—the *parliamentary system* proper—, or that they need the express confidence of its majority for holding office or must at least resign upon losing its confidence—the *parliamentary selection* of the leaders; that they must account for their actions exhaustively to parliament, subject to verification by that body or its committees—*parliamentary accountability* of the leaders; further, that they must run the administration according to the guidelines approved by parliament—*parliamentary control* of the administration. Then the leaders of the dominant parties have a positive share in government, and parliament becomes a factor of positive politics, beside the monarch who now governs no longer by virtue of his formal crown rights—at least not exclusively—, but by virtue of his personal influence, an influence which remains great in any case, but varies according to how prudent he is and how sure of his aims. This is what is meant by the *Volksstaat* [state of the people], irrespective of whether the term is appropriate or not; by contrast, a parliament of the ruled which can only resort to negative politics vis-à-vis a dominant bureaucracy represents a version of the *Obrigkeitsstaat* [state of the authorities]. We are here interested in the *concrete* consequences of the position of parliament.

Whether we hate or love parliamentary politics—we cannot eliminate it. At most, parliament can be made politically powerless, as Bismarck did with the *Reichstag*. In addition to the general consequences

of "negative politics," the weakness of parliament has other results [which can be better understood if we first recall the role of a strong parliament]: Every conflict in parliament involves not only a struggle over substantive issues but also a struggle for personal power. Wherever parliament is so strong that, as a rule, the monarch entrusts the government to the spokesman of a clear-cut majority, the power struggle of the parties will be a contest for this highest executive position. The fight is then carried by men who have great political power instincts and highly developed qualities of political leadership, and hence the chance to take over the top positions; for the survival of the party outside parliament, and the countless ideal, and partly very material, interests bound up with it require that capable leaders get to the top. Only under such conditions can men with political temperament and talent be motivated to subject themselves to this kind of selection through competition.

Matters are completely different if under the label of "monarchic government" the appointment to the top positions is the outcome of bureaucratic advancement or accidental court acquaintance, and if a powerless parliament must submit to such a government formation. In this case, too, personal ambitions, apart from substantive issues, naturally play a role, but in very different, subaltern forms, and in directions such as have been pursued in Germany since 1890. Besides representing the local economic interests of influential voters, petty subaltern job patronage becomes the major concern of the parties. The clash between Chancellor Bülow and the Center party [in 1906] was not due to politial differences, but essentially to the Chancellor's attempt to repudiate the party's patronage rights which even today still shape the personnel composition of some central agencies of the *Reich*. The Center party is not alone in this respect. The conservative parties continue their office monopoly in Prussia and try to scare the monarch with the spectre of "Revolution" whenever these benefices appear in danger. The parties which are permanently excluded endeavor to compensate themselves by running the municipal administrations and the public health insurance funds, and pursue in parliament, as the Social Democrats used to do, policies hostile to the government or alienated from the state. This is quite natural, for *every* party strives for *power*, that means, for a share in the administration and hence in the filling of offices. As far as the latter is concerned, our ruling strata are not to be outdone by any others, but they cannot be held *accountable* since job hunting and patronage occur behind the scenes and involve the subordinate positions which are not responsible for the personnel composition of the civil service. Our bureaucracy, in turn, benefits from this state of affairs by

being free from personal supervision; the only price it pays to the dominant parties are "tips" in the form of those small-time benefices. This is the natural result of the fact that the party (or party coalition) which actually provides the majority for or against the government is not itself officially called upon to fill the top political position.

On the other hand, this system permits qualified bureaucrats who nevertheless have no trace of statesman-like talent to maintain themselves in leading political positions until some intrigue forces them out in favor of similar personages. Thus, we have no less party patronage than any other country, but we have it in dishonestly veiled form and in a manner which always favors certain partisan views acceptable at court. However, this partiality is by far not the worst aspect of the matter. It would be politically tolerable if it afforded at least an opportunity for recruiting, from these court parties, leaders capable of guiding the nation. However, this is not the case. It would be possible only in a parliamentary system, or at least in one which makes the top positions available to parliamentary patronage. Here we encounter a purely formal obstacle embedded in the constitution.

7. *The Constitutional Weaknesses of the* Reichstag *and the Problem of Leadership*

Article 9 of the *Reich* constitution [of 1871] reads that "nobody can be simultaneously a member of the *Bundesrat* and of the *Reichstag*." Hence, whereas in parliamentary systems it is considered absolutely necessary that the leaders of the government are members of parliament, this is legally precluded in Germany. The Imperial chancellor, a minister representing his state in the *Bundesrat*, or an Imperial secretary of state, can be a member of a state parliament—for example, of the Prussian diet—and can there influence or even lead his party, but he cannot sit in the *Reichstag*. This stipulation was simply a mechanical imitation of the exclusion of the British peers from the House of Commons (and probably carried over from the Prussian constitution). Hence, it was an act of thoughtlessness; it must now be removed. This will not in itself be tantamount to the introduction of the parliamentary system or of parliamentary patronage, but it will create the opportunity for a politically competent deputy to hold at the same time a major position in the Imperial government. It is hard to see why a deputy who proves suitable for a top position should be forced to abandon his political base before he can assume his post.

If Bennigsen had entered the government at the time [1877/78] and had left the *Reichstag*, Bismarck would have turned an important political leader into an administrative official without parliamentary support, and the [National Liberal] party would have been taken over by its left wing or it would have disintegrated—and this perhaps was Bismarck's intent. Today the [National Liberal] deputy Schiffer has lost his influence in the party by joining the government and thus has surrendered it to its big business wing.[19] In this manner, the parties are "beheaded," but instead of effective politicians the government gets officials without professional training in a bureaucratic career and without a parliamentarian's influence. This results in the cheapest conceivable form of "buying off" the parties. Parliament becomes a stepping-stone for the career of talented would-be secretaries of state: This typically bureaucratic idea is championed by political and legal literati who consider the problem of German parliamentarism thus solved in a specifically "German" manner! These same circles sneer at job hunting, which appears to them as an exclusively "Western European" and "democratic" phenomenon. They will never understand that parliamentary leaders seek office not for the sake of salary and rank, but of *power* and the attending *responsibility*, and that these leaders can succeed only if they have a parliamentary following; these circles will also never comprehend that there is a difference between making parliament a recruiting ground for leaders or for bureaucratic careerists. For decades the same groups have ridiculed the German parliaments and their parties for seeing in the government something of a natural enemy. But they are not in the least disturbed by the fact that because of the limitation—directed exclusively against the *Reichstag*—of Article 9, *Bundesrat* and *Reichstag* are treated by the law as hostile powers which can relate to one another only through declarations from the latter's rostrum and the former's conference table. It should be left to the conscientious consideration of a statesman, of the government empowering him, *and* of his voters, whether he can combine with his office a parliamentary mandate, party leadership or, at any rate, participation in a party, and whether the instructions according to which he votes in the *Bundesrat* are compatible with his own convictions for which he stands in the *Reichstag*.[20] The man who is responsible for instructing the "presiding" [i.e., the Prussian] vote in the *Bundesrat*—the Imperial chancellor and Prussian foreign minister—should be free to exert his influence as a party member in the *Reichstag*, in addition to presiding over the *Bundesrat* under the supervision of the representatives of the other states. Nowadays, of course, it is considered "noble" if a statesman stays aloof from the parties. Count Posadowsky even believed that he owed it to

his *earlier* office [secretary of the interior from 1897 until 1907] to remain unaffiliated with any party, that means, to misuse the *Reichstag* in the role of an ineffective academic rhetorician. Why ineffective? Because of the way in which parliament conducts its business.

The speeches of the deputies are today no longer personal professions, still less attempts to win over opponents. They are official statements addressed to the country ("through the window"). After representatives of all parties have spoken once or twice in turn, the *Reichstag* debate is closed. The speeches are submitted beforehand to a party caucus, or at least agreed upon in all essentials. The caucus also determines who will speak for the party. The parties have experts for every issue, just like the bureaucracy. It is true that besides their worker-bees they have drones who are useful for rhetorical fireworks, if used cautiously. By and large, however, those who do the work also have the influence. Their work is done behind the scenes, in the meetings of the committees and the caucuses and especially in the private offices of the most active deputies. For instance, Eugen Richter's position was impregnable, even though he was very unpopular in his own [Progressive] party, because of his great working capacity and his unexcelled knowledge of the budget. He may have been the last deputy who could check up on the war minister's use of every penny, down to the last canteen. Despite their annoyance, officials of the War Department have several times expressed their admiration to me about Richter's grasp of these matters. Presently Matthias Erzberger's position in the Center party rests on his tremendous, bee-like industry, without which the influence of this politician, whose political talent is quite limited, would scarcely be understandable.[21]

However, industry qualifies a man neither for leadership in government nor in a party—two things which are by no means as different as our romantic literati believe. To my knowledge, all German parties had in the past men with the talent of political leadership: von Bennigsen, von Miquel, von Stauffenberg, Völk and others among the National Liberals, von Mallinckrodt and Windhorst in the Center party, von Bethusy-Huc, von Minnigerode, von Manteuffel among the Conservatives, von Saucken-Tarputschen among the Progressives, and von Vollmar among the Social Democrats. They all passed away or left parliament, like Bennigsen in the eighteen-eighties, because they could not enter the government as party leaders. If deputies do become ministers, like von Miquel and Möller, they must abandon their earlier political commitments in order to fit into the purely bureaucratic ministries. (At the time Möller said that he was in the *unpleasant* position of having made his private views known in his earlier speeches as a deputy!)

However, there are a great many *born leaders* left in Germany. But where are they? The answer is now easy. As an illustration, I refer to a man whose political views and attitudes toward social reform are radically opposed to mine: Does anybody believe that the present director of Krupp, formerly a civil servant and active in East-German colonization politics, was destined to manage Germany's largest industrial enterprise rather than to run a key ministry or a powerful parliamentary party?[22] Why then does he do the one and would presumably, under the present conditions, refuse the other? To make more money? I assume instead another very simple reason: Namely, that in face of the powerlessness of parliament and the resulting bureaucratic character of the ministerial positions a man with a strong power drive and the qualities that go with it would have to be a fool to venture into this miserable web of mutual resentment and on this slippery floor of court intrigue, as long as his talents and energies can apply themselves in fields such as the giant industrial enterprises, cartels, banks and wholesale firms. People of his type prefer to finance All-German newspapers and to open them to the scribbles of the literati. Stripped of all phraseology, our so-called monarchic government amounts to nothing but this process of *negative selection* which diverts all major talents to the service of capitalist interests. For only in the realm of private capitalism is there today anything approaching a selection of men with leadership talents. Why? Because *Gemütlichkeit*—in this case: the rhetoric of the literati---comes to an end as soon as economic interests involving millions and billions of Marks and tens and hundreds of thousands of workers are affected.[23] And why is there no such selection in government? Because one of the worst legacies of Bismarck's rule has been the fact that he considered it necessary to seek cover for his caesarist regime behind the *legitimacy* of the monarch. His successors, who were no Caesars but sober bureaucrats, imitated him faithfully. The politically uneducated nation took Bismarck's rhetoric at its face value, and the literati provided the usual applause. This stands to reason because they examine the future officials and consider themselves officials and fathers of officials. Their resentment is directed against everybody who seeks and gains power without legitimizing himself through a diploma. Since Bismarck had dishabituated it from worrying about public affairs, and foreign policy in particular, the nation permitted itself to be talked into accepting something as "monarchic government" which in truth amounted to the unchecked rule of the bureaucracy. Under such a system qualities of political leadership have never been born and brought to fruition anywhere in the world. Our civil service does indeed include men with leadership qualities; we certainly would not want to deny this here.

However, the conventions and internal peculiarities of the bureaucratic hierarchy severely impede the career opportunities precisely of such talents, and the whole nature of modern officialdom is most unfavorable to the development of *political* autonomy (which must be distinguished from the inner freedom of the private individual). The essence of politics—as we will have to emphasize time and again—is *struggle*, the recruitment of *allies* and of a *voluntary* following; to get training in this difficult art is impossible under the career system of the *Obrigkeitsstaat*. It is well-known that Bismarck's school was the Frankfurt Federal Diet.[34] In the army, training is directed toward combat, and this can produce military leaders. However, for the modern politician the proper palaestra is the parliament and the party contests before the general public; neither competition for bureaucratic advancement nor anything else will provide an adequate substitute. Of course, this is true only of a parliament and a party whose leader can take over the government.

Why in the world should men with leadership qualities be attracted by a party which at best can change a few budget items in accordance with the voters' interests and provide a few minor benefices to the protégés of its higshots? What opportunities can it offer to potential leaders? The tendency towards merely negative politics of our parliament is reflected today in the most minute details of the agenda and conventions of the *Reichstag* and the parties. I know of quite a few cases in which young political talents were simply suppressed by the old guard of deserving local notables and party bigwheels. This happens in every guild, and it is quite natural in a powerless parliament restricted to negative politics, since in an institution of this kind the guild instincts will predominate. A party oriented toward sharing governmental power and responsibility could never afford this; every member would know that the survival of the party and of all the interests which bind him to it depends upon its subordination to qualified leaders. Nowhere in the world, not even in England, can the parliamentary body as such govern and determine policies. The broad mass of deputies functions only as a following for the leader or the few leaders who form the government, and it blindly follows them *as long as* they are successful. *This is the way it should be.* Political action is always determined by the "principle of small numbers," that means, the superior political maneuverability of small leading groups. In mass states, this caesarist element is ineradicable.

However, this element alone guarantees that *responsibility* toward the public, which would evaporate within an assembly governing at large, rests upon clearly identifiable persons. This is especially true of a democracy proper. Officials elected directly by the people have proven

themselves in two situations: First, in the local cantons, in which the members of a stable population know one another personally and where elections can be determined by a person's reputation in the neighborhood community. The second case, which holds true only with considerable reservations, is the election to the highest political office in a mass state. It is rarely the most outstanding man, but usually at least a suitable political leader who obtains supreme power in this way. However, for the mass of officials in the middle ranks, especially those who need a specialized training, popular election as a rule fails completely, and for understandable reasons. In the United States the judges appointed by the President towered above those elected by the people in terms of capability and integrity. The man who appointed them was, after all, responsible for the official's qualification, and the ruling party suffered later if gross abuses occurred. In the United States, equal suffrage has resulted time and again in the election, as lord mayor, of a popular trustee who was largely free to create his own municipal administration. The English parliamentary system equally tends toward the development of such caesarist features. The prime minister gains an increasingly dominant position toward parliament, out of which he has come.

Just like every other human organization, the selection of political leaders through the parties has its weaknesses, but upon these the German literati have dilated *ad nauseam* during the last decades. Of course, the parliamentary system, too, expects of the individual that he subordinate himself to a man whom he can often accept only as the "smaller evil." But the *Obrigkeitsstaat* gives him no choice at all and imposes upon him bureaucrats instead of leaders, which certainly makes for a bit of a difference. Moreover, plutocracy flourishes in Germany as much as in other countries, if only in somewhat different forms. The literati depict the great capitalist powers in the darkest colors and, it should be noted, without any encumbering knowledge. There are some solid reasons behind the fact that these very powers, which know their own interests far better than those armchair theorists, range themselves unanimously on the side of the bureaucratic *Obrigkeitsstaat* and against democracy and parliamentarism; this is especially true of heavy industry, the most ruthless of these capitalist powers, but these reasons remain beyond the ken of the literary philistines. In their moralizing fashion, they score the fact that the party leaders are moved by the will to power and their following by selfish interest in office-holding—as if the bureaucratic aspirants were not equally career- and salary-minded, but rather inspired by the most selfless motives. The role of demagogy in the power struggle is demonstrated to everybody by the current (January

1918) newspaper campaign about who should be the German foreign minister, a campaign encouraged from certain official quarters.[25] This proves that an allegedly monarchic government facilitates the most pernicious misuse of the press in the pursuit of office and of interdepartmental rivalries. This state of affairs could not be aggravated in any parliamentary system with powerful parties.

The motives of party members are no more merely idealist than are the usual philistine interests of bureaucratic competitors in promotion and benefices. Here as there, personal interests are usually at stake (and this will not change in the vaunted state of corporate solidarity, which the literati envision). It is of crucial importance, however, that these universal human frailties at least do not prevent the selection of capable leaders. But in a party this is possible only if the leaders know that in case of victory they will have the powers and the responsibilities of government. Only then is this selection *possible*, but it is not assured even then. For only a *working*, not a merely speech-making parliament can provide the ground for the growth and selective ascent of genuine leaders, not merely demagogic talents. A working parliament, however, is one which supervises the administration by continuously sharing its work. Before the war this was not possible in Germany, but afterward it must be possible, or we will have the old *misère*. This is our next topic.

iii

The Right of Parliamentary Inquiry and the Recruitment of Political Leaders

The whole structure of the German parliament has been oriented toward *negative politics*: critique and complaint, the deliberation, modification and passing of governmental bills. All parliamentary conventions correspond to this condition. Because of the lack of public interest, we unfortunately do not have any political analyses of the actual operations of the *Reichstag*, as they exist for foreign parliaments; we only have solid legal studies of the rules of procedure. However, if you talk to a deputy about any desiderata of parliamentary organization, you are immediately confronted with numerous conventions which exist only

for the comforts, vanities, wants and prejudices of tired parliamentary dignitaries and impede any political effectiveness of parliament. In this way even the simple task of continuous parliamentary supervision over the bureaucracy is handicapped. Is this supervision superfluous?

Our officialdom has been brilliant wherever it had to prove its sense of duty, its impartiality and mastery of organizational problems in the face of official, clearly formulated tasks of a specialized nature. The present writer, who comes from a civil-service family, would be the last to let this tradition be sullied. But here we are concerned with political, not bureaucratic achievements, and the facts themselves provoke the recognition which nobody can truthfully deny: That bureaucracy failed *completely* whenever it was expected to deal with *political* problems. This is no accident; rather, it would be astonishing if capabilities inherently so alien to one another would emerge within the same political structure. As we have pointed out, it is not the civil servant's task to enter the political arena fighting for his own convictions, and in this sense to engage in the political struggle. On the contrary, his pride lies in maintaining impartiality, hence in disregarding his own inclinations and opinions, in order to adhere conscientiously and meaningfully to general rule as well as special directive, even and particularly if they do not correspond to his own political attitudes. But the heads of the bureaucracy must continuously solve political problems—problems of *Machtpolitik* as well as of *Kulturpolitik*. Parliament's first task is the supervision of these policy-makers. However, not only the tasks assigned to the top ranks of the bureaucracy but also every single technicality on the lower administrative levels may become politically important and its solution may depend on political criteria. Politicians must be the countervailing force against bureaucratic domination. This, however, is resisted by the power interests of the administrative policy-makers, who want to have maximum freedom from supervision and to establish a monopoly on cabinet posts.

1. *Effective Supervision and the Power Basis of Bureaucracy*

Effective supervision over the officialdom depends upon certain preconditions.

Apart from being rooted in the administrative division of labor, the power of all bureaucrats rests upon *knowledge* of two kinds: First, technical know-how in the widest sense of the word, acquired through

specialized training. Whether this kind of knowledge is also represented in parliament or whether deputies can privately consult specialists in a given case, is incidental and a private matter. There is no substitute for the systematic cross-examination (under oath) of experts before a parliamentary commission in the presence of the respective departmental officials. This alone guarantees public supervision and a thorough inquiry. Today, the *Reichstag* simply lacks the right to proceed in this fashion: the constitution *condemns it to amateurish ignorance.*

However, expertise alone does not explain the power of the bureaucracy. In addition, the bureaucrat has *official information,* which is only available through administrative channels and which provides him with the facts on which he can base his actions. Only he who can get access to these facts independently of the officials' good will can effectively supervise the administration. According to the circumstances, the appropriate means are the inspection of documents, on-the-spot inquiry and, in extreme cases, the official's cross-examination under oath before a parliamentary commission. This right, too, is withheld from the *Reichstag,* which has deliberately been made incapable of gaining the necessary information. Hence, in addition to dilettantism, the *Reichstag* has been sentenced to *ignorance*—plainly not for technical reasons, but exclusively because the bureaucracy's supreme power instrument is the transformation of official information into classified material by means of the notorious concept of the "service secret." In the last analysis, this is merely a means of protecting the administration against supervision. While lower ranks of the bureaucratic hierarchy are supervised and criticized by the higher echelons, all controls, whether technical or political, over these policy-making echelons have failed completely. The manner in which administrative chiefs answer questions and critiques in the *Reichstag* is often disgraceful for a self-confident people; it has been possible only because parliament cannot avail itself, through the "right of investigation" (*Enqueterecht*), of the facts and technical viewpoints, knowledge of which alone would permit steady co-operation with and influence upon the administration. This must be changed first. Of course, the *Reichstag* committees are not supposed to immerse themselves in comprehensive studies and to publish fat volumes—this will not happen anyway because the *Reichstag* is too busy with other things. The parliamentary right of inquiry should be an auxiliary means and, for the rest, a whip, the mere existence of which will force the administrative chiefs to account for their actions in such a way as to make its use unnecessary. The best accomplishments of the British parliament have been due to the judicious use of this right. The integrity of British officialdom and the public's high level of political

sophistication are largely founded on it; it has often been emphasized that the best indicator for political maturity lies in the manner in which the committee proceedings are followed by the British press and its readers. This maturity is reflected not in votes of no-confidence, indictments of ministers and similar spectacles of French-Italian *unorganized* parliamentarism, but in the fact that the nation keeps itself informed about the conduct of its affairs by the bureaucracy, and continuously supervises it. Only the committees of a powerful parliament can be the vehicle for exercising this wholesome pedagogic influence. Ultimately, the bureaucracy can only gain by such a development. The public's relationship to the bureaucracy has rarely shown such want of comprehension as in Germany, at least in comparison with countries that have parliamentary traditions. This is not astonishing. In our country, the problems with which the officials must deal are nowhere visible. Their achievements can never be understood and appreciated and the sterile complaints about "Saint Bureaucratius"—instead of positive critique—cannot be overcome so long as the present condition of uncontrolled bureaucratic domination persists. Moreover, the power of officialdom would not be weakened wherever it has its proper place. In departmental affairs, the permanent under-secretary (*Geheimrat*) who has specialized in a given field has the edge over his minister, even the minister who has been a career official; this is true for England just as for Germany. That is quite appropriate, for nowadays specialized training is an indispensable precondition for the knowledge of the technical means necessary to the achievement of political goals. But policy-making is not a technical affair, and hence not the business of the professional civil servant.

2. *Parliament as a Proving-Ground for Political Leaders*

The continuous supervision which would be introduced by the seemingly unspectacular right of parliamentary inquiry is the basic precondition for all further reforms aiming at an increase of parliament's share in government. This change is also the indispensable presupposition for turning parliament into a recruiting ground of political leaders. German literary fashion likes to discredit parliaments as arenas for "mere speech-making." Similarly, though with far more wit, Carlyle had thundered against the British parliament three generations ago, and yet it became the decisive agent of British world power. Today political (and military) leaders no longer wield the sword but resort to quite prosaic sound waves and ink drops: written and spoken *words*. What

matters is that intelligence and knowledge, strong will and sober experience determine these words, whether they be commands or campaign speeches, diplomatic notes or official statements in parliament. However, ignorant demagogy or routinized impotence—or both—prevail in a parliament which can only criticize without getting access to the facts and whose leaders are never put into a situation in which they must prove their mettle. It is part of that sorry story of political immaturity, which a wholly unpolitical era produced in our country, that the German philistine looks at political institutions such as the British parliament with eyes blinded by his own environment; he believes that he can smugly look down at them from the heights of his own political impotence and he fails to consider that the British parliament became, after all, the proving ground for those political leaders who managed to bring a quarter of mankind under the rule of a minute but politically prudent minority. The main point is that to a significant degree this subordination has been voluntary. Where are the comparable achievements of the much-praised German *Obrigkeitsstaat*? The political preparation for such achievements is, of course, not acquired by making ostentatious and decorative speeches before parliament, but only through steady and strenuous work in a parliamentary career. None of the outstanding English leaders rose to pre-eminence without experience in the committees and, often, in various government agencies. Only such intensive training, through which the politician must pass in the committees of a powerful *working* parliament, turns such an assembly into a recruiting ground not for mere demagogues but for positively participating politicians. Until today the British parliament has been unparalleled in this respect (as nobody can honestly deny). Only such co-operation between civil servants and politicians can guarantee the continuous supervision of the administration and, with it, the political education of leaders and led. Publicity of administration, enforced by effective parliamentary oversight, must be demanded as a precondition for any fruitful parliamentary work and political education. We, too, have begun to embark on this road.

3. *The Importance of Parliamentary Committees in War and Peace*

The wartime exigencies, which have done away with quite a few conservative slogans, have brought into being the Main Committee (*Hauptausschuss*) of the *Reichstag*,[26] its operations still leave much to be desired, but it is at least a step toward an effective parliament. Its insufficiency from a political viewpoint has been due to the pernicious

and unorganized *form* in which publicity was given to very sensitive problems; the discussions occurred among too large a circle of deputies, and for that reason they were bound to be emotional. It was simply dangerous mischief that hundreds of persons knew about confidential military and diplomatic matters (witness the issue of submarine warfare); as a result, such information was handed on privately or found its way into the press, inaccurately or in the form of sensational allusion. Current deliberations of foreign and military policy belong before a small circle of trusted representatives of the parties. Since politics is always made by a small number of persons, the parties, too, must be organized for the vital political issues not in the manner of guilds, but in that of a following. Their spokesmen must be "leaders," that means, they must have unlimited authority for making important decisions (or they must be able to get this authority within a few hours from committees that can be called together at any time). For its designated single purpose, the Committee of Seven of the *Reichstag* was a step that seemingly led in this direction.[27] The vanity of the administrative chiefs was taken into account by calling this body "provisional" and by attempting not to treat the parliamentarians as representatives of their parties—an attempt that would have destroyed the Committee's political significance and fortunately failed. There were good technical reasons for bringing these seven party representatives together with government representatives, but instead of the seven plenipotentiaries of the *Bundesrat* it would have been better to draw upon just three or four delegates of the larger non-Prussian states and, for the rest, to call in the four or five top military men or their deputies. At any rate, only a small group of men who are obliged to be discreet can prepare political decisions in very tense political situations. Under the wartime conditions it was perhaps appropriate to establish such a mixed committee uniting the representatives of the government with those of *all* major parties. In peacetime, an arrangement that would draw in party representatives on a similar basis might be equally useful for the deliberation of sensitive political issues, especially in foreign politics. For the rest, however, this system has a limited utility; it is neither a substitute for genuine parliamentary reform nor a means for the creation of coordinated governmental policies. If these policies are to be supported by several parties, consensus could be established in discretionary meetings between the government leaders and representatives of the parliamentary *majority*. A committee in which Independent Socialists and Conservatives sit together cannot possibly fulfill this function of formulating a political will. Any expectations along these lines would be politically unrealistic, since such structures cannot facilitate the pursuit of consistent policies.

By contrast, for the peacetime supervision of the bureaucracy specialized mixed committees, following upon the *Hauptausschuss*, might well prove suitable, provided the public is kept informed and effective procedures are designed that can preserve uniformity in the face of the specialized subject matter dealt with in the various subcommittees which would draw upon representatives from the *Bundesrat* and the ministries. The possible political effectiveness of such an arrangement will, of course, depend completely upon the future role of the *Reichstag* and the structure of its parties. If things remain as they are, if the mechanical obstacle of Article 9 of the constitution is retained and parliament continues to be limited to "negative politics"—and the bureaucracy obviously aims at this perpetuation—, then the parties will probably impose petty mandates on their representatives in the committees; they will certainly not grant them policy-making powers; moreover, each will go its own way pursuing petty emoluments for its protégés. The whole arrangement would then become a useless and time-consuming annoyance to the administration, not a means of political training and of fruitful co-operation. The positive result would in that case at best be something similar to the proportional patronage practiced in some Swiss Cantons: the individual parties peacefully divide their influence over the administration, and this lessens conflict among them. (However, it is very doubtful whether even this relatively negative result can be obtained in a mass state that is confronted with major political tasks. To my knowledge, the Swiss have divergent opinions about the positive effects of this practice, and these must of course be evaluated very differently in a large state.) Uncertain as these idyllic perspectives are, he who values most the elimination of party conflict will be pleased about them, and the bureaucracy will expect from such a practice the perpetuation of its power by continuing the system of petty payoffs. If, in addition, bureaucratic positions were to be divided proportionally among the various parties acceptable at court, it would be even easier to produce "happy faces all around." However, such a peaceful redistribution of benefices in the Prussian interior administration is most unlikely, given the monopoly of the Conservative party on the posts of *Landräte*, *Regierungs-* and *Oberpräsidenten*. Moreover, in purely political terms, not much more would come out of it than benefices for party bureaucrats, rather than political power and responsibility for party leaders. This would certainly not be a suitable means for raising the political level of parliament. It would be a completely open question whether in this manner the public supervision of the administration and the requisite public maturity could be increased.

At any rate, even the simplest administrative matters cannot be

adequately discussed in such a bureaucratized committee unless its right to procure the necessary technical and administrative information at any time is fully guaranteed. The bureaucracy's status interests, or more bluntly, its vanities and its desire to perpetuate the absence of controls, are the sole obstacles in the path of this demand—which, moreover, does not even imply the introduction of parliamentary government, but merely one of its technical preconditions.

The only substantively relevant objection which constitutional experts usually raise against the right of inquiry is that the *Reichstag* is completely autonomous with regard to its agenda, and hence the given majority might one-sidedly refuse an investigation or influence it in such a fashion as to make unwelcome findings impossible. Without any doubt, this discretion (Article 27 of the *Reich* constitution), which was adopted uncritically from English theory, is not suitable here. The right of inquiry must be guaranteed by new legislation; in particular, it must be established unconditionally as a *minority* right—let us say, in the form that one hundred deputies must be able to demand an inquiry, and such a minority must of course also have the right to be represented in committees, to ask questions and to write dissenting opinions. To begin with, this is necessary in order to provide the countervailing power of publicity against any abusive parliamentary majority and its well-known dangers, a counterweight that does not exist in other states and up to now has been effective in England only by virtue of the mutual party courtesy. However, other guarantees will also be required. As long as the industries compete with one another, especially those of different countries, it will be imperative to protect their technological secrets against tendentious publicity. The same protection must be extended to military technology, and also to pending questions of foreign policy, which prior to their ultimate decision should be discussed only before a small group. It is an error of some, particularly of Russian, literati that foreign affairs—such as the conclusion of a peace between warring nations—can be successfully conducted by outdoing one another in the public pronouncement of general "principles," instead of resorting to sober deliberations of the best possible compromise between the inevitably antagonistic national interests that lurk behind these alleged "principles."[28] At this very moment the facts make a mockery out of this notion. Certainly the means by which the faults of *our* past must be remedied are very different from these amateurish ideas of political literati. The opinion widely held in democratic circles that *public* diplomacy is a panacea—and always works for peace—is in this very generalized form a misconception. It has a certain appropriateness for final and thoroughly considered positions, but not—as long as there are competing states—for the process of deliberation; the same holds

true, of course, for competing industries. In direct contrast to the utility of public scrutiny in the realm of public administration, at the stage of foreign policy deliberations such publicity can most severely disturb the rationality and soberness of decision-making and hence even endanger or prevent peace. The events of the present war have demonstrated this very clearly. However, we shall discuss foreign politics in a separate section [cf. sec. *iv*, below].

4. *Domestic Crises and the Lack of Parliamentary Leadership*

At this point we would merely like to add some observations on the manner in which nowadays the lack of parliamentary leadership shows up in domestic crises. The events of Erzberger's [peace] move in July [1917] and of the two subsequent crises were instructive on this score.[29] All three occasions have clearly shown the consequences of a situation in which 1) government and parliament confront one another as divided organs, the latter being a "mere" representation of the ruled and therefore oriented toward "negative politics," 2) the parties are guild-like bodies since political leaders cannot find their vocation in parliament and hence no place in the parties, 3) the executive is in the hands of bureaucrats who are neither party leaders nor continuously in touch with them, but instead stand "above" the parties—to use the conventional status-conscious phraseology—and hence cannot lead them. When a strong parliamentary majority insisted on a positive decision by the government, the system failed at once. The puzzled government had to let the reins drag because it had no foothold in the party organizations. The *Reichstag* presented a spectacle of complete anarchy because the (so-called) party leaders had never held executive positions and were also at the time not considered future heads of government. The parties were confronted with a completely novel task to which neither their organization nor their personnel could measure up—the formation of a government. Of course, they were totally unable to succeed on this score, nor did they really try, for none of them, from the extreme right to the extreme left, had a man who was a recognized leader; the same held for the bureaucracy.

For forty years all parties have operated on the assumption that the *Reichstag* merely has the function of "negative politics." The "will to impotency," to which Bismarck had condemned them, was shockingly obvious [in July 1917]. They did not even participate in the selection of the new leadership; the vanity of the bureaucracy would not even tolerate that much at this critical moment, although the most simple pru-

dence would have prescribed it. Instead of putting to the parties the captious question whom they would like to propose as candidates or, more practically, how they looked upon the various possible candidates, the bureaucracy did not budge from its prestige-ridden view that the formation of the government did not concern the *Reichstag*. Forces outside of parliament [in particular, General Ludendorff] intervened and set up the new government, which in turn did not submit to the *Reichstag* a definite proposal with a categorical demand for a clear Yes or No answer. As everyone remembers, the new chancellor [Dr. Georg Michaelis] was forced into making several contradictory statements about the most important point [the Peace Resolution of the majority parties] and had to accept supervision by the Committee of Seven on a point of foreign affairs [the German response to the Papal peace note of August 1917] simply because he did not have parliament's *confidence*. It goes without saying that this unpleasant spectacle, which was bound to impair Germany's prestige, reinforced the literati's comforting conviction that parliamentarism was "impossible" in Germany; they kept talking of parliament's "failure." Actually, something very different failed: the bureaucracy's attempt at manipulating parliament, the very system that for decades had been at work, with the applause of the literati, to prevent parliament from making any positive political contributions, all in the interest of bureaucratic independence. The situation would have been completely different in any other mode of government in which responsibility rested squarely, or at least significantly, upon the shoulders of the party leaders; this would have offered an opportunity for political talents to help shape the country's fortunes from inside parliament. Then the parties could not have permitted themselves such a petty-bourgeois and guild-like organization as the one now prevailing in the *Reichstag*. They would have been compelled to subordinate themselves to leaders instead of to diligent civil-service types, such as prevailed especially in the Center Party, who would lose their nerve at the crucial moment. In such a crisis the leaders would have been obliged to form a coalition, which would have proposed to the monarch a constructive program and the men capable of carrying it out. However, under the given circumstances nothing but purely negative politics were possible.

[Michaelis,] the new chancellor selected from outside parliament [in July 1917], was confronted with a chaotic situation that soon resulted in the old condition. True enough, a number of very capable parliamentarians moved into high government office, but because of Article 9 of the Constitution they lost influence in their own parties, which thus were beheaded and became disoriented.[30] The same happened in the crises of August and October [1917]. Again the government failed completely because the men in charge clung tenaciously to the view that

they should not maintain continuous contact with the party leaders and not even hold preliminary talks with representatives of those parties whose backing they desired or hoped for. The mere fact that the new chancellor appointed in November [1917, Count Hertling], got in touch with the majority parties before taking office, and the further fact that all purely political ministries were now taken over by experienced parliamentary deputies, made it possible at long last to run the machinery of domestic politics with reasonable ease, although Article 9, Sentence 2, continued to show its harmful effects.[81] The January [1918] crisis proved even to the most benighted mind that parliament is *not* the source of our domestic troubles; rather, they have two sources: (1) the abandonment of Bismarck's strict principle that the generals conduct the war according to *military* rationale but that the head of the government concludes peace according to *political* considerations (of which strategic desiderata are only one factor); (2) even more importantly, the fact that some subaltern courtiers found it compatible with an allegedly "monarchic" government to leak policy deliberations to the press to benefit certain political parties.[82]

Our conditions can teach everyone that rule by career officials is not tantamount to the absence of party rule. A *Landrat* must be a Conservative in Prussia, and since 1878—when the eleven most fruitful years of German parliamentary work ended—our pseudo-parliamentarism has rested on the partisan axiom that every government and its representatives must be "conservative," with only a few concessions to the patronage of the Prussian bourgeoisie and of the Center party. This and nothing else is meant by the "impartiality" of the bureaucracy. This state of affairs has not been changed by the lesson which the war taught in all other countries: that all parties sharing in the government become "patriotic." The partisan interests of the conservative bureaucracy and of its allied interest groups dominate the government. We are now confronted with the inescapable consequences of this "cant," and we will continue to face them in peacetime. Not parliament alone but the whole governmental system will have to pay for it.

5. *Parliamentary Professionalism and the Vested Interests*

The decisive question about the future of Germany's political order must be: How can parliament be made fit to govern? Every other way of putting the question is simply wrong, and everything else is secondary.

It must be clearly understood that parliamentary reform depends not merely on these seemingly trivial yet practically important extensions

of parliamentary jurisdiction and on the removal of the mechanical obstacle presented by Article 9, as well as on certain significant changes in the procedures and the present conventions of the *Reichstag;* it depends above all on the development of a suitable corps of professional parliamentarians.

The professional parliamentary deputy is a man for whom the *Reichstag* mandate is not a part-time job but his major vocation; for this reason he needs an efficient office with the requisite personnel and access to information. We may love or hate this figure—he is technically indispensable, and therefore we have him already. However, even the most influential pros are [in Germany] a rather subaltern species, operating behind the scenes, because of the subordinate position of parliament and the limited career opportunities. The professional politician may live merely *from* politics and its hustle and bustle, or he may live *for* politics. Only in the latter case can he become a politician of great calibre. Of course, he will succeed the more easily, the more he is financially independent and hence available—not an entrepreneur but a *rentier*. Among those dependent upon a job only the lawyers can easily take leave and are suited to be professional politicians. An exclusive dominance of lawyers would certainly be undesirable, but it is a foolish tendency of our literati to denigrate the uses of legal training for political leadership. In an age ruled by jurists the great lawyer is the only one who, in contrast to the legally trained civil servant, has been taught to fight for, and effectively represent, a given cause; we would wish that the public pronouncements of our government showed more of the lawyer's skill in the best sense of the word. However, only if parliament can offer opportunities for political leadership will any kind of independent person, not just gifted and capable lawyers, want to live for politics. Otherwise, only salaried party functionaries and representatives of interest groups will want to do so.

The resentment of the typical party functionary against genuine political leaders strongly affects the attitude of some parties toward the introduction of parliamentary government and hence the recruitment of leaders in parliament. This tendency is, of course, very compatible with the like-minded interests of the civil service, for the professional deputy is a thorn in the side of the administrative chiefs, if only as an inconvenient supervisor and pretender to some share in the exercise of power. This is certainly aggravated when he emerges as a possible competitor for the top positions in government (a threat not posed by the representatives of special interests). In this manner we can also explain the bureaucracy's struggle to preserve parliament's ignorance, since only skilled professional parliamentarians who have passed through the school

of intensive committee work can produce from their midst responsible leaders, rather than mere demagogues and dilettantes. Parliament must be completely reorganized in order to produce such leaders and to guarantee their effectiveness; in their own way, the British parliament and its parties have long been successful in this regard. It is true that the British conventions cannot simply be taken over, but the basic structure can very well be adapted. We are not concerned here with the details of the changes required in the *Reichstag* procedures and conventions; they will become apparent as soon as the parties are forced to pursue responsible politics. However, we should turn to one more serious impediment to parliamentary government which is rooted in the German party system, a difficulty which has been discussed often, but usually in a distorted fashion.

There is no doubt that parliamentary government functions most smoothly in a two-party system such as existed in England until a short while ago (even though its disruption had been apparent for some time). However, such a system is not indispensable, and in all countries, including England, pressures for the formation of party coalitions are building up. More important is another difficulty: Parliamentary government is feasible only when the largest parties are *in principle* willing to take over the responsibilities of government. In Germany this was by no means the case. The biggest party, Social Democracy, was unwilling to enter any coalition under any conditions, since it believed in certain evolutionary theories and stuck to pseudo-revolutionary conventions inherited from the period of the anti-socialist legislation [1878–90]—for example, it refused to send members to ceremonial functions at Court. Even when it could have taken over the government in one of the smaller principalities by virtue of a temporary majority, it refused to do so. However, much more important than those theoretically inspired anxieties has been the real worry that it would be repudiated by its own class-conscious members if it joined a government inevitably limited by the conditions of a society and economy that would remain capitalist for the foreseeable future. This situation motivated the leaders to keep the party for decades in a kind of political ghetto, in order to avoid any kind of contaminating contact with the workings of a bourgeois state. Despite appearances, they do this even now. Syndicalism—the unpolitical and anti-political heroic ethos of brotherhood—is on the increase, and the leaders fear a rupture of class solidarity which would later damage labor's effectiveness in its economic struggles. Moreover, the leaders cannot rest assured that the bureaucracy's traditional attitudes will not come to the fore again after the war. Our future will depend to a large extent on the party's stand in the years ahead: whether its will to gain

governmental power will prevail or whether the unpolitical ethos of proletarian brotherhood and syndicalism, which surely will proliferate after the war, will gain the upper hand.

For somewhat different reasons, the second largest German party, the [Catholic] Center, has up to now been skeptical of parliamentarism. A certain elective affinity between its own authoritarian mentality and the *Obrigkeitsstaat* has worked in favor of the bureaucracy's interests. But another factor is more relevant. Since the Center party is a natural minority party, it is afraid that under a parliamentary regime it will also be a parliamentary minority and that its power position and ability to represent its present clientele would be endangered. Its power rests primarily on extra-parliamentary means: the clergy's control over the political attitudes of the believers. Within the *Reichstag* the system of negative politics provided the party with an opportunity to serve the material interests of its members. After the party had accomplished at least those clerical objectives that can be permanently maintained in Germany, it changed from an ideological party more and more into a vehicle of patronage for Catholic candidates for office and other Catholic interests which have felt themselves discriminated against ever since the era of the *Kulturkampf* [1871–80's]—whether this feeling is still justified is irrelevant here. Today its power rests largely on this function. Its control over the balance of power in the parliaments enabled the party to promote the private interests of its protégés. The bureaucracy could acquiesce and still save its face, because this patronage was "unofficial." However, the vested interests in the party are not only concerned lest parliamentarization and democratization diminish their opportunities in periods in which the Center would be part of the minority, they also fear something else. Under the present system the Center has been able to avoid that *responsibility* which would have fallen upon it if its leader had sat in the government, and this responsibility would not always have been convenient. Even if today the Center party commands a number of political talents, among the officials promoted by it are such incompetent ones as no responsible governing party would be likely to appoint. Such men can advance *only* if their sponsors cannot be held responsible for them. If the party were part of the government, it would have to recruit more capable candidates.

Unofficial patronage, then, is the worst form of parliamentary patronage—one that favors mediocrity, since nobody can be held responsible. It is a consequence of our *rule by conservative civil servants*, a rule whose perpetuation rests on this system of handouts (*Trinkgeldersystem*). It is no wonder that the Conservative party and the big business wing of the National Liberal party feel quite comfortable under these condi-

tions. For, after all, patronage under this system is not in the hands of politicians and parties, which might be held responsible by the public, but works through private channels ranging from the very important fraternity connections to the cruder or finer forms of capitalist "recommendations." Big business, which the foolish ignorance of our ideologists suspects of being allied with horrid parliamentarism, knows full well why it supports as one man the retention of an unsupervised bureaucracy.

This is the state of affairs which is heatedly and bitterly defended with literary slogans about the "corrupt" and "un-German" character of open party patronage. In truth, it is not the "German spirit," but powerful material interests in benefices, joined to the capitalist exploitations of "connections," which are pitted against handing patronage over to parliament. There can be no doubt that only the presence of absolutely compelling political circumstances will change anything at all in this respect. Parliamentary government will not arrive on its own. Nothing is more certain than that the most powerful groups work against it. True enough, all the parties mentioned have ideologists and sober politicians in addition to those subaltern office-seekers and routinized parliamentarians, but the latter have the upper hand. If the system of petty patronage were to be extended to other parties, the general trend would merely be reinforced.

Lastly, the beneficiaries of the status quo, and those naive literati who unsuspectingly mouth their phraseology, like to point triumphantly to the *federal* character of the German constitution in order to demonstrate conclusively the impossibility of parliamentary government on purely formal grounds. Let us first turn to the *legal* aspect of this problem, within the confines of our written constitution: from this we can see how incredible such an assertion really is. According to Article 18 of the Constitution, the emperor appoints and dismisses the chancellor and all imperial officials *on his own*, without interference from the *Bundesrat* [the Federal Council, a representation of the governments of the individual states]; only to him do they owe obedience, within the limits of the Federal laws. As long as this is the case, any constitutional objection on "Federal" grounds is baseless. Under the Constitution nobody can prevent the emperor from handing the *Reich* government over to the leader or the leaders of the parliamentary majority and from sending them into the *Bundesrat*; or from dismissing them if a clear *Reichstag* majority votes against them; or merely from consulting the parties in the formation of the government. No majority in the *Bundesrat* is entitled to topple the chancellor or merely to insist on his giving an account of his policies, as the undisputed interpretation of Article 17, Paragraph 2 requires him to do before the *Reichstag*. Recently it has

been proposed that the chancellor be made accountable not only to the *Reichstag* but also to the *Bundesrat;* this proposal deserves to be examined for its political feasibility (and to be discussed later on), but it would be a constitutional innovation no less than the elimination of Article 9, Paragraph 2, which we have proposed above. We must deal later with the fact that the real problems of parliamentary government, and of the Empire's constitution in general, are rooted not so much in the constitutional rights of the other members of the federation as in the relationship of those states to the hegemonial Prussian state. However, before we do this, we should examine the manner in which the present system has functioned in the field of foreign policy. It is here that government by bureaucrats reveals the inherent limits of its effectiveness as well as the terrible price we had to pay for tolerating it.

iv

Bureaucracy and Foreign Policy

1. *The Government's Failure to Curb Harmful Monarchic Pronouncements*

In Germany the *interior* administration is dominated by a specifically bureaucratic concept of administrative secrecy, the "service secret" (*Dienstgeheimnis*). It is astonishing to note the difference in the realm of *foreign* policy: there some of the most diverse steps were taken with dramatic publicity—and a publicity, at that, of a very peculiar sort.

For more than a decade, from the Krüger telegram to the Morocco crisis,[22] we had to live with the fact that purely private statements by the monarch on foreign policy matters were made public by sedulous court officials or news services, either with the toleration or even with the participation of the government. We are dealing here with events which have been of the utmost importance in shaping our global policies, and especially in consolidating the global coalition against us. Let us be clear that we are concerned here not with the question of whether the monarch's statements were correct and justified, but solely with the behavior of the officials. This writer, who certainly is convinced of the utility of monarchic institutions in large states, would refrain from any underhanded polemics against the monarch as much as from the pseudo-

monarchic adulation or the sentimental subaltern phraseology of the vested interests and the philistines. However, a monarch who makes personal but public statements of a sometimes extremely aggressive nature must be prepared to put up with an equally aggressive public critique. For we must face the fact that this method of conducting our policies through the *publication* of monarchic pronouncements was tolerated time and again. If this method was a grave political error (as we believe it was), then the toleration of the several repetitions of this procedure proves, insofar as the monarch was personally responsible for it, the necessity of his being forced to accept advice *only* from the political leadership, and of excluding all other groups—courtiers, military or whatever—from meddling in politically important matters. However, if concrete guarantees for such a procedure are not forthcoming, an utterly frank critique of the monarch himself would become a political duty. Certainly, such a public critique of the monarch would be politically undesirable. It is age-old political wisdom, not an old-fashioned outlook, which seeks to protect the monarch from being dragged demagogically before the public, as has happened repeatedly in Germany, by providing ritual formalities and conditions for his public appearances and thus making it possible to keep him personally out of the public disputes of party politics. Precisely because of this he can intervene much more effectively in times of national crisis. It should be clear, then, that we do not discuss here possible blunders on the part of the monarch, but rather the very different fact that the government used his public appearances or the publication of his views as a diplomatic means—at least in one case despite his personal doubts,[34] and that the government leaders suffered the publication of the monarch's views by non-responsible agencies, over their heads, without resigning immediately. Of course, the monarch is free to take any political position that he cares to take. But it must be up to the politically responsible leaders to decide whether, or in what substantive or formal manner, his views should be *made public*, and to assess their presumable impact. Hence, the chancellor must be asked for his advice before any major political utterance by the monarch can reach the public, and his advice must be accepted as long as he is in office. He and his colleagues default on their duties if they remain in office after this rule has been breached even once. Behind all the talk that "the nation does not want a shadow king," and similar phrases, these men hide nothing but their desire to hang on to their offices, if they fail to resign. This has nothing to do directly with the issue of parliamentary government; it is simply a question of political integrity. On this score our government has failed time and again in the most miserable manner. These failings are due to our faulty political

structure, whic puts men with a bureaucratic mentality into positions of political leadership. The issue of parliamentary government becomes highly significant only because under the given conditions there is no other instrumentality for effecting and guaranteeing the necessary changes. In order to avoid any misconstruction of our position, we should add that in almost all cases the monarch's statements were not only subjectively understandable, but sometimes also politically warranted—insofar as one could judge matters at the time. Moreover, in some cases it would probably have been helpful to convey his strong personal reactions through *diplomatic* channels to the governments concerned. But what was politically irresponsible was the *publication* of such statements, and here responsibility fell upon the political leadership for tolerating or instigating it. In Germany it seems to have been forgotten that it makes a tremendous difference whether a *politician* (the prime minister or even the president of a republic) issues a statement, no matter how harsh it may be, or whether he makes public a personal statement by the *monarch* and then "assumes responsibility" for it by a dramatic but cheap gesture. A public utterance of the monarch cannot, in effect, be criticized freely in the country; hence, it actually covers the statesman who misuses it for this purpose against a straightforward critique of his *own* actions. Abroad, however, there are no such restraints, and critique centers on the monarch. A politician can and should resign if conditions change and new policies become necessary against which he has committed himself, but the monarch is supposed to stay, and this implies that his words will stay with him. Once he has publicly committed himself, he cannot take them back even if he tries to do so in a new situation. Passions and sentiments of honor are aroused, for now it is a national point of honor to support the monarch—and ignorant literati such as the Pan-Germans (and their publishers) do a flourishing business. At home and abroad, the monarch's words are taken as binding, and the political fronts become frozen. This has indeed been the pattern in all these cases. Let us take a cool look at a few of them in order to see how the political mistake was made.

First the Krüger telegram. The indignation over the Jameson raid was justified and shared all over the world, even in England. It is quite possible that insistent diplomatic representations in London (which might have referred to the monarch's strong reaction) could have elicited formal statements by the British cabinet which it could perhaps not easily have disregarded afterwards. In addition, a general agreement about the African interests of both sides might have become more likely; Cecil Rhodes, for one, was quite amenable to it,[35] and it was necessary if we wanted to have a free hand in the Orient and keep Italy in the

alliance. But the publication of the telegram had, of course, the effect of a slap in the face, which precluded any reasoned talks.[36] Now the issue became a matter of national honor, and rational political interests were pushed aside. Hence, when later—before, during and after the Boer War—attempts were made to come to an understanding about Africa or the overall relations between England and Germany, the public in both countries, whose sentiments of national honor had now been aroused, did not really welcome these attempts even though both sides could have achieved their material goals through diplomatic understandings. The result of these approaches was to make Germany appear as the dupe after the Boer War. After all, in 1895 we simply did not have sufficient military resources to back any protest effectively. Let us silently pass over the shameful end, the refusal to receive the exiled president: for the main point was that the Boers could not be helped in spite of the monarch's words. Hence General Botha could declare in the South African parliament in 1914 that it had been Germany's behavior which has led to the loss of the Boers' independence.

There was much astonishment in Germany when Japan declared war on her in August 1914 and China followed suit in August 1917. The former step is always explained with the well-known 1895 intervention in connection with Port Arthur,[37] the latter with American pressures, and in both cases opportunism is also charged. No matter how true this is, another important factor must be added. It was, after all, the German monarch who, in word and picture, had publicly warned of the "Yellow Peril" and had called for the "preservation of the most sacred goods" [of the European nations]: Does anyone among us really believe that educated Chinese and Japanese have forgotten that?[38] In international politics racial problems belong to the most difficult ones since they are complicated by the interest clashes between the white nations. One can only approve of the monarch's endeavor to form an opinion on this score. But what German interest could possibly be served by making his views public in the way it was done? Was this reconcilable with any German interest in the Far East? What power resources stood behind such pronouncements? Whose interests were they bound to serve in the end? Moreover, which political aims were served by publishing the Emperor's speeches at the time of Count Waldersee's mission, or his naval addresses, which perhaps might have been quite fitting in a circle of officers?[39] The result of the German China policies contrasted embarrassingly and, we must add, by no means accidentally with such rhetoric, and this proved highly damaging to our prestige. Again, we shall leave out a shameful episode, the treatment of the "expiatory mission" [of Prince Chun in 1901, to apologize for the assassination of

minister von Ketteler during the Boxer Rebellion] and the discussions, again in public, which surrounded it. It is simply impossible to imagine the concrete political ends that Chancellor Bülow might have wanted to further when he tolerated such political Romanticism, which needlessly offended the Chinese sense of honor. If he was clear-headed enough to perceive the political uselessness and harm of all these events and yet felt that he had to consider conditions requiring their toleration, he should have resigned in the monarch's interest no less than that of the nation.

Grave doubts have been expressed whether the publication of the Emperor's speech in Damascus [before Saladin's grave, on November 8, 1898] was helpful in our relations with Russia. Our sympathies for Islamic culture and our political interests in the territorial integrity of Turkey were well-known abroad and not in need of such noisy ostentation. However, quite apart from the political constellation prevailing at the time, it would have been better to avoid the impressions created by this public move. Here, too, it is easy to see whose designs were bound to benefit from it.

If in this instance positive doubts are still possible, matters are perfectly clear with regard to the public address which the Emperor made in Tangier at the beginning of the Morocco crisis. Even neutral parties approved of Germany's stand, but it was again a serious mistake to use the monarch for a public move. We do not yet know what offers France made after [her foreign minister] Delcassé fell, but so much was clear then: Either Germany would have to be serious about going to war for the sake of Moroccan independence or the affair would have to be settled promptly in a manner that took account of each side's interests and sense of honor, with France offering some compensations. This might have had far-reaching consequences for our relationship with France. Why was it not done? The monarch's word, it was said, had engaged the nation's honor in favour of the Sultan of Morocco, and therefore we could not now leave him "in the lurch." However, the government did not really intend to go to war. The upshot of it all was the debacle of Algeçiras, followed by the "Panther" episode and finally the abandonment of Morocco; at the same time, the endless tension kindled eagerness for war in France and thus facilitated the English policy of encirclement. This development was paralleled by the impression that Germany would always yield in spite of the Emperor's words. All of this happened without providing any political compensations for Germany.

The aims of German foreign policy, especially overseas, were exceedingly limited if compared to those of other nations, and its results

were outright meager. However, it produced tensions and sheer noise like that of no other country, and time and again these wholly useless and damaging sensations were created by publishing statements of the Emperor. This method proved detrimental to us not only in hostile or neutral countries. After the Algeçiras conference the Emperor felt the need to express his thanks to Count Goluchowski, and instead of using regular channels the well-known telegram was *published*. The addressee's downfall was prompt and embarrassing for us: It demonstrated too late that no government will permit its leading statesmen to be *publicly* given a "good grade" by another government—not even by that of a closeally.[40]

On the domestic scene, the same mistakes were made. Did the so-called "Penitentiary Speech," which William made in a moment of anger [in 1898], really belong before the public, where it appeared as a political program? What is one to think of the fact that the bureaucracy felt now obliged to dream up a corresponding paragraph for inclusion in the proposed anti-strike bill, merely because William had spoken of stiff prison sentences for strikers? Only the portentous events of 1914 and the present [Easter 1917] promise of equal suffrage [in Prussia] have been able to counteract the impact of this pointless publication upon self-respecting workers. Was it in the dynastic interest? Or what other politically acceptable aims could the publication have had?

However, we want to limit ourselves here to the realm of foreign policy and hence would like to ask the pertinent question: At all these occasions, where were those *Reichstag* parties which could have made the decisive difference for the government's policy, but which later preferred to reproach Chancellor von Bethmann Hollweg for the failures of a policy that turned "the whole world into our enemies," or which accused him of hiding behind the monarch? What did they do in all those cases? *They took advantage of the attacks by the extreme left in order to denounce its "anti-monarchic" attitude!* We must state emphatically that they raised *public* objections only when it was too late. Even then they did this only to the extent that their vested interests were not involved. We shall not go into any details about the highly publicized events of 1908 [the "Daily Telegraph" Affair]; however, we should remind ourselves that the Conservative party, in contrast to the indubitably impressive remonstrance of its leaders before the monarch, later openly abandoned Prince Bülow and, as usual, remembered its pseudo-monarchism when its own *material* interests were affected. By the way, the monarch himself may have been quite astonished to find this chancellor, who at least once advised him on a spectacular personal intervention against his own objections,[41] suddenly turn against him under

the pressure of an excited public opinion. And what, finally, did our literati do in all these incidents? ***Publicly they applauded*** or kept on jabbering about how Germans do not happen to like a monarchy of the English type—just as the right-wing press is still doing. Flattering the most dreary philistine instincts, they attributed the failures to the diplomats and did not bother to ask once how these could work under such conditions. We could also speak of their ***private*** talk—but that would be a long story, and one not very honorable for those agitators who inveigh so bravely against the majority for demanding a "starvation peace."[42]

In all these cases, the behavior of our government was irresponsible; it has no parallels in any other large state. A ***public*** confrontation was permissible only if the government had been willing to go all the way, and without delay. But we did not really intend to take up arms for the Boers or against the "Mongols" or for the Sultan of Morocco; moreover, in the two former cases we had no business, and not enough power, to think of armed intervention. Yet the leaders of the government permitted a situation to arise in which the monarch was made to engage himself publicly, and this vitiated any rational agreement with England about our South African interests, and with France about the North African interests. Our position appeared first to be a matter of honor, and then was abandoned nevertheless. The inescapable result was a series of diplomatic defeats that were acutely embarrassing to every German and brought lasting detriment to our interests. Here was the root of the very dangerous impression that Germany would always retreat after much blustering, and it appears that this belief was one of the factors determining English policy in late July 1914. The unnatural world coalition against us has been largely due to these incredible blunders, which still affect us. The present humbug abroad about German "autocracy" is just that: swindle—but it is by no means politically irrelevant that it can occur. Who enabled our enemies, who themselves believe in it as little as in other fairy tales about Germany, to promote this swindle successfully? Who brought the tremendous and politically so effective hatred of the whole world upon the head of exactly this monarch, whose attitude was several times notoriously decisive in preserving the peace even at moments when war might have been more opportune for us from the viewpoint of *Realpolitik*? Who has made it possible for the masses abroad to believe seriously that Germany desires to be "liberated" and that this suppressed yearning will eventually find an outlet if only the war can be sufficiently prolonged? Who made possible the unheard-of absurdity of the present situation? As long as repetition is possible, the nation must not forget that it was

the conservative bureaucracy which was responsible for this state of affairs: in decisive moments it put bureaucrats into the top positions of government which instead should have been manned by *politicians*—men experienced in weighing the effects of public statements, men with the politician's sense of responsibility, not the bureaucrat's sense of duty and subordination that is proper in its place but pernicious in political respects.

Here the abyss that separates the two can be seen most clearly. The civil servant must sacrifice his convictions to the demands of obedience; the politician must publicly reject the responsibility for political actions that run counter to his convictions and must sacrifice his office to them. But in Germany this has never happened. The worst aspect of the matter has not yet been discussed: It is reliably known that almost all of the men who were in charge of our policies in that disastrous decade have time and again privately repudiated grave declarations for which they accepted formal responsibility. If one asked with amazement why a statesman remained in office if he was powerless to prevent the publication of a questionable statement, the usual answer was that "somebody else would have been found" to authorize it. This may very well be true, but then it also indicates the decisive fault of the system. Would somebody else have also been found if the head of government would have had to take the responsibility as the trustee of a powerful parliament?

2. *Parliamentary and Legal Safeguards*

At this decisive point we can see the importance of a parliament to which the bureaucracy is truly answerable. There is simply no substitute for it. Or is there? This question must be answered by all who are still convinced that they have a right to rail against parliamentarism. At the very same point it becomes perfectly obvious that the civil servant's sense of responsibility and that of the politician are appropriate each in its sphere—and nowhere else. For we deal here not with incompetent and inexperienced civil servants and diplomats but in part with outstanding ones, yet they did not have political "guts," something that is quite different from private integrity. However, they did not lack it accidentally, but rather because the political structure of the state had no use for it. What is one to say about a state of affairs—unknown to any other major power—in which the monarch's personal cabinet, courtiers or news agencies publicize events that are of utmost importance for international politics, with the result of getting our foreign policy bogged down and messed up for decades; a state of affairs, moreover, in which

the head of government shrugs his shoulders about these incidents and tolerates them after making some spuriously noble gestures. All that in a state, for whose *domestic* administration the "service secret" is (in the power interests of the agency chiefs) the crown jewel of civil service duty! It is obvious that this apparent contradiction can be explained solely by the bureaucrats' interest in unsupervised office-holding. What is one to say of a system which leaves politicians in office who condone major mistakes against their better convictions? And finally, how is one to take the fact that, in spite of the obviousness of it all, there are still literati who do not hesitate to claim that a state which functions thus in the most important political respects has "brilliantly proven" itself? True enough, the performance of the officials and civil servants was brilliant in their own sphere. However, in the politician's realm the bureaucracy has not only failed for decades, but has also shifted onto the monarch the odium of its own politically disoriented behavior in order to hide behind him. In this manner it helped bring about a world-wide constellation against us, in the wake of which the monarch could have lost his crown and Germany her whole political future if it had not been for the magnificent performance of our army. In the interest of the nation and of the monarchy, every constitutional alternative that prevents such occurrences is better than this state of affairs. *Hence, the current state must come to an end whatever the cost may be.* It is beyond doubt (and can easily be proven) that there are no partisan differences of opinion about these gravely detrimental developments. However, the right-wing politicians either did not have enough political character or had too many personal interests to voice opinions *publicly* which they stated *privately* with extreme bluntness. For the same reasons, they were unwilling to draw any concrete conclusions. But without substantive guarantees no decisive change can occur. This has been demonstrated by the fact that the court circles responsible for these publications proved absolutely incorrigible. The introduction of such safeguards is politically much more important than all other political issues, including those of parliamentary and suffrage reform. For us, parliamentarization is primarily the indispensable *means* for establishing such concrete safeguards. For it cannot be doubted that *only* a strong parliament and the actual parliamentary accountability of the government can provide a guarantee against the recurrence of such events.

However, after letting things run their course for decades, it will take years before a really effective parliamentary leadership can be created. What can be done in the meantime, as long as this reform has not been carried through or come to fruition?

One thing stands to reason: Everywhere, and particularly in a democracy, the big decisions in foreign policy are made by a small

number of persons. At present, the United States and Russia are the best examples, and no literary phraseology can change the facts. Every attempt at doing so would weaken the burden of responsibility, while the point is precisely to increase it. Hence the imperial prerogatives of Article 11 of the constitution, which in actuality are exercisable under the chancellor's responsibility, will remain unchanged. However, legal blocks must immediately be erected against the dangerous mischief which unaccountable and unknown courtiers or journalists have been able to perpetrate by publishing personal statements of the monarch on foreign policy. A special law must threaten with severe penalties, including criminal ones in case of deliberate abuse, anyone who will bring monarchic opinions before the domestic or foreign public without clearing them in advance with the proper authorities. In line with his constitutional obligations, the chancellor must take *prior* responsibility for their publication. *This is what matters.* It is empty rhetoric when the chancellor later reacts to protests in parliament with the assurance that he was taking responsibility for the publication. Even if this is done, an utterance by the monarch cannot be frankly criticized without endangering his political prestige. Most of all, however, such an excuse is not only pointless but politically a lie if the chancellor was not consulted in advance and merely went along. If he was indeed not asked beforehand, his statement merely indicates that, in spite of this publication, he does not feel like being pensioned off and prefers instead to hang on to his office. In addition to punishing those guilty of leaking the monarch's utterances, it must be constitutionally possible to "indict" the chancellor for approving or tolerating such leaks; such an "indictment," which should preferably occur before a parliamentary committee, would have the purpose of dismissing him or of declaring him permanently unfit for political office. Such a legal provision will exert the necessary pressure on the chancellor to proceed with the greatest caution.

Every monarchic pronouncement should be approved by the chancellor only after extensive deliberation with experienced men. Therefore, it would be desirable if an advisory body could comment about the suitability of *publication* (for this is the only issue). If a parliamentary committee is not desired, another body might serve the same purpose.

Up to now the Committee for Foreign Affairs of the *Bundesrat*, which is composed of representatives from the non-Prussian kingdoms [Saxony, Württemberg and Bavaria], was a kind of bad constitutional joke, merely decorative, without formal powers and real influence. For the chancellor is not required to present to it an account of his policies; in fact, he is explicitly exempted from this duty by Article 11. He need not go beyond passively accepting an expression of opinion. He is being polite if he presents [to this body] a formal *exposé*, such as is custom-

arily submitted in parliament for the instruction of the public. This at least seems to have been the actual practice, even though in this more intimate circle policies could very well have been discussed on their merits. During the war the Committee seems to have slightly increased its importance, and this too would not be accidental. It could very well be assigned such an advisory function before the publication of a monarchic statement with important foreign policy implications. It would be even better if the Committee could be transformed into an Imperial Crown Council which, together with the responsible department chiefs and some elder statesmen, could discuss important foreign policy alternatives *prior* to the decision and, if possible, in the monarch's presence. In the absence of a collegiate body of this kind on the *Reich* level, the Prussian Crown Council now frequently exercises this function not only in Prussian matters, but also in politically important matters concerning the *Reich* as a whole (and hence also the non-Prussian member states). Formally this activity can be only advisory, since the constitutional responsibility of the chancellor can be abridged as little as the constitutional role of the emperor in representing the *Reich* to the outside. Of course, any such proposal is discredited from the beginning if—as the bureaucracy is unfortunately prone to do—attempts are made to use it for the exclusion or weakening of the influence of parliament. However, it might be useful to impose by statute an explicit duty on the chancellor's part to give a full explanation of his policies before the *Bundesrat*. A problem might be posed by the relationship between this advisory body and the special parliamentary committees, especially if deputies would also sit in the Committee. More on that later.

Irrespective of whether this proposal will be realized, *never again* must such situations as those described earlier be tolerated. Therefore we must state unambiguously that the highly insincere pseudo-monarchic legend with which these events were defended was a fabrication of the Conservative party on the basis of Bismarck's demagogy. Purely domestic party interests hid behind this legend, just as they do now behind the war-time *Fronde*. This interest-ridden legend served many purposes: to preserve official positions—from the *Landrat* to the minister—as Conservative benefices, to use the state bureaucracy as the electoral machine of the Conservative party, therefore to perpetuate the Prussian suffrage privileges [i.e., the three-class suffrage] and to discredit and weaken the *Reichstag*, which in spite of all is still the best of the German parliaments. When today, after the political consequences have become clear, demands are raised for strengthening parliament as an organ of administrative supervision and of recruiting capable leaders, we know in advance the slogan which the beneficiaries of uncontrolled bureaucracy hold ready: "The monarchy is in danger."

But the future of the monarchy will be in doubt if these self-interested sycophants continue to have the monarch's ear. It must be the dynasties' own affair to cope with the fright caused by the spectre of democracy —not ours.

V

Parliamentary Government and Democratization

1. *Equal Suffrage and Parliamentarism*

We are concerned here not with the issue of democratization in the social sphere, but only with that of democratic—that is, equal—suffrage in its relation to parliamentarism. We also will not discuss whether at the time [1871] it had been constitutionally advisable for the German *Reich* to introduce equal suffrage under Bismarck's heavy pressure. Rather, we take equal suffrage for granted, as a fact that cannot be undone without grave repercussions. We merely want to inquire into the relationship between parliamentarization and democratic suffrage.

Parliamentarization and democratization are not necessarily interdependent, but often opposed to one another. Recently the belief has often been encountered that they are even necessarily opposed. Genuine parliamentarism, it is argued, is possible only in a two-party system, and then only if the parties are dominated by aristocratic notables. In England the old parliamentarism was indeed, as befits its feudal origin, not really "democratic" in the Continental sense, even after the Reform Bill and up until the [present] war. A look at the suffrage system alone will make this clear. The property and income requirements and the effective rights of plural voting had, after all, such an extent that, if they were transposed to Germany, they would probably admit only half of the present Social Democrats and also considerably fewer deputies of the Center party into the *Reichstag*. (However, in Germany there is no equivalent to the role of the Irish in the English parliament.) Until Chamberlain's caucus system, the two parties were clearly dominated by clubs of *honoratiores*. If the demand "One man, one vote," which was first raised by the Levellers in Cromwell's army, were now really to be satisfied, together with the demand for the (initially limited) women

suffrage, the character of the English parliament will certainly change significantly. The two-party system, already weakened by the Irish, will disintegrate further with the advance of the Socialists, and the bureaucratization of the parties will continue. —The well-known Spanish two-party system, based on the party notables' tacit agreement to use the vote for a periodic alternation in the tenure of the office aspirants, appears at the moment to be succumbing to the first attempt at serious elections. — But will such changes eliminate parliamentarism? The existence and formal power position of the parliaments are not threatened by democratic suffrage. This is demonstrated by France and other countries with equal suffrage, where the governments are ordinarily recruited from parliament and rely on parliamentary majorities. Of course, the spirit of the French parliament is very different from the English one. However, France is not a country suitable for a study of the *typical* consequences of democracy for parliamentarism. The strongly petty-bourgeois, and especially small *rentier*, character of its stable population creates conditions for a particular mode of rule by party notables and for a peculiar influence of *haute finance*, such as do not exist in predominantly industrial states. The French party structure is inconceivable in such states, but so is the historical two-party system of England.

Two-party systems are impossible in industrialized states, if only because of the split of the modern economic strata into bourgeoisie and proletariat and because of the meaning of socialism as a mass gospel. This creates, as it were, a "denominational" barrier, especially in Germany. Furthermore, the organization of German Catholicism as a party for the protection of a minority, a result of the denominational distribution, will hardly be eliminated, even though the Center party owes its present number of deputies merely to the given arrangement of electoral districts. At least four, and probably five, large parties will therefore permanently coexist in Germany; coalition governments will continue to be necessary and the power of a prudently operating monarchy will remain significant.

2. *The Impact of Democratization on Party Organization and Leadership*

However, the rule of notables within the parties is untenable everywhere outside of isolated agrarian areas with patriarchal landed estates because modern mass propaganda makes electoral success dependent upon the rationalization of the party enterprise: the party bureaucrat,

party discipline, party funds, the party press and party advertising. The parties are more and more tightly organized. They endeavor to commit even adolescents as a following. The clerical apparatus does this automatically for the Center party, the social environment for the Conservatives. Other parties have their own youth organizations, such as the "National-Liberal Youth" and the youth groups of the Social Democrats. Likewise the parties make use of all economic interests. They organize producers' and consumers' cooperatives and trade unions, and put trusted members as officials into the party positions thus created. They establish schools, sometimes backed by very substantial funds, for public speaking and for the training of agitators, editors and administrative employees. A voluminous party literature comes into being; it is financed by the same funds, contributed by interest groups, and used for the purchase of newspapers, the establishment of advertising offices and similar enterprises. The party budgets increase rapidly, for the election costs and the number of the necessary paid agitators rise. It is no longer possible to conquer a hotly contested larger district without spending at least 20,000 Marks. (At the present time politically interested businessmen invest their war profits on a vast scale in so-called patriotic newspapers of all kinds, in preparation for the first postwar elections.) The party apparatus increases in importance, and correspondingly the weight of the *honoratiores* declines.

Matters are still in flux. The organization of the bourgeois parties, which differs greatly in the degree of internal coordination, as has been noted before, presents roughly the following picture: The local activities are usually conducted "extra-occupationally" by *honoratiores*, and only in the big cities by officials. Newspaper editors or lawyers head the bureaus in medium-sized communities. Only larger districts have salaried secretaries who travel about. Local and regional associations cooperate in very different degrees in the selection of candidates and the choice of electoral slogans. The participation of the regional associations is determined particularly by the need for electoral coalitions and for run-off agreements. The leaders of the local organizations recruit the permanent members through efforts of greatly varying degrees, among which public meetings play a major role. The members' activities are very limited; often they do no more than pay their dues, subscribe to the party paper, attend more or less regularly the meetings at which party speakers appear, and volunteer a moderate amount of work at election time. In return, they obtain at least formal participation in the election of the local party executive and the stewards (*Vertrauensmänner*) and, depending upon the size of the locality, also a direct or indirect voice in the selection of the delegates to the party conventions. As a rule, how-

ever, all candidates are designated by the core of permanent leaders and bureaucrats; mostly they are also drawn from among them, supplemented by a few notables who are useful and deserving by virtue of their well-known name, their personal social influence or their readiness to make financial contributions. Thus, the participation of the rank and file is limited to assistance and voting during the elections, which take place at relatively long intervals, and to the discussion of resolutions, the outcome of which is always largely controlled by the leaders. A complete replacement of the local leaders and district officials is rare and almost always the result of an internal revolt, which most of the time involves personality issues. The common voter, who does not belong to any organization and is wooed by the parties, is completely inactive; the parties take notice of him mostly during the elections, otherwise only through propaganda directed at him.

The organization of the Social Democratic party, which has often been described, is much tighter [than that of the bourgeois parties] and also comprises a larger percentage of the available voters; within democratic forms it is strictly disciplined and centralized. The parties of the Right used to be more loosely organized and relied more on local notables, but now they are supplemented by the Farmers' League (*Bund der Landwirte*) with its closely-knit mass organization. In the Center party centralism and authoritarian leadership are formally most highly developed; however, the clergy's power has its limits in all non-ecclesiastic matters, as events have proven repeatedly.

The present stage of development has definitely done away with the old state of affairs, when elections used to take place on the basis of ideas and slogans which were formulated by ideologists and then propagated and discussed in the press and in public meetings; when candidates were proposed by *ad hoc* committees and, if elected, joined together to form parties that remained flexible in their composition; when, finally, these parliamentary groups constituted the leadership of like-minded persons all over the country—above all, the leadership which formulated the issues for the next elections. Now, by contrast, the party *official* is emerging everywhere, although at a varying pace, as the dynamic element of party tactics. Along with him, organized fund raising becomes important. The perpetual financial difficulties require regular dues, which naturally play the biggest role in class-based mass organizations such as the Social Democratic party; however, they also time and again reinvigorate the position of the party patron, which used to be predominant. Even in the Social Democratic party it was never completely absent. In the Center party a single patron, Mr. August Thyssen, now successfully claims a social rank at least equiva-

lent to that of an archbishop. Among the bourgeois parties, financial backers are moderately important as revenue sources on the left, but much more so on the right. In the nature of things, their role is most important in the middle-of-the-road parties such as the National Liberals and the old Free Conservatives, so that the present moderate strength of these bourgeois parties comes closest to being an approximate measure for the importance of money as such, that means, of funds provided by individual patrons, in elections based on equal suffrage. But even in the case of these parties one could not say that it is the support from financial backers, even if it is indispensable for them, which produces the vote. They exist, rather, by virtue of a peculiar mixed marriage of the financial powers with that broad stratum of the literati, including in particular the academic and non-academic teachers, which is emotionally attached to reminiscences of the Bismarck era. Compared to the number of their votes, a disproportionately large part of the bourgeois press appeals to them as subscribers; in watered-down form, its line is imitated by the completely opportunistic advertising press, since this happens to be convenient to government and business circles.

Here as everywhere bureaucratization and rational budgeting are concomitants of democratization, however strongly the German parties differ in their internal social structure. This necessitates much more continuous and strenuous electioneering than was ever known to the old parties of *honoratiores*. The number of election speeches that a candidate must deliver today, preferably in every little hamlet of his district, is ever increasing, as is the number of his local visits and reports, and also the demand by the party press for information services and ready-made copy and for advertising of every kind. The same can be said about the severity and ruthlessness of the methods of political combat. This has often been deplored and blamed upon the parties as one of their peculiarities. However, not only the party organizations resort to these measures, but just as much the power-holding governmental apparatus. Bismarck's press, which was financed out of the so-called "Guelph Fund," topped everything else, especially since 1878, with regard to unscrupulousness of means and want of good tone. The attempts have not ceased to create a local press that would be completely dependent on the dominant governmental apparatus. The existence and quality of these combat methods thus has nothing to do with the degree of parliamentarization nor with the kind of suffrage gradation; rather, these methods result purely from the *mass* elections, irrespective of whether the electoral bodies are the recruiting ground for the politically responsible leaders or whether they can only pursue negative policies of interest representation and petty patronage, as in Germany.[43] In the

latter case, the party struggle takes on particularly subaltern forms because it is motivated by purely material and personal interests. It is possible and necessary to fight with the means of criminal law against political attacks upon the personal honor and the private life of an opponent and against the unscrupulous spreading of sensational falsehoods. However, the essence of the political struggle as such cannot be changed as long as there are elected bodies that decide about material interests. Least of all can it be changed by reducing the importance and the level of parliament. So much must simply be accepted as a fact. Every kind of esthetic or moralizing disdain is completely sterile with regard to the issue of domestic political reform. The political question is merely: What are the consequences of this progressive democratization of the means and organizational forms of political combat for the structure of the political enterprise inside and outside of parliament? The developments just described are intimately related to the conduct of parliamentary affairs that we discussed earlier.

Inside and outside of parliament a characteristic figure is required: the *professional* politician, a man who at least ideally, but in most cases materially, regards party politics as the content of his life. [To repeat once more:] This figure, whether we love it or hate it, is in its present form the unavoidable product of the rationalization and specialization of partisan activities on the basis of mass election. Here again it does not make a difference what degree of political influence and responsibility devolves upon the parties by virtue of the advance of parliamentarism.

There are two kinds of professional politicians [as we have seen]: Those who live materially "off" the party and political activities; under American conditions these are the big and small political "entrepreneurs," the bosses, and under German conditions the political "workers," the salaried party officials. Secondly, there are those who live "for" politics, having independent means and being propelled by their convictions; politics becomes the center of their lives, as was true, among the Social Democrats, of Paul Singer, who at the same time was a party financier in the grand style.[44] It should be clear here that we do not deny the "idealism" of party officialdom. At least on the Left large numbers of irreproachable political personalities are found among the functionaries, such as one might have a hard time finding in other strata. However, although idealism is far from being a function of a person's financial situation, living "for" politics is cheaper for the well-to-do party member. Precisely this element—persons who are economically independent of those above and below them—is most desirable for party life and hopefully will not completely vanish, especially not from the radical parties. Of course, the party enterprise proper can nowadays not

be operated by them alone—the bulk of the work outside of parliament will always be carried by the party bureaucrats. However, because of their very preoccupation with the operation of the enterprise, these officials are by no means always the most suitable candidates for parliament. The Social Democrats are the only major exception. In most bourgeois parties, however, the party secretary, who is tied down by his office, does not make the best candidate. Within parliament a predominance of the party officialdom, no matter how desirable and useful its representation is, would not have a favorable effect. But such a predominance exists not even within the most bureaucratized party, the Social Democrats. In fact, party officialdom presents the relatively smallest danger of bringing about a domination by the "bureaucratic spirit" to the disadvantage of real leaders. This danger emanates much more from the compulsion to take account of interest organizations for the sake of vote-getting; this leads to the infiltration of their employees into the list of party candidates, a phenomenon that would increase considerably if a proportional election system, requiring the voting for lists, were to be adopted.[48] A parliament composed of such employees would be politically sterile. It is true, however, that the spirit of the employees of organizations such as the parties themselves and the trade unions is essentially different, due to their training in struggling with the public, from the spirit of the civil servant who works peacefully in the midst of filing-cabinets. Especially in the radical parties, and above all in the Social Democratic party, the danger posed by the bureaucratic spirit would be relatively smallest, since the vehemence of political combat counteracts the tendencies (not negligible even there) toward ossification into a stratum of benefice-holders. Yet even in these parties only a fraction of the genuine leaders were party bureaucrats.

In all democratized parliaments and parties the present demands upon the political enterprise result in elevating one profession to a particularly prominent role as a recruiting base for parliamentarians: the lawyers. Besides the knowledge of the law and, more importantly, the preparation for fighting an opponent which this profession affords in contrast to the office-holding of the employed jurists, a purely material element is decisive: the possession of a private office—today an absolute necessity for the professional politician. While every other free entrepreneur is prevented, because of the work load in his own enterprise, from meeting the increasing demands of regular political activity and would have to give up his occupation in order to become a political pro, it is relatively easy for the lawyer to switch, given the technical and psychological basis of his activities. The "lawyers' dominance" in a parliamentary democracy, which is so often and so wrongly deplored, is

only facilitated by the way in which even today the German parliaments fail to offer their members adequate offices, information services and clerical personnel.[48] However, we do not want to discuss here the technical aspects of the parliamentary enterprise. Rather, we will ask in which direction the party *leadership* develops under the pressure of democratization and of the growing importance of professional politicians, party officials and employees of interest groups, and which repercussions this has for parliamentary life.

3. *Democratization and Demagoguery*

The popular view of the German literati quickly disposes of the question about the effect of democratization: The *demagogue* will rise to the top, and the successful demagogue is he who is most unscrupulous in his wooing of the masses. An idealization of the realities of life would be useless self-deception. The assertion about the increasing importance of the demagogue has often been correct in this negative sense, and it is indeed correct if properly understood. In the negative sense it is true of democracy to about the same extent as, for the impact of monarchy, the remark that some decades ago a well-known general made to an autocratic monarch: "Your Majesty will soon be exclusively surrounded by scoundrels." A matter-of-fact consideration of democratic leadership selection will always include a comparison with other organizations and their systems of selection. A glance at the personnel affairs of bureaucratic organizations, including the best officers' corps, suffices to make clear the following: A genuine acknowledgment by subordinates that a superior "deserves" his position is not the rule but the exception, especially in the case of new superiors who have advanced fast. Profound skepticism about the wisdom of appointments, both with regard to the motives of those making them as with respect to the means employed by those who have been particularly fortunate in obtaining their positions, dominates the attitudes of the great majority of serious insiders—quite irrespective of all petty gossip. But this mostly silent critique is not noticed by the public, which thus has no inkling of it. Countless experiences, which everybody can make all about him, teach that the quality which best guarantees promotion is a measure of pliancy toward the apparatus, the degree of the subordinate's "convenience" for his superior. The selection is, on the average, certainly not one of born leaders.

The same skepticism of the insiders prevails in quite a few cases with regard to academic appointments, although public control should be able to profit itself here in view of the public character of the accom-

plishments, something that generally is not true in the case of officials. However, the politician and, above all, the party leader who is rising to public power is exposed to public scrutiny through the criticism of opponents and competitors and can be certain that, in the struggle against him, the motives and means of his ascendancy will be ruthlessly publicized. Sober observation should therefore show that the selection within the party demagogy proceeds, by and large, by no means according to less useful criteria than does the selection behind the closed doors of bureaucracy. Contrary examples are provided only by new countries such as the United States, but for the Germanic states in Europe a denial of this observation would be plainly insupportable. Moreover, if even a completely incompetent chief of staff [Helmuth von Moltke] at the beginning of the World War is not supposed to be an argument against the monarchy's ability to recruit leaders, then it is also inadmissible to hold their blunders in recruitment against the democracies.

However, we do not want to pursue further these politically sterile comparisons and recriminations. The decisive point is that for the tasks of national leadership only such men are prepared who have been selected in the course of the political struggle, since the essence of all politics is struggle. It simply happens to be a fact that such preparation is, on the average, accomplished better by the much-maligned "craft of demagoguery" than by the clerk's office, which in turn provides an infinitely superior training for efficient administration. Of course, political demagoguery can lead to striking misuses. It can happen that a mere rhetorician without superior intellect and political character gains a strong power position. But this description would not even apply to an August Bebel,[47] for he had character, although he lacked a superior mind. The period of his persecution [in the eighteen-seventies] and the accident that he was one of the earliest [Social Democratic] leaders, but also that personal quality brought him the unreserved trust of the masses, which intellectually far superior party members could not rival. Eugen Richter, Ernst Lieber, Matthias Erzberger—they all belong to a similar type.[48] They were successful "demagogues," in contrast to far superior intellects and temperaments who could not gain power in their parties despite their rhetorical triumphs before the masses. That is no accident—yet it is not a consequence of democratization; rather, it results from the constraints that impose "negative politics."

Democratization and demagogy belong together, but—let us repeat this—independently of the kind of constitution, insofar as the masses can no longer be treated as purely passive objects of administration, that is, insofar as their attitudes have some active import. After all, the road to demagogy has also been chosen, in their own manner, by the

modern monarchies. They use speeches, telegrams and propaganda devices of all kinds for the promotion of their prestige; nobody can claim that this kind of political propaganda has proved less dangerous for the national interest than the most passionate demagogy [of party leaders] at election times. Quite to the contrary. In the midst of the war we now encounter even the phenomenon that an admiral engages in demagogy. The jurisdictional struggles between the former chancellor [Bethmann-Hollweg] and Admiral von Tirpitz were brought before the public in a wild campaign by the latter's followers (and with his toleration, as was correctly emphasized in the *Reichstag*); domestic interests joined the fray on the admiral's side, so that a military and diplomatic issue that could be resolved only with the most thorough knowledge of the facts [i.e., the issue of unrestrained submarine warfare] became the object of an unparalleled demagoguery among the masses, which in *this* case were indeed "uncritical," that is, without any means of judgment. Hence nobody can claim that "demagoguery" is a characteristic of a constitutionally democratic polity. The revolting battles of the satraps and intrigues of candidates for a ministry in January 1918 also were carried into the press and public meetings. These demagogic activities had some impact. In Germany we have *demagoguery* and the pressure of the rabble *without democracy*, or rather *because of the absence* of an orderly democracy.

However, we want to discuss here only the actual import of demagogy for the structure of political leadership; thus we want to raise the question of the relationship between democracy and parliamentarism.

4. *Plebiscitary Leadership and Parliamentary Control*

Active mass democratization means that the political leader is no longer proclaimed a candidate because he has proved himself in a circle of *honoratiores*, then becoming a leader because of his parliamentary accomplishments, but that he gains the trust and the faith of the masses in him and his power with the means of mass demagogy. In substance, this means a shift toward the *caesarist* mode of selection. Indeed, every democracy tends in this direction. After all, the specifically caesarist technique is the plebiscite. It is not an ordinary vote or election, but a profession of faith in the calling of him who demands these acclamations. The caesarist leader rises either in a military fashion, as a military dictator like Napoleon I, who had his position affirmed through a plebiscite; or he rises in the bourgeois fashion: through plebiscitary affirma-

tion, acquiesced in by the army, of a claim to power on the part of a non-military politician, such as Napoleon III. Both avenues are as antagonistic to the parliamentary principle as they are (of course) to the legitimism of the hereditary monarchy. Every kind of direct popular election of the supreme ruler and, beyond that, every kind of political power that rests on the confidence of the masses and not of parliament —this includes also the position of a popular military hero like Hindenburg—lies on the road to these "pure" forms of caesarist acclamation. In particular, this is true of the position of the President of the United States, whose superiority over parliament derives from his (formally) democratic nomination and election. The hopes that a caesarist figure like Bismarck attached to universal suffrage and the manner of his anti-parliamentary demagogy also point in the same direction, although they were adapted, in formulation and phraseology, to the given legitimist conditions of his ministerial position. The circumstances of Bismarck's departure from office demonstrate the manner in which hereditary legitimism reacts against these caesarist powers. Every parliamentary democracy eagerly seeks to eliminate, as dangerous to parliament's power, the plebiscitary methods of leadership selection. A notable instance is found in the present French constitution and the French election law, which abolished list voting [in 1889] because of the Boulangist danger. However, French parliamentary democracy paid with that lack of authority of the supreme powers among the masses that is typical of France and so characteristically different from the position of the President of the United States. By contrast, in democratized hereditary monarchies the caesarist-plebiscitary element is always much attenuated, hut it is not absent. As a matter of fact, the position of the present British Prime Minister [Lloyd George] is based not at all on the confidence of parliament and its parties, but on that of the masses in the country and of the army in the field. Parliament acquiesces (with considerable inner reluctance).

Thus, the contrast between the plebiscitary and the parliamentary selection of leaders is quite real. However, the *existence* of parliament is not useless for that matter. Vis-à-vis the factually caesarist representative of the masses it safeguards in England 1) the continuity and 2) the supervision of his power position, 3) the preservation of civil rights, 4) a suitable political proving ground of the politicians wooing the confidence of the masses, and 5) the peaceful elimination of the caesarist dictator once he has lost the trust of the masses. However, since the great political decisions, even and especially in a democracy, are unavoidably made hy few men, mass democracy has bought its successes since Pericles' times with major concessions to the caesarist principle of selecting leaders. In the large American municipalities, for example,

corruption has been checked only by plebiscitary municipal dictators, whom the trust of the masses gave the right of establishing their own administrative agencies. And wherever democratic mass parties found themselves confronted with great tasks, they were obliged to submit more or less unconditionally to leaders who held the confidence of the masses.

We have just illustrated, with the British example, the importance that under this circumstance parliament retains in a mass democracy. However, there are not only subjectively sincere "socialists," but also subjectively sincere "democrats" who hate the parliamentary enterprise so much that they advocate "socialism without parliament" or "democracy without parliament." Of course, nobody can "refute" overwhelmingly powerful antipathies. But it is necessary to clarify what would be their practical consequence in a state with our monarchic constitution. What then would be a democracy without any parliamentarism in the German political order with its authoritarian bureaucracy? Such a merely *passive democratization* would be a wholly pure form of *uncontrolled bureaucratic domination*, so familiar to us, which would call itself a "monarchic regiment." Or, if we relate this democratization to the economic reconstruction that these "socialists" hope for, it would be a modern rational counterpart of the ancient liturgical state. Interest groups legitimized and (allegedly) controlled by the state bureaucracy would be actively the agents of corporate self-administration, and passively they would be the carriers of the public burdens. The civil servants would then be supervised by these profit-oriented associations, but neither by the monarch who would be quite incapable of doing it, nor by the citizen who would lack all representation.

Let us take a closer look at this vision of the future. Such passive democratization would not, for the foreseeable future, lead to the elimination of the private entrepreneur, even if there would be far-reaching nationalization; rather, it would involve a syndicalization of big and small capitalists, small propertyless producers and wage earners, through which the economic opportunities of each category would somehow be regulated and—this is the crucial matter—be monopolistically guaranteed. This would be socialism in about the same manner in which the ancient Egyptian "New Kingdom" was socialist. It would be democracy only if provisions were made for giving the will of the masses decisive influence on the management of this syndicalized economy. It is inconceivable how this could be done without a representation safeguarding the power of the masses and continuously controlling the syndicates: that is, without a democratized parliament that would be able to intervene in the substantive and personnel affairs of this administration. Without a popular representation of the present type an

economy of such industry associations can be expected to evolve a guild policy of protecting everybody's livelihood, and thus to move toward a stationary economy and the elimination of any interest in economic rationalization. For everywhere the concern with a corporate *guarantee* of a livelihood has been decisive for economic groups that dispose of no or little capital as soon as they were monopolistically organized. He who wants to consider this an ideal of a "democratic" or "socialist" future is welcome to do so. But it takes the very shallow dilettantism of the literati to mistake such a cartellization of profit and wage interests for the ideal, so frequently propagated nowadays, according to which the production of goods be adapted in the future to needs and not, as at present, to profit interest—a confusion that arises time and again. For to realize this last ideal it would obviously be necessary to proceed not from a cartellization and monopolization of profit interests, but from the exact opposite: the organization of consumer interests. The economic organization of the future would have to be established not in the manner of state-controlled compulsory producer cartels, guilds and trade unions, but in the manner of a huge, state-controlled and compulsory consumer cooperative; the latter, in turn, would regulate production according to demand, as some consumer cooperatives already do (through production of their own). Again, it cannot be imaged how the "democratic" interests—those of the mass of the consumers—can be protected in any way other than through a parliament that also can control national production continuously.

But this is enough about such pipe dreams. The complete abolition of the parliaments has not yet been demanded seriously by any democrat, no matter how much he is opposed to their present form. Probably every democrat would like to retain them as the agency for enforcing the *public control of administration*, for determining the *budget* and finally for deliberating and passing *laws*—functions for which parliaments are indeed irreplaceable in all democracies. The opposition, insofar as it is sincerely democratic and not, as is usually the case, a dishonest screen for bureaucratic power interests, desires essentially two things: 1) that laws should be made not through parliamentary decision but through compulsory popular vote; 2) that the parliamentary *system* should not exist, that means, the parliaments should not be the recruiting grounds for the national leaders and parliamentary confidence should not be decisive for their tenure in office. As is well known, this is the established rule in the American democracy; partly it derives from the direct popular election of the head of state and of other officials, and partly from the so-called principle of the "separation of powers." However, American democracy teaches the lesson, with sufficient clarity, that the elimination of parliamentarism

in this manner provides no more of a guarantee for impartial and incorruptible administration than does the parliamentary system itself; the exact opposite is the case. It is true that, by and large, the popular election of the head of state has not worked out badly. The number of really unsuitable presidents has at least not been larger during the last decades than that of unfit monarchs in the hereditary monarchies. However, with the principle of popular election of civil servants the Americans themselves are satisfied only to a very limited extent. If applied generally, this principle eliminates not only what technically distinguishes the bureaucratic machinery: bureaucratic discipline, but it also fails to provide any guarantee for the quality of the officials in a large state. It puts the selection of candidates into the hands of invisible cliques which, by comparison with parliamentary parties and their leaders, are highly irresponsible toward the public. The candidates are presented to the voters who themselves have no capacity for technical judgment. This is a most unsuitable form of filling administrative positions that require specialized technical training. It is precisely with regard to the most recent and advanced administrative functions, hut also with regard to judgeships, that the trained officials appointed by the elected head of state in the United States are technically, and insofar as corruption is concerned, incomparably superior. After all, the selection of trained civil servants and that of political leaders are two different things. — By contrast, the mistrust against the powerless *and therefore* corrupt parliaments of the individual American states has led to an expansion of direct popular legislation.

The *plebiscite*, as a means of election as well as of legislation, has inherent technical limitations, since it only answers "Yes" or "No." Nowhere in mass states does it take over the most important function of parliament, that of determining the budget. In such cases the plebiscite would also obstruct most seriously the passing of all bills that result from a compromise between conflicting interests, for the most diverse reasons can lead to a "No" if there is no means of accommodating opposed interests through negotiation. The referendum does not know the *compromise*, upon which the majority of all laws is based in every mass state with strong regional, social, religious and other cleavages. It is hard to imagine how in a mass state with severe class tensions tax laws other than progressive income taxation, property confiscations and "nationalizations" can be adopted through popular vote. These difficulties might perhaps not impress a socialist. However, we know of no example when a state apparatus exposed to the pressures of a referendum has effectively enforced such often nominally exorbitant and partly confiscatory property taxes; this is as true of the United States as it is of the Swiss Cantons, in which the conditions are very favorable since

the population, by virtue of old tradition, thinks in terms of substantive issues and is well schooled in political matters. Moreover, the plebiscitary principles weaken the autonomous role of the party leader and the responsibility of the civil servants. A disavowal of the leading officials through a plebiscite which rejects their proposals does not and cannot enforce their resignation, as does a vote of noconfidence in parliamentary states, for the negative vote does not identify its reasons and does not oblige the negatively voting mass, as it does a parliamentary majority voting against a government, to replace the disavowed officials with its own responsible leaders.

Finally, the more the direct management of economic enterprises by the state bureaucracy were to grow, the more awkward would be the lack of an independent control organ that would have the power, as the parliaments do, to demand publicly information from the all-powerful officials and to call them to account. The specific means of purely plebiscitary democracy: direct popular elections and referenda, and even more so the instrument of the recall, are completely unsuitable in the mass state for the selection of trained officials and for the critique of their performance. Since the importance of interested money is not negligible for the parties' campaigns even in parliamentary elections, its power and the impetus of the demagogic apparatus supported by it would increase all the more immensely if in a mass state popular elections and referenda were to prevail completely.

It is, of course, true that compulsory voting and the referendum are the radical opposite of the situation so often deplored, namely, that the citizen in the parliamentary state fulfills no other political function than putting a ballot, provided ready-made by the parties, into a box every few years. It has been questioned whether this is really a means of political education: Without any doubt, it is that only under the conditions, discussed earlier, of public scrutiny and control of the administration which accustoms the citizens to the continuous observation of the administration of their affairs. However, the compulsory referendum may call the citizen to the ballot box dozens of times within a few months in order to decide about laws; the compulsory election imposes upon him the voting for long lists of candidates who are completely unknown to him and whose *technical* qualifications for office he cannot judge. It is true that the absence of technical qualifications (which the monarch himself does not have either) is in itself no argument against the democratic selection of the officials. It is certainly not necessary to be a shoemaker in order to know whether a shoe fits. However, not only the danger of growing apathy, but also of erroneous identification of those responsible for abuses is extremely great if specialized officials are popularly elected, whereas in a parliamentary system

the voter makes the leaders of the party which appointed the officials responsible for their performance. And insofar as technically complicated laws are concerned, the referendum can all too easily put the result in the hands of hidden, but skillfully manipulating interests. In this respect, the conditions in European countries, with their highly developed trained officialdom, are essentially different from those in the United States, where the referendum is considered the only corrective against the corruption of the inevitably subaltern legislatures.

These arguments are not directed against the use of the referendum as *ultima ratio* in suitable cases, even though the conditions in mass states differ from those of Switzerland [where this method is applied]. But the plebiscite does not make powerful parliaments superfluous in large states. As an organ of public control of the officials and of really "public" administration, as a means for the elimination of unfit top officials, as a locus for establishing the budget and for reaching compromises among parties, parliament remains indispensable in the electoral democracies. In hereditary monarchies it is all the more indispensable, since the monarch cannot just go along with popularly elected officials nor, if he appoints the officials, take sides, lest his specific domestic function be compromised: to make possible a conflictless solution in cases when the political mood and the balance of power are not clear. Apart from being a check upon "caesarist" leaders, parliamentary power is necessary in hereditary monarchies because there may be long periods in which no one appears to hold the confidence of the masses to a fairly general degree. Everywhere the problem of succession has been the Achilles heel of purely caesarist domination. The rise, neutralization and elimination of a caesarist leader occur most easily without the danger of a domestic catastrophe when the effective co-domination of powerful representative bodies preserves the political continuity and the constitutional guarantees of civil order.

The point that really offends the democrats who are hostile to parliament is apparently the largely voluntaristic character of the partisan pursuit of politics and hence also of the parliamentary parties. As we have seen, "active" and "passive" political participants indeed stand at opposite poles under this system. The political enterprise is an *enterprise of interested persons.* (We do not mean those materially interested persons who influence politics in every form of state, but those politically interested men who strive for political power and responsibility in order to realize certain political ideas.) This very pursuit of interests, then, is the essential part of the matter. For it is not the politically passive "mass" that produces the leader from its midst, but the political leader recruits his following and wins the mass through "demagogy." This is true even under the most democratic form of state. Therefore, the

opposite question is much more pertinent: Do the parties in a fully developed mass democracy permit at all the rise of men with leadership capacities? Can they at all absorb new ideas? For they succumb to bureaucratization quite as does the state apparatus. The founding of new parties, with the necessary organizational apparatus and newspapers, requires today such an investment of funds and labor, and is so difficult in view of the entrenched power of the existing press, that it is practically almost out of the question. (Only the plutocracy of the war profiteers has under the very special conditions of the war succeeded on this score [with the establishment of the Fatherland Party].)

The existing parties are stereotyped. Their bureaucratic positions provide the "maintenance" of the incumbents. Their store of ideas has largely been fixated in propaganda literature and the party press. The material interests of the publishers and authors resist the devaluation of this body of literature through the transformation of ideas. The professional politician, finally, who must live "off" the party, least of all wants to see his intellectual equipment of ideas and slogans outmoded. Hence, the reception of new ideas proceeds relatively fast only there, where parties completely devoid of principles and devoted only to office patronage, as in the United States, add to their "platforms" whichever "planks" they think will gain them the most votes.

The rise of new leaders appears even more difficult. For a long time the same leaders have been seen at the helm of German parties; these leaders in most cases deserve personally highest regard, but just as often they do not excel either intellectually or in strength of political temperament. We have already mentioned the typical guild resentment against new men—this is in the nature of things. On this score, too, conditions are partly different in parties as the American ones. There it is the rulers of the parties, the bosses, who have a very stable position. They only want power, not honor or responsibility. For the sake of preserving their own power they do not expose themselves to the vagaries of a candidacy, which would lead to a public discussion of their political practices and thus could compromise the chances of the party. They therefore frequently present, even if reluctantly, "new men" as candidates. They don't mind that as long as these candidates are "reliable" in their sense. They do nominate them unwillingly, but perforce, if these men have such a vote-getting power, by virtue of their "newness," hence by virtue of some spectacular achievement, that their candidacy appears necessary in the interest of electoral victory. These practices, which have come into being under the conditions of direct election, are not at all transferable to Germany and are scarcely desirable here. Just as little transferable are the French and Italian conditions, the consequence of the party structure in these countries, under which a fairly

limited number of political personalities considered suitable for a ministerial post (*ministrable*), occasionally supplemented by new men, rotate in the leading positions in ever different combinations.

The English conditions are very different. Men with political temperament and leadership qualifications have there appeared and risen in sufficient numbers within the parliamentary career line (which we cannot describe here) and also within the parties, which are strictly organized through the caucus system. On the one hand, the parliamentary career offers very good opportunities to men with political ambition and the will to power and responsibility; on the other, the parties are forced by the "caesarist" feature of mass democracy to submit to men with political temperament and talent as soon as these prove that they can win the confidence of the masses. The chance for a potential leader to get to the top is a function, as it turns out time and again, of the parties' power chances. Neither the parties' caesarist character and mass demagogy nor their bureaucratization and stereotyped public image are in themselves a rigid barrier for the rise of leaders. Especially the well-organized parties that really want to exercise state power must *subordinate* themselves to those who hold the confidence of the masses, if they are men with leadership abilities; in contrast, the loose following in the French parliament is, as is well known, the real home of pure parliamentary intrigues. In turn, however, the solid party organization and, above all, the necessity for the leader to train and prove himself through conventionally prescribed participation in parliamentary committee work, guarantees fairly well that these caesarist trustees of the masses respect the established constitutional arrangements and that they are selected not purely emotionally, that means, merely according to "demagogic" qualities in the negative sense of the word. Particularly under the contemporary conditions of selection, a strong parliament and responsible parliamentary parties, hence their function as a recruiting and proving ground of mass leaders as statesmen, are basic conditions for maintaining continuous and consistent policies.

5. *The Outlook for Effective Leadership in Postwar Germany*

The political danger of mass democracy for the polity lies first of all in the possibility that emotional elements will predominate in politics. The "mass" as such (irrespective of the social strata which it comprises in any given case) thinks only in short-run terms. For it is, as every experience teaches, always exposed to direct, purely emotional and ir-

rational influence. (It has this in common, incidentally, with the modern "self-governing" monarchy, which produces the same phenomena.) A cool and clear mind—and successful politics, especially democratic politics depends, after all, on that—prevails in responsible decision-making the more, 1) the smaller the number of decision-makers is, and 2) the clearer the responsibilities are to each of them and to those whom they lead. The superiority of the American Senate over the House of Representatives, for example, is largely a function of the smaller number of senators; the best political achievements of the English parliament are products of unequivocal responsibility. Wherever such unambiguous responsibility defaults, the party system fails like any other kind of domination. From the viewpoint of the national interest the political utility of solidly organized interest groups rests on the same basis. Completely irrational, from the same viewpoint, is the unorganized "mass"—the democracy of the streets! It is strongest in countries with either a powerless or a politically discredited parliament, that means, above all, in countries without *rationally organized parties*. In Germany, apart from the absence of the Latin coffee-house culture and the presence of a calmer temperament, organizations such as the trade unions, but also the Social Democratic party, constitute a very important counterbalance against the direct and irrational mob rule typical of purely plebiscitary peoples. From the Hamburg cholera epidemic [of 1892] to the present time it has been necessary to appeal repeatedly to these organizations for help whenever the state apparatus proved inadequate. That must not be forgotten once the times of hardship are over.

In Germany, too, the difficult first postwar years will be a severe test for the discipline of the masses. There can be no doubt that the trade unions, in particular, will face unprecedented difficulties. For the up-and-coming young workers, who now earn ten times as much as in peacetime and enjoy a temporary license that will never recur, are being dishabituated from any sense of solidarity and any capacity to adapt to, and be useful for, the organized economic struggle. A "syndicalism of immaturity" will flare up once this youth is confronted with the normalcy of peacetime. It is certain that we will encounter plenty of purely emotional "radicalism" of this kind. In the population centers attempts at a syndicalist putsch are quite possible, just as is a mighty groundswell, in view of the serious economic situation, of the political mood represented by the Liebknecht group. We must ask whether the masses will *persist* in the sterile negativism toward the state that must be anticipated. That is a question of nerves. The outcome will depend, first of all, on whether the proud saying: "The appeal to fear finds no response in German hearts," *will prove itself on the thrones*. Moreover,

the outcome will depend on whether such explosions trigger again the familiar fear of the propertied, that means, whether the emotional effect of the blind fury of the masses will activate the equally emotional and senseless cowardice of the bourgeoisie, just as the beneficiaries of uncontrolled bureaucracy hope.

Against putsch, sabotage and similar politically sterile outbreaks, which occur in all countries—even though less frequently here as elsewhere—every government, including the most democratic and the most socialist, would have to proclaim martial law if it does not want to risk the consequences that now appear in Russia. No further word is needed on this score. *But:* The proud traditions of peoples which are politically mature and free from cowardice have always proved themselves in such situations in that they kept their nerve and a cool head, crushed force with force, but then tried to resolve soberly the tensions that had led to the outbreak—above all, in that they immediately restored the *guarantees of civil liberties* and in general did not let such events interfere with the manner of their political decision-making. In Germany, however, one can be quite assured that the beneficiaries of the old order and of uncontrolled bureaucracy will exploit every outbreak of syndicalist putschism, no matter how insignificant, in order to scare our philistine bourgeoisie which, unfortunately, still has pretty weak nerves. Among the most shameful experiences during the tenure of Chancellor Michaelis we must note that *speculation on the cowardice* of the bourgeoisie which expressed itself in the attempt to exploit in a sensational fashion, and for purely partisan purposes, the behavior of a few dozen pacifist fanatics, without regard for the effect upon our enemies—and also upon our allies. After the war similar intrigues will be repeated on a larger scale. By its reaction the German nation will then demonstrate whether it has attained political maturity. We would have to despair of our political future if these machinations were to succeed; unfortunately, some experiences make this appear a possibility.

In Germany the democratization of the parties on the left and the right is a fact that cannot be undone—on the right it takes the form of an unscrupulous demagogy that has a counterpart not even in France. However, the democratization of the suffrage is a compelling demand of the hour, which can no longer be postponed, especially in the German hegemonial state [Prussia]. Apart from all other considerations, reasons of state require, (1) since the equal suffrage is today the only way of ending the suffrage struggles, that their sterile perpetuation, which has led to such profound bitterness, must be eliminated from the political scene *before* the soldiers return from the field for the reconstruction of the state; (2) that it must be viewed as politically unaccept-

able to put the returning soldiers at an electoral disadvantage vis-à-vis those strata which maintained, or even increased, their social position, property and customers during the time when they at the front laid down their lives for those who stayed home. Of course, the obstruction of this political necessity is possible, but this would have terrible consequences. *Never again* would the nation be as solidary in the face of an external threat as it was in August 1914. We would be condemned to remain a small and conservative country, perhaps with a fairly good public administration in purely technical respects, but at any rate a provincial people without the opportunity of counting in the arena of world politics—and also without any *moral* right to it.[49]

NOTES

1. Unless otherwise indicated, the notes and the emendations in the text are by the English editors, as are the subheadings within secs. *i–v*, which merely intend to give the reader a better orientation.

From Max Weber, *Gesammelte politische Schriften*, ed. Johannes Winckelmann (2d ed.; Tübingen: Mohr, 1958), 294–394. The essays were first published together in the series "Die innere Politik," edited by Siegmund Hellmann (München and Leipzig: Duncker & Humblot, 1918). In certain passages Weber drew on Part Two of *Wirtschaft und Gesellschaft*, which was unpublished at the time. Hence, the reader will find certain repetitions in Weber's exposition of rule by notables and by bureaucrats, but at the same time he can observe the linkage between Weber's political views and his scholarly perception of secular changes. Yet as Weber himself points out in the preface, he does not claim scientific authority for his political views. Furthermore, the reader should keep in mind that the essay originated in newspaper articles which repeated the main points with propagandistic persistence. Weber's "Politics as a Vocation," which is his best known political essay in the United States, in turn takes up some of the themes of his wartime writings. It is truly the sum of his political perspective, but in its brevity it is even more of an occasional piece than the earlier political writings and hence in need of more extensive and concrete elaborations such as the present essay.

In recent years Weber's politics have been given considerable attention. The following selection is useful as background reading for his political writings; it also contains many references to other pertinent literature: Arnold Bergsträsser, "Max Webers Antrittsvorlesung in zeitgeschichtlicher Perspektive," *Vierteljahrshefte für Zeitgeschichte*, vol. 5, 1957, 209–19; Golo Mann, "Max Weber als Politiker," *Neue Rundschau*, vol. 75, 1964, 380–400; Wolfgang Mommsen, *Max Weber und die deutsche Politik, 1890–1920* (Tübingen: Mohr, 1959); *id.*, "Max Weber's Political Sociology and His Philosophy of World History," *International Social Science Journal*, vol. 7, 1965, 23–45; for an expanded version, see "Universalgeschichtliches und politisches Denken bei Max Weber," *Historische Zeitschrift*, vol. 201, 1965, 557–612; Guenther Roth, "Political Critiques of Max Weber: Some Implications for Political Sociology," *American Sociological Review*, vol. 30, 1965, 213–223; Gustav Schmidt, *Deutscher Historismus und der Übergang zur parlamentarischen Demokratie* ("Historische Studien," vol.

398; Lübeck: Matthiesen, 1964); Gerhard Schulz, "Geschichtliche Theorie und politisches Denken bei Max Weber," *Vierteljahrshefte für Zeitgeschichte*, vol. 12, 1964, 325–350.

2. Sections *i* to *iii* had originally been published in the *Frankfurter Zeitung* of May 27, June 5/6 and June 24, 1917 under the title "German Parliamentarianism in Past and Future". Cf. the bibliography in Eduard Baumgarten, ed., *Max Weber—Werk und Person* (Tübingen: Mohr, 1964), 71 ff; also Winckelmann's introduction to GPS, 2d ed., XXXV. On the fall of Chancellor Bethmann-Hollweg on July 14, 1917 and the short rule of Chancellor Michaelis (until October 30, 1917), see below, notes 27 and 29.

3. Moritz Busch (1821–1899) was Bismarck's principal press agent and official eulogist. His memoirs, *Bismarck: Some Secret Pages of his History* (London: Macmillan, 1898), were first published in England because of anticipated libel problems in Germany.

4. After the initial measures of Bismarck's struggle to control the Catholic church (the so-called *Kulturkampf*, 1872–1887, which was strongly supported by the liberal parties), an attempt on his life was made by a certain Kullmann, an unemployed Catholic cooper, at Bad Kissingen in July 1874. As again in 1878, when the Social Democrats were saddled with the responsibility for the Hödel and Nobiling attempts on the old Emperor's life, Bismarck immediately tried to turn this incident to political advantage in his conflict with the Center party. "You may renounce this murderer as much as you want," he exclaimed (very much alive) in the next budget debate, "but he hangs tightly on to your coattails; it is you whom he calls his party." See Karl Bachem, *Vorgeschichte, Geschichte und Politik der deutschen Zentrumspartei*, III (Köln: Bachem, 1927), 219f.

5. Friedrich Julius Stahl (1802–1861) and Ludwig von Gerlach (1795–1877), both advisers of the romantic Prussian king Frederick William IV, were leaders of Protestant agrarian conservatism in mid-century Prussia. Stahl, one of the most effective spokesmen of the Divine Right of kings after the 1848 revolution, was influential in shaping the Prussian constitution of 1850 along conservative lines. Gerlach, a co-founder of the *Kreuzzeitung*, opposed Bismarck to the end, to the point of sitting with the Center delegates in the post-1870 *Reichstag*. On the older Christian-Social movement in general, see W. O. Shanahan, *German Protestants Face the Social Question: The Conservative Phase, 1815-1871* (Notre Dame: University of Notre Dame Press, 1954).

6. Rudolf von Bennigsen (1824–1902), Joseph Völk (1819–1882) and Franz August Freiherr Schenk von Stauffenberg (1834–1901) were leaders of the National-Liberal party. Bennigsen headed the party from 1866 to 1898; he refused a seat in the government in 1877 and retired from the *Reichstag* from 1883 to 1887, because he felt he could no longer cooperate with Bismarck. The right-wing Völk left the party in the first dispute over tariff legislation in 1878; the South-German Stauffenberg was one of the leaders of the left-wing *Sezession* in 1881. Benedikt Franz Leo Waldeck (1802–1870) was the leader of the democratic left in the Prussian National Assembly of 1848 and again in the Prussian diet during the Constitutional Conflict, 1861–1869.

7. Weber's father, Max Weber Sr., played a significant role in the Berlin National-Liberal party of the Bismarckian era as a city magistrate, deputy in the Prussian Diet and some-time deputy in the *Reichstag*. Bennigsen, Miquel, and other leaders of the party were frequent guests in his house, and "already the half-grown sons were permitted . . . to overhear the political disputes and absorb whatever they could understand" (Marianne Weber, *Max Weber* [Tübingen:

Mohr, 1926], 42). Although Weber was only 14 years old in 1878, the interests of the early-maturing boy ranged far into political matters (cf. the letters of the 14- and 15-year old reprinted in Baumgarten, *Max Weber, op. cit.*, 6–13); hence these and the following statements may indeed be based on his own memories from that period.

8. Bismarck established the *Reich* as a federation of the ruling dynasties which were represented in the *Bundesrat* (Federal Council); they formally controlled all legislation and "governed" through its president, the chancellor who was appointed by the emperor and who normally was also prime minister of Prussia. The *Reichstag* was the only "unitary" institution, i.e. one representing the German people as a whole, but it had only deliberative and budgetary powers and no control over the federal government. Many state functions—churches, education, the railroads, the post office, in the case of Bavaria even the army—remained under the jurisdiction of the individual states. The central institutions which did exist were dominated by Prussia.

9. On the background of the Prussian Constitutional Conflict, which brought Bismarck to power, see Eugene N. Anderson, *The Social and Political Conflict in Prussia: 1858–1864* (Lincoln: The University of Nebraska Press, 1954).

10. Ludwig Windthorst (1812–1891), a former Hanoverian minister of justice, was the leader of the Catholic Center party and as such Bismarck's major parliamentary antagonist, although sometimes a cooperating one, during the latter's entire incumbency.

11. On Bismarck and the anti-socialist legislation, see Guenther Roth, *The Social Democrats in Imperial Germany* (Totowa, N.J.: The Bedminster Press, 1963), ch. III; Vernon L. Lidtke, *The Outlawed Party: Social Democracy in Germany, 1878–1890* (Princeton: Princeton University Press, 1966).

12. When Bismarck, in 1879, wanted to raise the customs tariffs in order to make the *Reich* less dependent upon the financial contributions of the member states, the particularist (but protectionist) Center party, whose votes he needed, insisted that any excess of the new revenues above 130 million marks be transferred to the states; if the *Reich* wanted any share of such sums, the question would again be thrown into parliament, which voted the annual matricular contributions. Georg von und zu Franckenstein (1825–1890), a prominent Bavarian member of the party, was the author of this clause. In Prussia it was complemented by the Huene bill (1885–1893), the work of the Center deputy and Silesian landowner Karl Huene Baron von Hoiningen (1837–1900), which required that the Prussian state pass on all but 15 million marks of the windfall Franckenstein monies to the counties and municipalities "in order to eliminate a stimulus for unhealthy expenditures of the Prussian state budget." Cf. Ernst Rudolf Huber, *Deutsche Verfassungsgeschichte seit 1789*, III (Stuttgart: Kohlhammer, 1963), 951; Bachem, *Zentrumspartei, op. cit.*, III, 394ff.

13. Herbert von Bismarck (1849–1904) was his father's secretary of state for foreign affairs from 1886 to the latter's fall in 1890.

14. The idea that Roman law promoted capitalism is part of the nursery school lore of the amateurish literati: Every student must know that all characteristic legal institutes of modern capitalism (from the share, the bond, the modern mortgage, the bill of exchange and all kinds of transaction forms to the capitalist forms of association in industry, mining and commerce) were completely unknown to Roman law and are of medieval, in part of Germanic origin. Moreover, Roman law never got a foothold in England, where modern capitalism originated. The reception of Roman law became possible in Germany because

of the absence of the great national guilds of lawyers, which in England resisted this development, and because of the bureaucratization of law and administration. Early modern capitalism did not *originate* in the bureaucratic model states where bureaucracy was a product of the state's rationalism. Advanced capitalism, too, was at first not limited to these countries, in fact, not even primarily located in them; it arose where the judges were recruited from the ranks of the lawyers. Today, however, capitalism and bureaucracy have found one another and belong intimately together. (Weber's footnote.)

15. On the *Sezessi n* and its merger with the Progressive party, see above, Pa t Two, ch. XIV, n. 9. On the organization in general of the German parties during the Empire, see Thomas Nipperdey, *Die Organizati n der deutschen Parteien v r 1918* (Düsseldorf: Droste, 1961).

16. Compare also Weber's comment at the 1909 convention of the *Verein für Sozialpolitik* in Vienna, in which he confronted the older generati n of membe s who had exalted the superiority of bureaucracy vis-à-vis "Manchesterism", reprinted in *GA SS*, 412ff.

17. Since it has been alleged from Russian quarters that Mr. Kerenski has made use of this passage from the *Frankfurter Zeitung* in public meetings to show the need for his offensive as a proof of "strength," let me here explicitly address this gravedigger of Russia's young freedom: An offensive can be launched nly by someone who disposes of the necessary resou ces—for example, enough artillery to hold down the opposing infantry in its trenches, and enough means of transportation and supplies to let the own soldiers in their trenches feel their dependence on him for food. The "weakness" of the so-called "Social-Revolutionary" government of Mr. Ke enski, however, lay in its lack of creditworthiness, as has been explained elsewhere [cf. "Russlands Übergang zur Scheindemokratie," in *Die Hilfe*, April 26, 1917, eprinted in *GPS*, 192–210], and in the necessity, in order to gain the *domestic* c edits required for the maintenance of its power, to deny its own idealism, to conclude an alliance with the bourgeois imperialist Entente, and thus to sacrifice hundreds of thousands of its own countrymen as mercenaries for alien inte ests. I believe that I was unfortunately right with this prediction, as with others that I made elsewhere on Russia's expected stance. (I see no reason to modify this passage, which was written many months ago.) (Weber's footnote.)

18. *Nachtwächterstaat* was the epithet commonly applied to the liberal state with its minimization of functi ns by the critics of the laissez-faire doctrine. The reference, of course, is to "Manchesterist" England.

19. Eugen Schiffer (1860–1954) a National-Liberal deputy, was made undersecretary of state at the Imperial treasury in 1917.

20. It is amusing that in the [ultra-conservative] *Kreu zeitung* of all places an anonymous writer derives the incompatibility of the two positions fr m the formalist legal consideration that parliamentary deputies are supposed to vote according to their convictions, but *Bundesrat* members according to instructions. It does not put off the *Kreuzzeitung* that numerous *Landräte*, who since Puttkamer's times have been responsible for "representing the political line of the government," sit in the Prussian diet; nor is it disturbed by Imperial secretaries of state who, as deputies in the Prussian diet, would be expected to criticize the instructions they have received, as *Bundesrat* members, from the government which is responsible to this diet. If a party leader, who is als a member of the *Bundesrat*, cannot get the instructions that correspond to his convictions, he must resign. In fact, that should be done by *every* statesman [who cannot get the necessary mandate]. More n that below. (Weber's footnote.)

21. Matthias Erzberger (1875–1921) was the most prominent Center party member of the war period. A leader of the democratic left wing, he played a key role in the process of parliamentarization and in the early post-war government; he was assassinated by nationalist fanatics in 1921. Cf. Klaus Epstein, *Matthias Erzberger and the Dilemma of German Democracy* (Princeton: Princeton University Press, 1959).

22. After 1918 Alfred Hugenberg indeed became both: From his propagandistic basis in the newspaper and movie industry he went on to head the rightwing *Deutsch-Nationale Partei* in 1928 and to join Hitler's first cabinet as minister of economics in 1933, in the completely mistaken expectation that he could manipulate Hitler.

23. This is a reference to a much-used proverb, "In monetary matters *Gemütlichkeit* finds its limits"; it is said to have been first stated by the industrialist and liberal leader David Hansemann in the Prussian diet on June 8, 1847.

24. Bismarck was Prussian minister to the loosely organized Federal Diet in Frankfurt, in which Austria still played a dominant role, from 1851 till 1859. Cf. Arnold Oskar Meyer, *Bismarcks Kampf mit Österreich am Bundestag zu Frankfurt (1851–1859)* (Berlin: Koehler, 1927).

25. Richard von Kühlmann (1873–1948), a career diplomat appointed secretary of state in August 1917, had angered the military (Ludendorff) through a relatively conciliatory position on some procedural issues at the Brest-Litovsk peace negotiations late in December; this resulted in a press campaign and other pressures directed by the Great Headquarters for his dismissal—a goal which Ludendorff attained only in July 1918, when Kühlmann was forced to resign and was replaced by an admiral, Paul von Hintze. Cf. Erich Matthias and Rudolf Morsey (eds.), *Der Interfraktionelle Ausschuss 1917/18* (2 vols.; "Quellen zur Geschichte des Parlamentarismus und der politischen Parteien," first series, vols. 1/I–II; Düsseldorf: Droste, 1959), II, 77ff.

26. The *Hauptausschuss* was formed in October 1916. It was in fact the Budget Committee, empowered to sit even when the *Reichstag* was not in session, with the specific purpose of debating foreign affairs and war matters; it comprised representatives of all parties on a proportional basis. Cf. Matthias and Morsey (eds.), *op. cit.*, I, xivff.

27. After the fall of Chancellor Bethmann-Hollweg (on which see below, n. 29), an advisory committee of seven parliamentarians was forced by the mistrustful *Reichstag* upon the new chancellor, Georg Michaelis, to consult with him on the German response to the Papal peace note of August 1917. This was the first time parliament explicitly participated in foreign policy formulation, and thus an important step toward parliamentarization. Cf. Epstein, *Erzberger, op. cit.*, 216ff.; also Matthias and Morsey (eds.), *op.* cit., I, 119–213, where the prehistory and course of the negotiations is extensively documented in protocols of committee sessions.

28. Between December 1917 and March 1918 Trotsky negotiated with German diplomatic and military representatives at Brest-Litovsk. Wilson's Fourteen Points date from January 1918.

29. On July 6, 1917 Erzberger in a sensational speech revealed in the *Hauptausschuss* the failure of the unlimited submarine campaign and, with the backing of a new parliamentary coalition (usually referred to by Weber as the "majority parties"), pressed for a peace resolution of the *Reichstag* and speedy parliamentary reform. With the help of the military authorities, who were playing their own game, these moves resulted in the fall of Chancellor Bethmann-Hollweg a few days later. However, parliament had no influence upon the

selection of the new chancellor, the Prussian Food Administrator Dr. Georg Michaelis; even to its own ambiguous formula of "peace without forcible territorial acquisitions" it obtained his grudging adherence only with the reservation "As I interpret it."

Consequently, the *Reichstag* had no confidence in the new chancellor, and a second crisis occured in August, at the occasion of the Papal peace note, which resulted in the establishment of the Committee of Seven to supervise the drafting of the German response.

In October, finally, after the government had announced its intention to suppress the left-wing Independent Socialist party because of its alleged (but poorly documented) fomenting of a naval mutiny, the joint committee of the majority parties (the *Interfraktionelle Ausschuss*) demanded and secured Michaelis' dismissal. In the ensuing negotiations the *Reichstag* insisted successfully that his aged and infirm successor, the Bavarian Prime Minister Count Hertling, a conservative member of the Center party and himself a former *Reichstag* deputy, come to an agreement with it on policy and personnel matters before taking office in November. For a convenient summary of these "parliamentarizing" developments in 1917, see Epstein, *Matthias Erzberger*, *op. cit.*, chs. VIII–IX.

30. In August 1917 two important parliamentarians joined the Michaelis ministry. Paul von Krause, a National-Liberal deputy in the Prussian diet, was appointed Imperial secretary of justice, and the Center leader in the *Reichstag* Peter Spahn, became Prussian minister of justice. In October the National Liberal deputy Eugen Schiffer was appointed undersecretary of state in the Imperial treasury.

31. In the Hertling government, the parliamentarians obtained for the first time policy-making positions. The Progressive leader in the *Reichstag*, Friedrich von Payer, was given the Imperial vice-chancellorship, and the left-wing National Liberal Robert Friedberg was made vice premier in Prussia.

32. The January 1918 crisis arose out of disputes between the civilian and the military leadership over the conduct of the Brest-Litovsk peace negotiations with Russia. Cf. also n. 25 above.

33. Early in January 1896 William II sent a telegram to the President of Transvaal, Paul Krüger, congratulating him on the repulsion of Jameson's raid which had been backed by Cecil Rhodes. The Emperor acted upon the recommendation of the secretary of state, Baron Marschall von Bieberstein, who thereby hoped to prevent him from ill-advised intervention. The maneuver was part of a German attempt to isolate England diplomatically, but it actually increased Germany's isolation. — During the first Morocco crisis of 1905/6 the German government tried to oppose French colonial designs on Morocco. William II visited Tangier, but the subsequent international conference at Algeçiras ended with a severe diplomatic defeat for Germany. During the second Morocco crisis in 1911 the German gunboat "Panther" was dispatched to Agadir, but in the end Germany lost another diplomatic round.

34. For William II's doubts about the advisability of a trip to Tangier in 1905, which he then undertook *"contre coeur,"* see his *Ereignisse und Gestalten 1878–1918* (Leipzig: Koehler, 1922), 90f.

35. On a rather conciliatory conversation between Rhodes and William II, see *op. cit.*, 72f.

36. On the Emperor's version of his opposition to the telegram and his anticipation of English public protest, see *op. cit.*, 69f.

37. At the time Russia, France and Germany—which professed to be

alarmed about the "Yellow Peril"—prevented Japan from annexing the Liaotung peninsula in the wake of her military triumph over China (treaty of Shimonoseki, April 1895). For the German aspects of these negotiations, cf. Emperor William II's autobiography, *op. cit.*, 68, and Johannes Ziekursch, *Das Zeitalter Wilhelms II*, vol. III of *Politische Geschichte des neuen deutschen Kaiserreiches* (Frankfurt: Sozietätsverlag, 1930), 92ff.

38. The Emperor's Christmas present for Tsar Nicholas in 1895 was an allegorical drawing, executed on his design by the painter Knackfus but represented as his own work. It depicted the Archangel Michael gathering a cohort of ironclad ladies, recognizable by their coats-of-arms as Germania, Britannia, Russia, etc., for a crusade against the Yellow Peril, shown as a blood-thirsty moloch brooding on a cloud over Europe's peaceful cities. The gift and its title, "Nations of Europe, safeguard your most sacred goods," soon became known and was widely ridiculed, but the Emperor believed he had achieved a diplomatic success when his ambassador reported that the hapless recipient had framed and hung the work of art. "It really works! How very satisfying" he wrote on the margin of the report. Cf. Erich Eyck, *Das persönliche Regiment Wilhelms II.* (Zürich: Rentsch, 1948), 119; Emil Ludwig, *Kaiser Wilhelm II*, trans. Ethel C. Mayne (London: Putnam's, 1926), 223f.

39. On July 27, 1900, William II made his infamous "Hun" speech, whence derived the epithet commonly applied to the German soldiers in the Anglo-Saxon countries during World War I. In sending off the troops that were to participate in the crushing of the Boxer Rebellion, with Count Waldersee as the nominal commander-in chief of the international expeditionary force of Russian, Japanese and English troops, William said among other things: "No pardon shall be given, no prisoners shall be taken. Whoever falls into your hands shall be at your mercy. Just as the Huns under King Attila made a name for themselves a thousand years ago which still awes us in traditions and tales, you shall impress the name of the Germans upon China for a thousand years to come so that no Chinaman will ever again dare even to look *scheel* at a German"—a bad pun implying both an evil and a slit-eyed look. In his naval addresses, William employed such terms as that of the "mailed fist" which Germany wanted to apply in the world. Cf. Eyck, *op. cit.*, 200, 272.

40. On April 13, 1906, William II sent a telegram to the Austrian foreign minister, Count A. Goluchowski, in which he said: "You have proven yourself a brilliant second in the duel and can be sure that I shall reciprocate in case of need." This contributed to Goluchowski's downfall a few months later. The German ambassador in Paris, Prince Radolin, remarked in a letter to Friedrich von Holstein (May 8, 1906): "We are, after all, completely isolated in the world, and everybody hates us, even Austria, which is absolutely furious about the Goluchowski telegram." See Norman Rich and M. H. Fisher (eds.), *The Holstein Papers*, IV (Cambridge: At the University Press, 1963), 421f.

41. See above, n. 34. On the Daily Telegraph Affair, see Wilhelm Schüssler, *Die Daily-Telegraph-Affaire. Fürst Bülow, Kaiser Wilhelm und die Krise des Zweiten Reiches* 1908 (Göttingen: Musterschmidt, 1952).

42. Apparently a pejorative term for the Reichstag majority of Progressives, Majority Social Democrats and members of the Center party which in the summer of 1917 adopted a resolution for a peace without territorial aggrandizement and political, economic or financial exploitation. —In a 1917 letter the National-Liberal deputy Gustav Stresemann, who was to become the outstanding foreign minister of the Weimar Republic but was a strong annexationist during most of the war, provides an illustration for the kind of duplicity that Weber derides

here: "If today even conservative secretaries of state tell us behind closed doors that they desire parliamentarization because they fear that the personal conduct of politics by the Emperor may cause Germany immeasurable harm, then one can talk about this in confidential circles, but as a monarchic man one can never bring this most serious justification for parliamentarization before the public." Cf. Matthias and Morsey (eds.), *Der Interfraktionelle Ausschuss*, *op. cit.*, I, 157 n. 10.

43. Late in 1917 newspapers bought up by Big Business accused the *Frankfurter Zeitung* and a *Reichstag* deputy of having been bribed with English money. My name and that of a National-Liberal colleague were likewise linked to bribes by Lloyd George. And such assertions were believed in literary circles! This fact is indeed sufficient for judging the political maturity of this stratum. The doings of these sycophants prove that in Germany demagoguery *without* parliamentarism and *without* democracy operates fully on the French level. (Weber's note.)

44. Paul Singer (1844–1911), a Berlin factory owner, was a leading member of the Social-Democratic party, whose *Reichstag* delegation he headed from 1885 on.

45. This is exactly what later happened in the Weimar Republic, where proportional representation also led to a proliferation of parties based purely on the interest representation of specific groups.

46. As late as 1967, two deputies in the *Bundestag* of the German Federal Republic had to share a single small room; the research staffs of the parliamentary factions were too small and completely overburdened. It was still difficult for parliament and the individual parties to recruit academic and other "in and outers," as they are familiar on the staffs of Congressional committees in the United States.

47. August Bebel (1840–1913) was the leader of the Social Democratic party from its foundation in 1869.

48. For Richter and Erzberger, see earlier notes. Ernst Lieber (1838–1902), a liberal member of the Center party, directed his party's parliamentary delegation after Windthorst's death in 1891.

49. Sec. vi of the essay, entitled "Parliamentarization and the Role of the States" (*GPS*, 394–431), has not been included in this translation because of its more technical character.

INDEX

The index is divided into three parts: (*i*) An index of contemporary scholars cited by Weber; (*ii*) an index of other names mentioned in the text, mainly historical; and (*iii*) a subject index. The Introduction and the editorial notes have not been indexed.

HISTORICAL NAMES

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