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Political Asceticism from Hobbes to Carré de Malberg

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I.

Hobbes has generally been taken to be either the father of modern natural law (since he explains the state as a contractual expression of “basic” human drives) or the father of modern legal positivism (since he equates the law with the will of the sovereign). In this paper I will argue that both readings miss the richness and complexity of Hobbes’s political thought, reducing the meaning of its elements or confusing them with the whole. Its core lies in the conception of the *state as a representation* – a baroque artifice, in which individuals, both the rulers and the ruled, are invited to self-represent themselves anew, wearing the masks concordant with the same representation.

In this reading, therefore, the “contract” does not express a “real bond” between the state and prior individuals, who do not exist as such in nature *qua* nature. As a metaphor, the “contract” rather expresses a co-constitution of the state and individuals themselves, a construction that is as artificial and modern as it is self-conscious. What is ultimately proposed is a form of political asceticism in which nature is not expressed but transcended, and the will of the sovereign is not glorified but tamed.

I will also argue that this reading allows us to clarify the continuity between Hobbes’s political thought and the post-revolutionary system of national sovereignty, as reconstructed by Carré de Malberg, in whose theory of the state one finds an ultimate form of Hobbesian asceticism, as now expressed in a purely juridical concept of state organ and in a conception of citizenship concordant with the 1789 Declaration of the Rights of Man and of the Citizen. In Carré de Malberg, as in Hobbes, citizens do not “authorize” the state but represent it, representing themselves as embodying a nation personified by the state.

II.

In order to clarify Hobbes’s conception of the state as a representation one must begin by reminding that, according to him, a people is formed at the moment in which a sovereign represents it. Before the collectivity is unified through its representation by the sovereign, there is not a people but a multitude (Skinner 2002a: 399ff.; Hoekstra 2006: loc. 2801ff.).

The said moment pertains to a *representational concept of representation*: both the sovereign and the people – their respective qualities as representative and represented – exist only in the human mind. Thus, entailing a relation of representation, the state is also a representation of the mind. At issue is the capacity of human beings to form representations through their “imagination and artifice”

which allows them to escape nature and construct a world that corresponds to their needs (Vieira 2009).

That capacity is revealed in language, which is representational, i.e., it does not reflect something prior to it but shapes the social and political world. Equipped with that understanding, Hobbes enunciates a new political language – the language of the modern state¹ – at a moment in which the classic political heritage, centred in “natural” political units and the corresponding regimes, had fallen apart.

III.

The sovereign, who represents the people, personifies the people. Therefore, the person of the state coincides with the office of the sovereign. Hobbes’s theory of state personality is thus different from the theory of corporate personality as developed in the late medieval period. There, the “collective person” or “corporation” was identified with the collective body existing prior to its representation. On the contrary, in Hobbes there is no collective body prior to the representation but only a multitude. It is the relation of representation that constitutes the people and personifies it.

The fictitious person is therefore identified with the sovereign representing the previously inexistent people. One may say, with Hoekstra, that in Hobbes “far from the people being king, the king is instead the people” (2006: loc. 2701ff.)

In Hobbes’s own words (2009: XVI, § 12):

“A Multitude of men, are made One Person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the Unity of the Representer, not the Unity of the Represented, that maketh the Person One. And it is the Representer that beareth the Person, and but one Person: And Unity, cannot otherwise be understood in Multitude.”

Hobbes’s theory of the personality of the state can only be fully understood if one considers his general theory of personality, in particular the distinction between natural persons and artificial persons.

1 In Philip Pettit’s formulation, the Hobbesian state is “made with words” (2008: 8ff.).

Natural persons are individual persons, but they are not mere individuals. Conversely, mere individuals are not, as such, persons: they become persons through the exercise of their capacity to represent themselves. The individual is mere matter, the person is a human responsibility entailing the unification of matter into an entity recognizable by others as a person. Thus being, “man as artificer is responsible for unifying man as matter” (Vieira 2009: 78).

This theory of “natural” personality will not be strange to jurists, who are familiar with the concept of legal person as a repository of rights and responsibilities, a pole of legal relations. What Hobbes defends is that that legal conception is not merely fictional but essentially corresponds to what “natural persons” are. There is no person until the moment in which someone is capable of representing oneself, unifying in actions and words susceptible of being taken by others as a sign and pledge of his or her responsibility. Individuals who are incapable of that self-representation are not natural persons; they must be represented by a person of a different kind, i.e., by an artificial or fictitious person.

That is, a natural person is a representation of his or herself; an artificial person is a representation of another entity, be it an individual incapable of self-representation, be it a thing, be it a multitude². The unification of man as matter through his self-representation as a natural person matches the unification of a multitude – its transformation into a people – through its representation by an artificial person: the sovereign. In both cases, human artifice allows man to escape nature.

IV.

In Hobbes, the relation of representation that constitutes the state is not aimed at mirroring a community in its prior reality – neither in its “natural” unity of ends nor, even less so, in its diversity. Representation is not to be confused with representativity. As explained above, the state collectivity is not a reality antedating the representation, being instead constituted through representation and as a representation. The underlying purpose is to establish unity out of that which is taken to be common to all: “human nature”.

In opposition to the Aristotelian tradition, human beings are now conceived as creatures determined by primary drives, who therefore grant allegiance to

2 In Hobbes's words (2009: XVI, §§ 1, 2): «A person is he “whose words or actions are considered, either as his own, or as representing the words or actions of another man, or of any other thing to whom they are attributed, whether Truly or by Fiction. When they are considered as his owne, then is he called a Naturall Person: And when they are considered as representing the words and actions of another, then is he a Feign'd or Artificiall person.»

the sovereign to the degree in which their protection is guaranteed. This does not mean however that there is a “human nature” pertaining to the pre-discursive realm of which the state is a mere mechanical expression. Hobbes is not a modern natural lawyer in that reductive sense. On the contrary: the state is a representation all the way down, so to speak – and conversely, all the way up. That is, the new representation – the state – entails a *new language on what man is*. Men who are represented by the sovereign – and represent the sovereign as such – are so from the moment they *represent themselves* as equally determined by the basic interests the sovereign protects.

Therefore, at issue in the “new man” is not the “immediate empirical reality of individuals”³. Neither is it “man’s *true nature*”, or even less, “human *authenticity*”. At issue is instead a language that humans should make their own – representing themselves anew – at a moment in which their existence is no longer viable through their incorporation in those hierarchical communities of higher ends that had been described in the Aristotelian tradition.

Hobbes’s position during the “engagement controversy” can be illuminating at this point. Seeking to justify the taking by the royalists of an “oath of engagement” (i.e., a declaration expressing approval of Charles I’s trial and execution and of the abolition of the monarchy and the House of Lords), Hobbes, himself associated with the royalist cause, defends the taking of the oath. The ground is “his theory of political obligation [as] based not on legitimist principles but on the assumption of a strictly mutual relationship between protection and obedience” (Skinner 2002b: 22).

On that ground, allegiance to a government that was believed to be a mere *de facto* government by the royalists, was taken to be admissible: any power with the capacity to protect them, even if antagonistic to the legitimist principles they endorsed, should be envisioned by men as representing them and therefore as deserving their obedience. *The “oath” would not be a demonstration of human authenticity; it would rather involve the assumption by men of a new language about themselves and the power they were to obey.*

3 Didier Mineur considers that Hobbes’s theory implies “a constructivist conception of the unity of the political body that is exterior to the immediate empirical reality of individuals” – and also that political unity is the “object of a representation of themselves offered to individuals by power”. Mineur seems, however, to assume that the said “empirical reality of individuals” is a given for Hobbes and, consequently, that individuals who “authorize” the state are prior to its construction/representation. Moreover, for Mineur, individuals remain divided in spite of “the principle of unity of the body politic which rests on the sovereign himself” (2010a: 37ff.). From my perspective, however, a different reading is possible. According to it, as explained in the text, individuals themselves are representations (self-representations), i.e., they are not empirical realities antedating the state but *masks* pertaining to the new political language that constitutes the Leviathan – that new political language being therefore a *common code* individuals are to adopt as their own as “natural persons” who engage in the founding “contract”. It is in this sense that Hobbes’s conception of the state as a representation is constructivist all the way down, or all the way up.

Going back to Hobbes's *corpus*, one may dispute such a reading, considering those textual elements that point to mere human nature as the "raw material" underlying the state (the latter being the mere mechanical result of a primary drive for self-preservation and of an inherent "fear of violent death"). However, one should take into account that, in Hobbes, "fear is not created out of nothing"; it is instead based on the self-representation of men in their "natural equality" and in their readiness to harm one another. The point therefore is not that we are "equal by nature", but that we "*acknowledge ourselves as equal*", thus having our "primary" desires and aversions as the common drives of our behaviour – not conceiving the "raw material" of politics in any other way (Morgado 2008: 263ff.).

In other words, the touchstone of Hobbes's political architecture is not to be found in self-preservation itself but in the *self-representation* of men as so determined in equal manner – wearing the corresponding *masks*. Men represent themselves as "natural persons" at the moment of the original contract – considering here the representational conception that Hobbes has of "natural persons" themselves, as explained above. Moreover, Hobbes is very much aware that there is no inevitability or necessity underlying his construction. On the contrary: its viability depends on a cultural inversion regarding man's representation of himself and of the power deserving his obedience. In Hobbes's own words, that representation shatters the "moral learning" received "from Rome, and Athens" (2009: XXXI, § 20).

In light of the above, the relation of representation is not a mechanical relation but a *co-constitutive relation*. In it and through it, both the representative (the sovereign) and the represented (the people) are generated – the people being a collectivity composed of primordial units, the "natural persons". The latter are "natural beings without natural relations", taking part in the original "contract" detached from all natural groups, relations and beliefs. In truth, it is their renewed self-representation as non-natural "natural persons" that the metaphor of the "contract" is aimed at illustrating. The artificiality of the "contract" precisely means that "an order of representation succeeds an order of incorporation" (Marent 2001: 228-229).

In sum, at issue is not a "natural" foundation of the state conceived in reductive terms but an audacious co-constitution of state power and of the persons obeying it; a *creational* relation of representation that redefines political reality and man himself. That co-constitution points to a somehow paradoxical form of *political asceticism*. Men are required to self-represent themselves anew with reference to those "basic" common drives that subsist beyond their divergent relations and beliefs, stepping outside "nature" in the Aristotelian sense. One confirms therefore that the "contract" is the axial element of a construction that is as artificial and modern as it is self-conscious.

V.

In Hobbes, the sovereign is conceived within a relation of representation which establishes him as such. That relation finds its “raw material” – only apparently “raw”, as explained above – in “human nature” conceived as equally determined by self-interest and, by the same token, in those “natural laws” that advance its requirements. The latter are therefore “constitutive of sovereign authority” (Dyzenhaus 2001: 470). In this light, it is equivocal to consider Hobbes to be the “father of legal positivism” – at least in its voluntarist variety, one equating the law with the will of the sovereign as a really existing and untamed will.

Indeed, the interest of the sovereign – namely when issuing laws – is the interest of an artificial person who represents “natural persons” agglutinated into a people. That interest is thus constitutively and intrinsically public. Proceeding with Dyzenhaus (2001: 482):

«The sovereign who issues commands as a supreme judge of a commonwealth is an artificial person. Hobbes always talks of the sovereign as one individual, as “he”, perhaps because of his own prejudice for monarchy as the form of government best suited to maintain the commonwealth. But his personification of the sovereign cannot escape the general theme of *Leviathan*. (...) The sovereign is an artificial person, a creation of human artifice, and, moreover, not even the reasoning head of the great monster, but its soul (...). It follows that the benefit intended by the sovereign in issuing commands can only be the benefit of the commonwealth, which is to say that all commands by definition aim at the common good of protection of those subject to the law, the good which in turn is the justification for the sovereign’s existence. Commands will of course have their origins in some person’s or some body’s judgment about a particular aspect of the common good. But in order for that judgment to be a successful command, it must be filtered through legal order, for as Hobbes also tells us on the first page of *Leviathan* the equity and laws of the sovereign are an “artificial Reason and Will”. No judgment as to the common good counts as command unless it meets whatever criteria are stipulated within legal order to be recognized as such».

When rejecting a reductive qualification of Hobbes as a “father of positivism”, one is not of course pretending him to be a classic natural lawyer. Justice taken to be a “virtue” that frames the commands of the ruler has no place in Hobbes’s

system. Regarding Hobbes, one cannot even speak of “virtues” of the sovereign but only of ends of the sovereign, which essentially correspond to the *salus publica*.

The point is that those ends must preside over the commands of a sovereign who respects the relation of representation establishing him as such. Therefore, those commands cannot be arbitrary or inconsequential: arbitrariness and lack of consequence would inevitably harm an impartial solution of controversies by those who are to settle them according to the commands of the sovereign⁴. Ultimately, the subjects would be led to solve controversies by their own means, falling back into a situation of existential threat. In this case, the relation of representation that constitutes the state would inevitably be dissolved, since “The Obligation of Subjects to the Sovereign is understood to last as long, and no longer, than the power lasteth, by which he is able to protect them” (2009: XXI, § 14). In sum, *the interest of the sovereign coincides with the interests of the subjects*⁵.

In this context, the representational logic establishing the sovereign is not a jurisprudential logic in the natural right tradition. It is instead a *prudential logic* in the modern instrumental sense, aimed at assuring the interests of the subjects and, by the same token, at strengthening the state. As Loughlin summarizes, Hobbes “performed a crucial role in replacing the moral reason of natural law with a form of political reason that led to the formation of the modern state as an institution promoting civil peace, security and prosperity” (2012: 21).

If in the Hobbesian context reason is prudential or instrumental – and no longer moral as in the natural right tradition – Hobbesian political language does not fail to be a new language about *right*, i.e., on what’s *right*. One can indeed refer in this context to a new *political right*. In its logic, if there are no unjust laws of the sovereign, there are beneficent or harmful laws for the subjects and therefore for the sovereign. The sovereign would challenge his own representational quality – endangering the state – if he ignored that.

In sum, the sovereign, as his subjects, is not allowed to remove the mask corresponding to the state as a representation. In James I’s baroque image, the sovereign always stands on a public stage.

4 That according to the “laws of nature”, taking into account particularly the eighteenth law of nature, according to which “No Man To Be Judge, That Has In Him Cause Of Partiality” (2009: XV, § 24).

5 Very significantly, in Hobbes’s work, *salus publica* is defined from the perspective of the subjects – addressing the “benefits” they are to enjoy – requiring “that they be defended against foreign enemies”, “that peace be preserved at home”, “that they enrich as much as that is consistent with public security” and “that they enjoy a harmless liberty” (1998: XIII, § 6).

VI.

If Hobbes can be taken to be a “father of positivism”, the form of positivism he generated is different from a puerile form glorifying the will of the sovereign as a really existing and untamed will. That other form can be named as *representational positivism* and reached its zenith in Raymond Carré de Malberg’s post-revolutionary theory of the state.

That other form of positivism is distinguished by its denial of an *actual* sovereign will, thus configurable outside the realm of the state as a representation. That is, within *representational positivism* political reality (the state) is a human representation, just like political will itself, the latter being now equated as the will of a state organ.

I will return to this point below, but starting at the beginning, it must be said first that Carré de Malberg engenders a theory of the state that corresponds to the “system of national sovereignty” affirmed by the French Revolution. In that system, the state is conceived as a “representation” or “personification” of the nation. The nation on its turn is not conceived as prior or independent from that representation but is constituted with the same. That is, the nation and the state are co-constituted in the moment in which the former is personified by the latter (1920: 3-4)⁶.

The realm in which the nation and the state are co-constituted – a representational realm of entities that did not exist before – is constitutional discourse or state theory, which is now taken to be ultimately based on the principles of the Declaration of the Rights of Man and of the Citizen. Prior to that discourse, there is no *natural* or *sociological* nation – no collectivity to be personified – but only a mass of individuals dispersed “in particular groups, the family, the tribe, the *gens*”. The moment in which “the collectivity is constituted by its very organization in an indivisible union” is thus an ascetic moment in which the natural or sociological differences of previous “constitutive groups” are transcended (1920: 3-4, 11ff.).

The said moment, entailing a detachment of individuals from those groups, involves their self-representation as citizens – who precisely define themselves, not by their natural relations, but by their common constitutional status, thus embodying a nation. And only at that moment – in which the nation emerges as a “general and superior corporation” personified by the state – “national sovereignty” emerges. In Carré de Malberg’s words, “there is not, in the state, a sovereignty prior to that which is of the state itself” – i.e., prior to its representation within constitutional discourse (1920: 2; 1922: 166, 242).

6 There being “a speculative constitutive combination” of both terms (Maulin 2003: 121).

According to Carré de Malberg, the system of national sovereignty affirmed by the French Revolution means the ultimate consummation of the modern state. And in fact what is reproduced here with a maximum degree of sophistication is the Hobbesian logic of the state as a representation, which is now reasserted as a revolutionary constitutional logic. In continuity with the Hobbesian system, the moment of representation entails the constitution of the body politic as a unified body with a common status to all citizens. Moreover, it is clarified that that unified body – a nation personified by the state – has a “general and common interest” that is not to be conceived independently from “individual interests” which are now guaranteed as rights (1920: 25-6).

Didier Mineur holds that, unlike that which is the case in Hobbes, in Carré de Malberg, the state – or its representation – is not rooted in the “authorization” of individuals, there being no “real bond” between the state and the wills of individuals (2010b: 37ff.). It is true that Carré de Malberg does not conceive of such a bond but on that matter he is a descendant of Hobbes – contrary to what is believed by Mineur.

According to the above said, in Hobbes, the representation of the state implies a simultaneous self-representation of individuals: the contract is a metaphor that expresses, not a “real bond”, but a self-representation of individuals as equally determined by the interests guaranteed by the state. Well, also in Carré de Malberg, the citizens who embody the nation – and who hold the interests guaranteed by the state – are not supposed to be pre-existent to the nation or the state that personifies it. Prior to the state, as seen above, there are only “particular groups, the family, the tribe, the *gens*”, i.e., relations of incorporation and not of citizenship. That means that the *citizens themselves* are representations – self-representations – of human beings which undercut the political relevance of those groups and which precisely allow them to integrate in a nation.

As to the power of the state, the normativity inherent to Hobbes’s representational logic is taken to its ultimate consequences in the system of national sovereignty. In truth, the state is now conceived as an “organization”, a “public establishment” or a “person” separated into organs, who are not to be confused with any concrete officials.

The separation between the natural person of the ruler and his sovereign quality had already been clarified by Hobbes. However, in the latter the sovereign office was still concrete to a degree: if the sovereign was an office, the office of the sovereign was not entirely distinguished from its holder; rather, it implied the distinction in that holder of his quality as a natural person, on the one side, and his quality as a representative or fictitious person, on the other. Differently, in the system of national sovereignty, the entity that represents the nation and in which

the nation is personified, is a purely abstract entity. It is “a synthetic and abstract being” in Carré de Malberg’s words (1922: 174).

VII.

Carré de Malberg’s theory of the state – in particular his theory of the legal personality of the state – pretends itself to be a positivist theory, developing within the framework of *Isolierung* that dominated the legal science of his period. In this context, he affirms the state as an “exclusively legal notion” (1920: 28). However, Carré de Malberg’s theory has an unmistakable prescriptive or normative dimension. Its “usefulness” is to “give a firm legal basis to the modern system of limitation of powers” without which the citizens would be at the mercy of arbitrariness (1922: 30).

Mineur accuses Carré de Malberg of being unable to reconcile “a theory of the legal personality of the state developed within a positivist methodology aimed as such at isolating legal science” with the prescriptive or normative reach of his own theory (2010b: 39). I believe however that Mineur does not take duly into account the specificity of Carré de Malberg’s positivist approach. Its point is not to “isolate” legal science on purely epistemic reasons. Its point instead is to affirm legal science – constitutional discourse – as an autonomous realm of representations that has its own logic – namely normative – uncontaminated by reality (“natural”, “sociological” or otherwise).

In the realm of “reality”, i.e., in the actual world, only the wills of individuals exist. But the will of the state is not something existing in that realm. Rather it is the will of an organ of the state – a representational entity – implying the conversion of the actual will of an individual or group of individuals into a will represented as the state’s, i.e., attributed to the state as a “synthetic and abstract being”. Therefore, the will of the state only exists in the realm of representations involving what Carré de Malberg names as a *raffinement d’abstraction* – an “artifice of abstraction” (1920: 11-12; 1922: 284ff.).

At the moment in which Carré de Malberg developed his theory of the state, the concepts of state personality and of state organ – originally developed by German public lawyers – were under fierce criticism by Leon Duguit. For the latter, if only the wills of individuals are observable, then the affirmation of a “collective will” of the state is nothing but an “ingenious fiction” aimed at legitimizing mere force. That being so, state theory should not assume the existence of the state as a “legal person” separated into “organs”; it could only consider the phenomenon of power, the brute fact that there are rulers who hold power and exercise it, thus commanding the ruled (1921: 460ff.).

It must be noted that the primary target of Duguit's criticism were the concepts that had been developed by the German "Gerber/Laband school". In that period, the organ of the state – namely, the monarch – was believed to be the actual "representative" of an actual "collective will", that being the "unified will of the German people". That is, state theory was conceived as a *mirror* of realities conceived as independent from it, its purpose being to "take nineteenth century German politics to a conceptual level" (Jouanjan 2005: 231, 254-5).

Now, being this the target of Duguit, one can understand his eagerness to denounce the corresponding "fictions" as well as their cryptopolitical effect. Carré de Malberg himself rejects Gerber's theory, accurately maintaining that "a true artifice of abstraction" is absent from it (1920: 11-12).

But in a disarming way for Duguit, Carré de Malberg renews the theory of the legal personality of the state and the concept of state organ. Indeed, for Carré de Malberg – who reveals himself to be a true successor of Hobbes regarding this crucial matter – the theory of the state is not to be conceived as a "mirror" of a reality that is prior to it, i.e., it must not fictionalize itself as a reflection of pre-existing entities⁷. On the contrary, *at issue is something that is consciously artificial*.

Only in the realm of artifice – i.e., in the realm of representation in a *legal* sense – can the personification of the nation as the state become conceivable. Only in that realm – which is the realm of constitutional discourse – can the separated wills of individuals who are authorized to act for the state be considered to be the "will of the nation" or the "will of the state". In contrast, in the non-representational realm, there are only "individual wills, which as such are divergent, unsure of themselves, obscure, insusceptible of being thought as a unity" (1922: 284ff.).

In the realm of constitutional discourse, it is therefore possible for men to transcend nature by entering into another dimension, so to speak. A dimension in which a collective will, the will of the state, and indeed the personality of the state itself, become thinkable. And this is possible for men since they are endowed with a representational capacity that allows them to forge an artificial world that matches their needs. This representational capacity is the legal capacity par excellence. In the exercise of that capacity men perform the roles ascribed to them by the state as a representation, wearing the corresponding masks. And, according to Carré de Malberg, "in law, to perform a role is to have the quality" (1920: 41).

Thus, to the extent that they are based on that capacity and respond to human needs, the concepts of legal personality and of state organ are not

7 For Carré de Malberg, the purpose of legal science – and therefore of state theory, which is legal science – is not to describe something, but to consider legal relations which are "abstract in character" (1920: 21).

“ingenious fictions” aimed at disguising mere force. They are not fictions, to the same degree that constitutional law is not a fiction: to deny the state, the legal personality of the state, means to deny the legal order that corresponds to it. And in truth the underlying human needs or “interests” fundamentally require the overcoming of anarchy and the absence of arbitrariness.

In Carré de Malberg’s words, the representation of the state as a legal person – and the concept of state organ – are intended to “provide a firm legal basis to the modern system of limitation of powers, namely of those individuals who serve as organs of the state. The state must be distinguished from these individuals, at least in the sense that the powers exercised by the latter are so, not in their own name, but in the name of the person of the state and by virtue of the statute that organizes the state” (1920: 30).

Moreover, the relation between the person of the state and human needs or “interests” is not accidental, that is, it does not concern a “function” of the state that adds to the state itself. That relation is *constitutive* of the state, in the sense that there is no state without it. Indeed, if a “unified will” did not correspond to the state – if the state corresponded merely to the naked will of individual rulers, to the brute fact of force, as in Duguit –, then the power of the state would not be possible as a stable power capable of claiming obedience.

In Carré de Malberg’s words (1920: 198):

“In the theory of force, that stability is compromised by its own principle; if the power of the state consisted merely in the domination by those who actually held a superior force, the dominated individuals would not be kept from using all the means necessary to liberate themselves from that force, trying to establish a parallel force or, even more, trying to destroy any force of this sort, thus suppressing the state (...). The intrinsic error of this theory is to believe that force itself – any force – can correspond to the state. But this force would be only temporary: that regular and stable order without which the state cannot be considered to exist would not be there.”

Interpreting, the state would deny itself as a stable power if it merely consisted in the use of force of some individuals over others. A stable power *must be represented* as such both by the rulers and the ruled. To the extent that it denies the legal personality of the state and questions the concept of state organ – and, by the same token, the idea of the state as a representation –, it is Duguit’s conception that ultimately reveals itself to be fictional and arbitrary. It builds on an empirical appearance, falling into a puerile naturalism, but the state cannot

possibly correspond to that appearance – that if by the state one considers a power that is continually and durably represented as such by the rulers and the ruled.

In sum, the state is a representation, its realm being constitutional discourse. That realm is not merely fictional or purely arbitrary, much to the contrary. We are speaking of the most distinctive human realm: the world of representations. Only in that realm can “the individual who authors the will he produces” not be “the author of the will he manifests”, the former being attributed to the state (1922: 306).

In very similar terms, Eric Maulin (2003: 154ff.) holds that «Carré de Malberg rediscovers the central problem of Hobbes’s thought, which consists in thinking the existence of a collective and unified will beyond the insuperable singularity of the wills of individuals. His merit resides in perceiving that that problem is characteristically legal (...). In that way, Carré de Malberg’s theory of the state leads his author to conceive a realm of legal “reality” that is relatively independent from empirical reality». Therefore, the personality of the state and the will of its organs are not “the result of a natural, spontaneous, process, but the product of human artifice, taking the form of a legal order”.

Maulin adds that Carré de Malberg, being responsible for that decisive development, does not yet know to “which galaxy” that legal “reality” belongs to. This judgment is probably unfair to Carré de Malberg. In truth, the latter is well aware that that “galaxy” is the *realm of representation in a legal sense*; it corresponds to a representational reality of men which coincides with post-revolutionary constitutional discourse. The purpose of Carré de Malberg’s theory of the state is to offer a systematic account of it.

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