

MAX WEBER'S

THEORY OF THE MODERN STATE



ORIGINS, STRUCTURE AND SIGNIFICANCE

ANDREAS ANTER



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Origins, Structure and Significance

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To my parents

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Preface to the English Edition

In the history of political thought, fragmentary thinkers are of particular interest. Unfinished work makes subsequent interpretation necessary. Max Weber is, in many ways, a fragmentary thinker. So it may be no coincidence that the “sociology of the state” he envisaged in his late years remained unwritten. This book does not seek a retrospective completion of plans about which Weber had written. Only nineteenth-century architects considered themselves capable of completing medieval cathedrals. This book, however, provides a systematic account of Weber’s theory of the modern state, its origins, structure and significance, placing it in its historical context and with respect to contemporary theoretical discussion. In Weber’s treatment of the state, the ambivalence of his political thought becomes especially evident, shifting between an *etatist* stance and an individualistic attitude.

The era during which Weber developed his conception seems infinitely remote from today’s “negotiating state” and “multi-level governance.” Nonetheless, his positions have lost little of their appeal and validity. His definition of the state as the monopoly of legitimate force is widely accepted in contemporary political science, sociology and legal theory. Today, these disciplines, and even the theory of the state itself, are searching for their real object. For this reason it seems even more worthwhile to consider the positions adopted by Weber.

The first edition of this book was the printed version of my thesis, which I wrote while a member of the Department of Political Science at the University of Hamburg. My study was generally well-received.¹ While the second German edition remained almost unchanged, the present English

¹ See among the reviews Furio Ferraresi, “Max Weber nella critica recente”, *Filosofia Politica* 9 (1995) pp. 489–90; Stefan Breuer, “Halb preußisch, halb englisch”, *Frankfurter Allgemeine Zeitung*, 16 May 1995 p. 43; Giuseppe Balistreri, “Nuovi studi su Max Weber”, *Informazione Filosofica* 26 (1995) p. 50; Constans Seyfarth, *Soziologische Revue* 18 (1995) p. 605; Claas Thomsen, “Gewaltmonopol als Maßstab”, *Bonner General-Anzeiger*, 27 September 1995 p. 23; Martin Gralher, “Suche nach dem Politischen”, *Das Parlament*, 2 February 1996 p. 14; Gregor Schöllgen, *Historische Zeitschrift* 262 (1996) p. 141; Dietmar Willoweit, *Zeitschrift für Neuere Rechtsgeschichte* 18 (1996) pp. 333–5; Wolfgang Reinhard, *Der Staat* 35 (1996) pp. 482–3; Otfried Höffe, *Zeitschrift für philosophische Forschung* 1996 p. 522; A. Braeckman, *Tijdschrift voor Filosofie* 58 (1996) pp. 770–1; E. Bolsinger, “Max Weber’s Sociology of the State”, *Telos* 109 (1996) pp. 182–5; Reinhard Mehring, *Jahrbuch Politisches Denken* (1997) pp. 181–4; Claus Leggewie, “Im Gehäuse der Hörigkeit”, *Süddeutsche Zeitung*, 1 March 1997 p. VI (suppl.); Friedhelm Kröll, *Das Argument* 39 (1997) pp. 432–3; Stephan Ganglbauer, “Über die politische Wissenschaft eines homo politicus”, *SWS-Rundschau* 37 (1997) pp. 489–91; Jörg Luther, *Archiv des öffentlichen Rechts* 122 (1997) pp. 658–9; Pier Paolo

edition is a revised and updated one. Recent work has been incorporated; and so far as possible references made to the *Max Weber Gesamtausgabe*. Some criticisms have been considered and taken into account, while some positions are now formulated more clearly than before. The basic positions, however, have remained unchanged.

My original interest in Weber was prompted by the lectures of Wilhelm Hennis during my studies at the University of Freiburg. In later years I was inspired by his iconoclastic approach and his willingness to engage in lively and stimulating discussion. With his death in November 2012, the world of Weber scholars lost one of its most inspiring representatives. I think of him with gratitude. To my wife Maja, I am grateful for reading and criticising the original version of this book. I am much indebted to Keith Tribe, who translated this book excellently and organised its publication. For literary and bibliographical research, I am thankful to Hannah Bethke and Verena Frick.

Andreas Anter
Erfurt
October 2013

Portinaro, "Weberiana", *Teoria Politica* 13 (1997) pp. 185–7; Paul-Ludwig Weinacht, *Historisches Jahrbuch* 118 (1998) pp. 374–6; Nolberto A. Espinosa, *Filosofía* 12 (1998) pp. 44–5; Gianfranco Poggi, "Recent Work on Weber", *Political Theory* 26 (1998) pp. 588–90; Agostino Carrino, *Diritto e cultura* (1999) pp. 195–6; Hartmann Tyrell, "Physische Gewalt, gewaltsamer Konflikt und 'der Staat'", *Berliner Journal für Soziologie* 9 (1999) pp. 282–5; Bernd Wunder, *Zeitschrift für Historische Forschung* 26 (1999) pp. 420–1; Sven Eliaeson, *Zeitschrift für Politik* 47 (2000) pp. 97–8.

Translator's Preface

Andreas Anter's book was originally published before the appearance in the ongoing *Max Weber Gesamtausgabe* of many texts referred to here, and indeed we still await the appearance of two volumes devoted to Weber's methodological writings. While the *Gesamtausgabe* has not brought about any substantial alteration in the texts available to us, it has prompted a much more sophisticated understanding of Weber's work and arguments, which has in turn informed recent translations. Accordingly many of the older translations of Weber into English are now quite unusable: this is true of the Shils and Finch collection of methodological writings, but also the corpus of *Economy and Society* in its 1968 English edition.

Max Weber died while in the process of rewriting *Economy and Society*; he completed what is now Part One, but the remainder was put together from scattered manuscripts after his death. However, the fact that these manuscripts existed means that Weber intended to substantially rewrite them, since he usually discarded all papers once he had finished a piece of work. For this reason alone the edition compiled after his death and originally published in 1922 should be treated with caution. Moreover, in the interim Johannes Winckelmann reorganised the text according to his own preconceptions, so that the version put together as the English 1968 edition does not follow the same order or include the same material as the 1922 edition, nor indeed does it coincide exactly with any German edition. The editors of the MWG took the decision that the original compilation was sufficiently problematic to warrant dividing the text previously known as *Economy and Society* into two: MWG I/23 being Part One, and MWG I/22 in several parts being the various collections of unrevised manuscripts. Since the text known as *Economy and Society* no longer has philological credibility, reference is made here either to recent translations of Part One, or to the MWG version of the remainder.

Acknowledgements

This is a revised translation of the second edition of *Max Webers Theorie des modernen Staates. Herkunft, Struktur und Bedeutung*, published by Duncker & Humblot, Berlin 1996. The first edition appeared in 1995.

Introduction

Very little preoccupies the political thought of modernity as much as the State. Even Max Weber puts the state above all else in his writing, describing it as “the most important constitutive element of all cultural life.”¹ He notes that the “prime” task of his science is the analysis of “political actions and forms,” the most important of which he again identifies “above all” with the State.² The question “What is a ‘state’?” opens his programmatic speech, “Politics as a Vocation,”³ and the definition of the state closes his “Basic Sociological Concepts.”⁴ The broad significance that Weber attributes to the state is apparent in the way that his writing repeatedly turns to theoretical reflection on the nature of the state. But nowhere does he develop at any length the questions and issues that such reflection raises. It is well-known that he never developed a systematic doctrine of the state, nor a theory of the state or a sociology of the state; instead, he always deals with the state in passing, with remarks that are seldom pursued beyond a few sentences. They are scattered throughout his work and can be found in the most diverse contexts: in his early agrarian writings, in his methodological essays, in the special sociologies and in the political writings.

In his later years Weber increasingly devoted himself to themes touching on the state; it was central to his teaching during his last few semesters; he planned to develop a sociology of the state which was intended to be the conclusion of his sociology of rulership, but this intention remained

¹ Max Weber, “The ‘Objectivity’ of Knowledge in Social Science and Social Policy,” in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 p. 371.

² Weber, “The Meaning of ‘Value Freedom’ in the Sociological and Economic Sciences,” in his *Collected Methodological Writings*, ed. Hans Henrik Bruun, Sam Whimster, Routledge, London 2012 pp. 332–333 (trans. revised).

³ Weber, “The Profession and Vocation of Politics,” in his *Political Writings*, ed. Peter Lassman, Ronald Speirs, 6th ed. Cambridge University Press, Cambridge 2008 p. 310.

⁴ Weber, *Wirtschaft und Gesellschaft*, J. C. B. Mohr (Paul Siebeck), 5th ed. Tübingen 1985 p. 30.

unfulfilled.⁵ Nonetheless, his sociology of the state is not “unfinished” in the same way that Mahler’s Tenth Symphony or Kafka’s *The Castle* are. It is not that we simply lack a conclusion. Johannes Winckelmann’s attempt to play the role of literary executor and complete the project by fabricating a “sociology of the state” from student lecture notes and sections of the later political writings is ultimately a questionable and dubious enterprise.⁶ He follows the indefensible procedure of ripping from their context pieces of political writing addressed to very particular issues, eliminating thereby contemporary relevance and meaning; cutting and shunting texts in a sometimes very awkward fashion; and finally, as he admitted himself, expunging “pure value judgements.”⁷ Such an approach does justice neither to the texts nor to Weber’s self-understanding, and it is hard to see exactly what “didactic interest,” or even “scholarly interest,”⁸ this project is supposed to serve.

Winckelmann’s approach was quite rightly greeted with criticism, principally on account of the way in which a sociology of the state had been extracted from the political writings and reassembled like some kind of mosaic.⁹ Wilhelm Hennis believed the entire enterprise to be an “unfortunate error,” discounting the many declarations Weber made regarding a future “sociology of the state.” It was not Weber’s early death, but “the limitations of his intentions and the possibilities of his problematic” which for Hennis obstructed the unfolding of a sociology of the state, so that nothing more in this line was to be expected.¹⁰ Whether anything more might here be expected is of course a matter of speculation. It is however clear that Winckelmann’s project is untenable, incapable of reconstructing a sociology of the state on the basis of Weber’s writings.

Just as there is no elaborated sociology of the state in Weber, a finished doctrine of the state is also lacking. On 23 January 1913 he wrote to his publisher that his contribution to the *Grundriss der Sozialökonomik*, over which he had long sweated, was “really the outlines for a comprehensive sociological theory of the state,” and on 30 December 1913 he wrote to his publisher about

⁵ See Stefan Breuer, “Max Webers Staatssoziologie,” *Kölner Zeitschrift für Soziologie und Sozialpsychologie* Jg. 45 (1993) pp. 215ff.; Wolfgang J. Mommsen, *Max Weber and German Politics 1890–1920*, trans. Michael S. Steinberg, University of Chicago Press, Chicago 1990; Reinhard Bendix, *Max Weber: An Intellectual Portrait*, Routledge, London 1998 p. 13.

⁶ Max Weber, *Staatssoziologie*, ed. Johannes Winckelmann, Duncker & Humblot, Berlin 1966.

⁷ Johannes Winckelmann, “Vorwort zur 4. Auflage,” in Weber, *Wirtschaft und Gesellschaft*, 5th ed. J. C. B. Mohr (Paul Siebeck), Tübingen 1985 p. XXIX.

⁸ Winckelmann’s own terms in his “Vorwort,” *ibid.*

⁹ Mommsen, *Max Weber and German Politics*, *op. cit.* p. xx; Bendix, *Max Weber*, *op. cit.* p. 473.

¹⁰ Wilhelm Hennis, *Max Weber’s Central Question*, trans. Keith Tribe, Threshold Press, Newbury 2000 p. 98.

a forthcoming “complete sociological theory of the state and rulership.”¹¹ In respect of statements of this kind the sceptical attitude adopted by Wilhelm Hennis is entirely fitting. Whatever moved Weber to make such statements in his correspondence, a glance at the relevant sections of *Economy and Society* shows, as Stefan Breuer rightly says, that there is “barely anything” here that represents a “complete sociological theory of the state and rulership.”¹² This is because theoretical remarks on the state are scattered throughout the text, so that “Weber’s doctrine of the state” could only be derived from a systematic review of all aspects of the text that related in some way to such a doctrine. The sheer number of these aspects corresponds to a plurality of dimensions. Whereas in the “Basic Sociological Concepts” the state is defined as a “political institutional organisation” disposing of a “monopoly of legitimate physical force,”¹³ the state appears in other contexts as a “relation of rulership,” as the “complex of specific joint human action,” as a “machine,” as a “tangle of value ideas,” as a “legal order,” or as a bureaucratic apparatus.

This study will – first of all – elaborate, structure and compare these various perspectives from the standpoint of a sociology of rulership, a theory of action, history, the law, ethics, epistemology and of value judgements. Second, the given historic-theoretical origins of each individual position will be identified; and third, their significance for contemporary state theory and political science will be assessed. This book is constructed in such a way that these dimensions can be elaborated step by step, permitting the structure of Weber’s theory of the state to emerge.

The definition of the state has axiomatic significance, for it provides an anchor-point for several aspects of his conception of the state: the criteria of the monopoly of physical force, of institutional character, of the political, of legitimacy and of order. Among the implications of the concept of the state is Weber’s practice of identifying no set “purpose” for the state, which in turn makes it necessary to determine his position on the question of the role of the state – which was in contemporary discussion over the state one of the prime issues of the time. Following on from a detailed analysis of the criteria of his concept of the state in Chapter 1, in Chapter 2 I raise those aspects of his theory of the state relating to the sociology of rulership, dealing in this respect with the fundamental relationship between state and legitimacy. Linked to this, in Chapter 3, is an investigation of Weber’s analysis of the state in terms of an action framework, an analysis that is closely interwoven with his epistemological grounding of state doctrine. This provides a foundation on the basis of which the way in which value judgements link into his conceptualisation of the state can be opened out; here it is above a matter of clarifying the relation

¹¹ Weber to Paul Siebeck, 23 January 1913, in his *Briefe 1913–1914*, MWG II/8 p. 53.

¹² Stefan Breuer, *Max Webers Herrschaftssoziologie*, Campus Verlag, Frankfurt a.M., New York 1991 p. 25.

¹³ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 17 p. 29.

both of “state” and “nation” and of ethics and reason of state (Chapter 4). The elementary relationships in Weber's theory of the state between state and law, bureaucratisation and rationalisation can then in Chapter 5 be treated historically in terms of the positions he adopted with regard to the origins of the modern state. Finally, Chapter 6 provides an interpretation of his view of the state as a “machine” in the context of his understanding of the state as a component of the process of occidental rationalisation.

Consideration of Weber's thought with regard to the state is overdue, given the absence of any satisfactory investigation of the positions he adopted here. As long ago as the 1960s, Karl Loewenstein called for “a comprehensive presentation of his conception of the state,”¹⁴ but even in 1990 Stefan Breuer concluded that “a convincing account of Weber's theory of the state has yet to be made.”¹⁵ The present study is intended to close this gap in commentary literature on Max Weber. Hitherto the attempts made in this direction have either confined themselves to particular aspects of Weber's thinking – legal,¹⁶ historical¹⁷ or concerning the evolution of his writing¹⁸ or the history of ideas.¹⁹

¹⁴ Karl Loewenstein, “Max Webers Beitrag zur Staatslehre in der Sicht unserer Zeit,” in Karl Engisch et al., *Max Weber. Gedächtnisschrift*, Duncker & Humblot, Berlin 1966 p. 132.

¹⁵ Stefan Breuer, “Neue Max Weber-Literatur,” *Neue Politische Literatur* Jg. 35 (1990) p. 14.

¹⁶ Cf. Stephen Turner, Regis Factor, *Max Weber: The Lawyer as Social Thinker*, Routledge, London, New York 1994 pp. 93ff.; Michel Coutu and Guy Rocher (eds), *La légitimité de l'État et du droit. Autour de Max Weber*, Saint-Nicolas 2005 ; François Chazel, “Communauté politique, État et droit dans la sociologie Wébérienne,” *L'Année sociologique* Vol. 59 (2009) pp. 275–301.

¹⁷ Cf. Stefan Breuer, “Wege zum Staat,” in Andreas Anter, Stefan Breuer (eds), *Max Webers Staatssoziologie*, Nomos, Baden-Baden 2007 pp. 57–77; Andreas Anter, “Von der politischen Gemeinschaft zum Anstaltsstaat: Das Monopol der legitimen Gewaltsamkeit,” in Edith Hanke, Wolfgang J. Mommsen (eds), *Max Webers Herrschaftssoziologie*, J. C. B. Mohr (Paul Siebeck), Tübingen 2001 pp. 121–138; Patrice Mann, “La genèse de l'État moderne: Max Weber revisité,” *Revue française de sociologie* 41 (2000) pp. 331–344; Stefan Breuer et al., “Entstehungsbedingungen des modernen Anstaltsstaates. Überlegungen im Anschluß an Max Weber,” in Stefan Breuer, Hubert Treiber (eds), *Entstehung und Strukturwandel des Staates*, Westdeutscher Verlag, Opladen 1982 pp. 75ff.

¹⁸ Breuer, “Max Webers Staatssoziologie,” op. cit. This essay represents an instructive discussion of Weber's sociology of the state.

¹⁹ Cf. Andreas Anter, “La teoria dello Stato di Max Weber nel contesto contemporaneo,” *Il Pensiero Politico* 44 (2011) pp. 348–368; Gangolf Hübinger, “Einleitung,” in Max Weber, *Allgemeine Staatslehre und Politik (Staatssoziologie)*, MWG III/7 pp. 1–39; Siegfried Hermes, “Der Staat als ‘Anstalt’: Max Webers soziologische Begriffsbildung im Kontext der Rechts- und Staatswissenschaften,” in Klaus Lichtblau (ed.), *Max Webers ‘Grundbegriffe’*, VS Verlag, Wiesbaden 2006 pp. 184–216; Furio Ferraresi, *Il fantasma della comunità: Concetti politici e scienza sociale in Max Weber*, Franco Angeli, Milano 2003 pp. 190ff.; Duncan Kelly, *The State of the Political: Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt and Franz Neumann*, Oxford University Press, Oxford 2003.

Michael Zängle's *Max Webers Staatstheorie im Kontext seines Werkes*²⁰ is rather curious – for while it covers a great deal of ground, hardly any of this relates to the title. Astonishment is the only possible reaction to the fact there is discussion of “the state, the real *thema probandum*” only “at the beginning and the end”; “by far the greater part of the text is dedicated to entirely different things.”²¹ Quite basic elements of Weber's theory of the state are completely disregarded: in particular, a historical perspective on positions adopted regarding the origins of the modern state, the question of the relation of state and bureaucracy, and not least the epistemological aspects of the theory of the state. The book has quite evidently been written in ignorance of major parts of Weber's work. This is the only explanation for the absence of any consideration of relevant passages in the political writings, in the early writings and in the methodological writings, despite a claim on the part of the writer to have made use of all Weber's writings.²²

Reference to the entirety of Weber's writing is a fundamental prerequisite for the registration and evaluation of Max Weber's theory of the state. Moreover, its understanding also requires reference to a range of contemporary discussion: in the “state sciences,” sociology, political economy, law and philosophy. As with every thinker, Weber has to be read and understood historically, since his positions and concepts can only be understood if placed in relation to the framework within which they were formed, together with prevailing conceptual presuppositions. But identification of this frame of reference can be dogged by serious problems of a kind already alluded to above. As Wilhelm Hennis has observed, “Weber's work is so difficult to interpret because the context of almost every one of his texts is never clearly stated, although it would have been quite plain to his contemporaries.”²³ Mommsen complained that only very few “traces of contemporary attitudes” can be found, “which may serve as clues to detect in him a certain intellectual position.”²⁴ Martin Riesebrodt has also noted that “Weber did

²⁰ Zängle, *Max Webers Staatstheorie im Kontext seines Werkes*, Duncker & Humblot, Berlin 1988.

²¹ Breuer, “Neue Max Weber-Literatur,” op. cit. p. 14.

²² Zängle, op. cit. p. 11. Even the few passages that do address themselves to Weber's theory of the state fail to provide much illumination, and are distinguished for the most part by a series of crass misunderstandings. So for instance there is a claim that Weber's theory of legitimation involves “a theory of manipulation” (p. 82); and that Weber's “Social-Darwinistic” point of departure “implies from the first that legitimation is a deception.” (p. 69)

²³ Hennis, *Max Weber's Science of Man. New Studies for a Biography of the Work*, trans. Keith Tribe, Threshold Press, Newbury 2000 p. 142.

²⁴ Wolfgang J. Mommsen, “Max Weber's political sociology and his philosophy of world history,” *International Social Science Journal* 17 (1965) pp. 23–45, 24.

not usually disclose his sources and references" and that, consequently, "one has to be careful in establishing such references."²⁵

This also goes for Weber's positions and concepts in respect of the theory of the state. If he remarks, with all youthful authority, that it was "hard to determine" how Livy "had used his sources, and what sort of sources he had used,"²⁶ then the same can be said about him: almost nowhere does he make reference to theoretical and historical positions, and leaves hardly anything by way of traces that would make it possible to unambiguously place him in one or the other traditions of political theory. It seems more likely that he sought to avoid any such traces, if not erase them.

Since Weber leaves us so little to go on in respect of the sources and framework for his positions on politics and the state, we must ourselves set off on their trail. While he left no tracks, he did unintentionally provide a strategy for such an endeavour; and so when he wrote that to gain insight into the political "specificity" of a state one had to "proceed exactly in the same way as someone who interprets *Faust*,"²⁷ it is possible to take up this advice and apply it to a knowledge of the "specificity" of his conception of the state, together with its theoretical and historical background. The business of the history of political thought is in no small part a philological enterprise. And so this study also pursues the goal of revealing the theoretical and historical context of the individual building blocks of his theory of the state. In so doing I will be not so much concerned to identify "predecessors" for his thinking, but instead to ask after the discursive context in which he should be placed, which positions he took up, and how he modified them.

Of decisive importance in this regard is German state doctrine of the time – first of all Georg Jellinek's *Allgemeine Staatslehre*, a work whose very great influence upon Max Weber is here examined and demonstrated. In his memorial address for Jellinek – a unique testament to admiration and friendship – he did admit that he had gained from Jellinek's major works "quite crucial stimulation."²⁸ So it has occasionally been maintained that "determination of their exact relationship"²⁹ would be desirable. Some

²⁵ Weber, "From Patriarchalism to Capitalism: The Theoretical Context of Max Weber's Agrarian Studies (1892–3)," in Keith Tribe (ed.) *Reading Weber*, Routledge and Kegan Paul, London 1989 p. 133.

²⁶ Weber, Letter to his cousin Fritz Baumgarten, 9 September 1878, *Jugendbriefe*, J. C. B. Mohr (Paul Siebeck), Tübingen 1936 p. 11.

²⁷ Weber, "Critical studies in the logic of the cultural sciences" (1906), in his *Collected methodological writings*, op. cit. pp. 139–184, 167 (WL 263), trans. revised.

²⁸ Weber, Memorial Speech to Georg Jellinek at the wedding of his daughter, Frau Dr. Dora Busch, 21 March 1911, in René König, Johannes Winckelmann (eds), *Max Weber zum Gedächtnis*, Westdeutscher Verlag, Opladen 1963 p. 15.

²⁹ Wolfgang Schluchter, *Die Entstehung des modernen Rationalismus*, Suhrkamp, Frankfurt a.M. 1998 p. 182.

efforts hitherto have been made to examine the “importance of Jellinek to Weber.”³⁰ Apart from this, the importance of Nietzsche to central aspects of Weber’s political thinking will be demonstrated. Many authors have commented that there were connections here,³¹ but concerning the theory of the state, no one has ever attempted a detailed textual comparison. Likewise there has so far been no investigation of the influence of Friedrich Gottl, Hugo Preuß, Heinrich von Treitschke, Paul Laband and Walther Rathenau on quite basic elements of Weber’s understanding of the state. I will seek here to demonstrate points both of affinity and demarcation between Weber on the one hand and these contemporaries on the other.

This study aims to not only show the kind of tradition in which Weber stood but also measure his ability to contribute to the issues raised today by legal and political science. He is certainly one of the most important forerunners of political science, and many of his positions – on power and rulership, or on parliament and bureaucracy – have become core elements of the discipline. But there has so far been no study of the political content of his theory of the state. This seems worth pursuing, given the great significance ascribed to connecting political science to a theory of the state, such that political discourse might once again resume its interest in the State. Since the 1920s discussion of the nature of the state has often been described as in a condition of crisis³² and was during the 1960s and 1970s

³⁰ Breuer, “Max Webers Staatssoziologie,” op. cit. p. 210. See Realino Marra, *La religione dei diritti. Durkheim – Jellinek – Weber*, Giappichelli Editore, Torino 2006 pp. 50ff.; Duncan Kelly, *The State of the Political. Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt and Franz Neumann*, Oxford University Press, Oxford 2003 pp. 97ff.; Andreas Anter, “Max Weber und Georg Jellinek. Wissenschaftliche Beziehung, Affinitäten und Divergenzen,” in Stanley L. Paulson, Martin Schulte (eds) *Georg Jellinek, J. C. B. Mohr* (Paul Siebeck), Tübingen, 2000 pp. 67–86; Breuer, *Georg Jellinek und Max Weber. Von der sozialen zur soziologischen Staatslehre*, Nomos, Baden-Baden 1999.

³¹ Cf. Bryan S. Turner, “Max Weber and the spirit of resentment: The Nietzsche legacy,” in *Journal of Classical Sociology* 11 (2011) pp. 75–92; Laurent Fleury, “Nietzsche, Weber et le politique: d’une pensée philosophique à un regard sociologique,” in Hinnerk Bruhns, Patrice Duran (eds), *Max Weber et le politique*, Fondation Maison des Sciences de l’Homme, Paris 2009 pp. 163–180; Franz Graf zu Solms-Laubach, *Nietzsche and Early German and Austrian Sociology*, Berlin, New York 2007 pp. 13ff., 77ff.; Ralph Schroeder, “Nietzsche and Weber. Two ‘Prophets’ of the Modern World,” in Sam Whimster, Scott Lash (eds), *Max Weber, Rationality and Modernity*, 2nd ed. Routledge, London 2006 pp. 207–221; Eugène Fleischmann, “De Weber à Nietzsche,” in *European Journal of Sociology* 42 (2001) pp. 243–292 (reprint); Wilhelm Hennis, *Max Weber’s Central Question*, trans. Keith Tribe, Threshold Press, Newbury 2000 pp. 146ff.; Robert Eden, *Political Leadership and Nihilism. A Study of Weber and Nietzsche*, University Press of Florida, Tampa 1983 pp. 49ff., 205ff.

³² See, for example, Alfred Weber, *Die Krise des modernen Staatsgedankens in Europa*, Deutsche Verlags-Anstalt, Berlin 1925; Hermann Heller, “Die Krisis der Staatslehre,” in *Archiv für Sozialwissenschaft und Sozialpolitik* Bd. 55 (1926) pp. 289ff.; Rudolf Smend, “Verfassung und Verfassungsrecht,” in his *Staatsrechtliche Abhandlungen und andere Aufsätze*, Duncker & Humblot, Berlin 1968 pp. 121ff.

marginalised; but since the late 1980s, there has been renewed discussion of the state, involving fundamental discussion of our contemporary understanding of the state.

The view is today repeatedly expressed that efforts to analyse and investigate the reality of the state cannot do without a historical and theoretical foundation, that this is needed more than ever.³³ This book seeks to demonstrate that Weber made a quite decisive theoretical contribution to the development of a modern theory of the state, a theory which necessarily has to work with his positions and concepts. This has become increasingly recognised in the writings of those interested in the analysis of the state.³⁴ It is to this insight that this present book is addressed.

³³ Cf. Gianfranco Poggi, *The State. Its Nature, Development and Prospects*, 4th ed., Polity Press, Cambridge 2010; Mark Bevir, R.A.W. Rhodes, *The State as Cultural Practice*, Oxford University Press, Oxford 2010 pp. 23ff.; Arthur Benz, *Der moderne Staat. Grundlagen der politologischen Analyse*, 2nd ed., Oldenbourg, Munich 2008 pp. 11ff.; Peter J. Steinberger, *The Idea of the State*, Cambridge University Press, Cambridge 2006 pp. 39ff.

³⁴ See Paul du Gay/Alan Scott, "State Transformation or Regime Shift?" *Sociologica* 2 (2010) pp. 1–23; Arthur Benz, *Der moderne Staat*, op. cit. pp. 80f., 157f.; Colin Hay, Michael Lister, "Theories of the State," in Colin Hay et al. (eds), *The State: Theories and Issues*, Palgrave Macmillan, Basingstoke 2006 pp. 1–20, 7ff.; Walter C. Opello, Stephen J. Rosow, *The Nation-State and Global Order*, 2nd ed. Lynne Rienner, London 2004 pp. 140ff.; Gunnar Folke Schuppert, *Staatswissenschaft, Nomos*, Baden-Baden 2003 pp. 78f.; Wolfgang Reinhard, *Geschichte der Staatsgewalt*, 3rd ed. C. H. Beck, München 2003 pp. 125ff.; Klaus Roth, *Genealogie des Staates*, Duncker & Humblot, Berlin 2003 passim; Gianfranco Poggi, *Forms of Power*, Polity Press, Cambridge 2001 pp. 12ff.; Stefan Breuer, *Der Staat*, Rowohlt, Reinbek b. Hamburg 1998.

1

Aspects of the Concept of the State

It would be important to investigate in some detail the influence of unclear terminology upon the history of human thought and action.

(Georg Jellinek, *Allgemeine Staatslehre*, 1900)

A theory of the state presumes the existence of a concept of the state. However, construction of such a concept is a matter of no small difficulty, a difficulty inherent in the nature of the state itself. Every attempt to define “the State” runs up against the question of whether such a constantly changing, abstract and complex structure can be reduced to one clear concept. When Weber states that “the question of the logical structure of the *concept of the state*” is by far the “most complex and interesting case”¹ of the problem of concept formation, he touches on a theme that runs like a red thread through all discourse on the state in modernity. Herder thought that the state was “something abstract, that one neither saw nor heard.”² Kant came to the conclusion that the state was beyond “direct intuition.”³ For Joseph von Held the state was “an abstract entity,”⁴ and even for Fichte it is no more than “an abstract concept.”⁵ Adam Müller tears his hair over the fact that “together with the defunct concept ‘state’ a thousand inconsequentialities enter into science,” adding that “since concepts cannot shake

¹ Weber, “The ‘Objectivity’ of Knowledge in Social Science and Social Policy,” in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 p. 394.

² Johann Gottfried Herder, *Ideen zur Philosophie der Geschichte der Menschheit*. Sämtliche Werke, ed. Bernhard Ludwig Suphan, Bd. XIII, Weidmann, Berlin 1887 p. 453.

³ Immanuel Kant, *Critique of the Power of Judgment*, ed. Paul Guyer, Cambridge University Press, Cambridge 2000 p. 226.

⁴ Joseph von Held, *Grundzüge des Allgemeinen Staatsrechts*, Brockhaus, Leipzig 1868 p. 82.

⁵ Johann Gottlieb Fichte, *Rechtslehre. Vorgetragen von Ostern bis Michaelis 1812*, ed. Richard Schottky, Meiner, Hamburg 1980 p. 159.

themselves, it cannot rid itself of these inconsequentialities."⁶ Constantin Franz not only mocks the "sheer variety of definitions of the state" but adds that "one still seeks the true definition, and will never find it."⁷

This was still where things stood in Max Weber's time. Renewed effort was bent to the problem of organising the historical and empirical material necessary for the construction of a concept of the state. It was, however, also plain that conceptual precision steadily declined as ever more material was introduced.⁸ Even today, discussion of the state faces the problem that the object 'state' seems to elude comprehensive treatment, being unendingly complex and so capable of definition only at a very high level of abstraction.⁹

It is hardly surprising, therefore, that even the theory of the state had by the 1920s lost interest in a concept of the state as such.¹⁰ For political science, it then temporarily disappeared from view,¹¹ being regarded as an obsolete and old-fashioned concept.¹² Any attempt to clarify the conceptual nature of the state was simply dismissed: this had of course often been attempted, but every such attempt met with failure on account of the complexity of the phenomenon. Despite more than two hundred years of discussion, Niklas Luhmann maintained, the concept of the state remained unclarified; there had always been too much complexity and heterogeneity, and furthermore any such future efforts would merely fill up books, providing no greater clarity.¹³

Does it therefore follow from this that Max Weber's conception of the state was likewise a failure? If the sceptics and pessimists are right, then we can simply move on to the next chapter. But the following account will demonstrate that Weber did identify the problem of complexity and heterogeneity, and that his conception of the state is very certainly a contribution to a discussion going back two hundred years. Any effort to construct a

⁶ Adam Müller, *Die Elemente der Staatskunst*, Bd. I, Sander, Berlin 1809 p. 44.

⁷ Constantin Frantz, *Die Naturlehre des Staates als Grundlage aller Staatswissenschaft*, C. F. Winter, Leipzig 1870 p. 68

⁸ See on this especially Adolf Menzel, "Begriff und Wesen des Staates," *Handbuch der Politik* Bd. 1, Rothschild, Berlin, Leipzig 1912 pp. 35ff.

⁹ Cf. Martin Kriele, *Einführung in die Staatslehre*, 6th ed., Kohlhammer, Stuttgart 2003 p. 1; Wilhelm Hennis, *Politics as a Practical Science*, Palgrave Macmillan, Basingstoke 2009 pp. 81ff.

¹⁰ Hermann Heller, "Die Krisis der Staatslehre," *Archiv für Sozialwissenschaft und Sozialpolitik* Bd. 55 (1926) p. 312.

¹¹ As demonstrated by Alexander Passerin d'Entrèves, *The Notion of the State. An Introduction to Political Theory*, Oxford University Press, Oxford 1967 pp. 59ff.

¹² Theda Skocpol, "Bringing the State Back In," in Peter B. Evans, Dietrich Rueschemeyer, Theda Skocpol (eds) *Bringing the State Back In*, Cambridge University Press, Cambridge 1985 p. 4: "The state was considered to be an old-fashioned concept, associated with dry and dusty legal-formalist studies."

¹³ Niklas Luhmann, *Social Systems*, trans. John Bednarz, Stanford University Press, Stanford 1996 p. 463.

conception of the state today must necessarily follow on from the work of Weber. And such efforts are by no means a thing of the past, demonstrated by a new state discourse turning on the need for conceptual identification of the state.¹⁴ Legal and social science can find in Weber a foundation for work directed to this objective.

Weber's theory of the state is certainly no "theory without a concept" of the kind that Luhmann claims to find reaching back two hundred years.¹⁵ The fragments that we can locate in Weber's writings are above all conceptual in nature. Weber, who prescribed for himself "the *formation of clear concepts*,"¹⁶ who was indeed devoted to naming and defining, placed his definition of the state at the end of his basic sociological concepts. Here he defines the state as a "political *institutional organisation*" whose "administrative staff can successfully exercise a *monopoly of legitimate physical force*"¹⁷ in the execution of its orders."¹⁸ Contrary to the prevailing assumption that his definition of the state was limited to the monopoly of physical force, he went on to name a series of criteria, among them the political, institutional and organisational character of the state, the nature of an administrative staff, of legitimation and of order. Weber maintains explicitly that the monopoly of physical force was not the sole defining characteristic: the "manner in which the state lays claim to the monopoly of violent

¹⁴ See Andreas Anter, "Der Staat als Beobachtungsobjekt der Sozialwissenschaften," *Zeitschrift für Politik*, Sonderband 5 (2013) pp. 17–27; Gunnar Folke Schuppert, *Staat als Prozess. Eine staatsrechtliche Skizze in sieben Aufzügen*, Campus, Frankfurt, New York 2010; Arthur Benz, *Der moderne Staat*, 2nd ed., Oldenbourg, Munich 2008; Colin Hay, Michael Lister, "Theories of the State," in Colin Hay et al. (eds), *The State: Theories and Issues*, Palgrave Macmillan, Basingstoke 2006 pp. 1–20; Peter J. Steinberger, *The Idea of the State*, Cambridge University Press, Cambridge 2006 pp. 39ff.; Walter C. Opello, Stephen J. Rosow, *The Nation-State and Global Order*, 2nd ed. Lynne Rienner, London 2004 pp. 140ff.; Josef Isensee, "Staat und Verfassung," in Isensee, Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland* Vol. II, 3rd ed. Müller, Heidelberg 2004 pp. 3–106; Jens Bartelson, *The Critique of the State*, Cambridge University Press, Cambridge 2001; Stefan Breuer, *Der Staat*, Rowohlt, Reinbek b. Hamburg 1998 pp. 14ff.

¹⁵ Luhmann, *Social Systems* op. cit. p. 463.

¹⁶ Weber, "The 'Objectivity' of Knowledge in Social Science and Social Policy," in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 p. 359.

¹⁷ *Monopol legitimen physischen Zwanges* – here the emphasis is on coercion, but this idea is normally expressed as *Gewaltmonopol* – monopoly of violence, or force. In English these two terms tend to be distinct, such that "violence" is "especially forceful"; but this does not map into German so directly, since for example someone who is *gewalttätig* is in English "violent," rather than "forceful." In respect to the functions of the state "force" rather than "violence" is usually more appropriate, although strict adherence to this would be inappropriate. [Trans.]

¹⁸ Weber, "Basic Sociological Concepts," in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 p. 356.

domination is as essential a current feature as is its character as a rational 'institution' and continuous 'organisation'; "formally characteristic of the modern state" is not only the monopoly of physical force but of administrative and legal order.¹⁹ But despite these qualifications, the monopoly of physical force does remain the leading criterion of his concept of the state, and this will be elaborated in the following discussion.

1 The ideal-typical character of the concept of the state

Before passing to the individual elements of the concept of the state, we need to clarify both its sociological conceptual status and also some fundamental methodological aspects that play an important role in Weber's account. He defines the state "abstracting from ... changing substantive purposes,"²⁰ insisting that it is not possible to define it "in terms of the *purpose*" it follows, as there is no single purpose that *all* states have pursued. Instead it had to be defined by the *means* – physical force – which are common to all states.²¹ The choice of *means* is directed by methodological considerations. Ends and purposes are subject to constant historical change, and so of no use in defining the fundamental nature of the state; the means (of realising the purpose) by contrast remains constant. Hence for Weber the substance of state action is only a matter of *conceptual* indifference, since this substance varies infinitely from the "rapacious state" and the "welfare state," and from the "state based on the rule of law" to the "cultured state."²²

Weber here makes use of historical argument; he is not only interested in conceptually identifying the "contemporary" state but all state formations.

¹⁹ Ibid. p. 357.

²⁰ The following discussion uses a number of terms related to the state which are perfectly clear and precise in German, but which translate into English poorly. The first of these is *Staatsbegriff*, here consistently translated as "concept of the state." The second is *Staatslehre*, strictly "doctrine of the state" but which is more simply, if less precisely, rendered as "theory of the state." This is linked to the *Staatswissenschaften*, which is however more problematic, since "as sciences of the state" this can refer back to a nineteenth-century usage which was then displaced by the "social sciences"; or alternatively, it relates more precisely to later usage referring specifically to those discourses – law, politics, finance, administration – linked to state apparatuses. This is usually rendered here as "state sciences." Most problematic of all is *Staatszweck*, in English "what the state is for," its purpose, end or aim. None of these three terms are very adequate, creating awkward formulations and lumpy phrasing; especially since "end" is the required choice when countered with *Staatsmittel*, "the means available to the state," an important counterposition to preserve since of course Weber displaced a definition of the state in terms of ends by a definition organised around means. Since "state ends" is awkward and in some contexts ambiguous, for the most part I use the phrasing "aims and purposes." [KT]

²¹ Weber, "Basic Sociological Concepts," op. cit. pp. 357, 356.

²² Weber, *Gemeinschaften*, MWG I/22-1 p. 205 (WuG 514).

That his concept of the state is concerned with the construction of an *ideal type* of the modern state can be shown from a passage in the essay on "Objectivity," where he illustrates the method of constructing ideal types by taking the example of the construction of the scientific concept of the state, noting that "The concrete form assumed by the historical 'state' in such contemporary syntheses can however be rendered explicit only through orientation to ideal typical concepts."²³ If we begin from Weber's understanding, the concept of the state is on the one hand the outcome of historical and empirical analysis that distils the essence of the state from a wealth of heterogeneous material, and on the other a heuristic instrument for the conceptual comprehension of empirico-historical reality.

The fact that Weber demonstrates his conception of the ideal type by introducing the concept of the state is significant insofar as it leads us toward the undisclosed historical and theoretical origin of his conception. It corresponds almost word-for-word to Georg Jellinek's conception of "empirical type." Because of the hopeless methodological "confusion"²⁴ of contemporary political theory, Jellinek developed a method of creating types, with the aim of isolating constant elements among the heterogeneity of state phenomena; in this way, he hoped to be able to classify phenomena and construct concepts adequate to a theory of the state. In so doing he distinguished two types: the "ideal type," which is "normative" and relates to an idea of the "best state," and the "empirical type" that the scholar derives from comparative historical and empirical investigation, logically distilling from the "variety of phenomena" that they shared in common.²⁵ These are the types with which Jellinek is concerned. He even went so far as to demand that theory of the state seeks "the empirical type of state relationships" – a task that is in principle unending, for as relations constantly change so too do the empirical types.²⁶

Weber's conception of "ideal type" is quite plainly linked to Georg Jellinek's "empirical type," both in respect of its empirico-historical and epistemological design. He makes no reference to this adaptation and quite clearly assumes that this linkage is obvious to the scientific public of the

²³ Weber, "The 'Objectivity' of Knowledge," op. cit. p. 394. For Weber's concept of ideal type see Hans Henrik Bruun, *Science, Values and Politics in Max Weber's Methodology. New Expanded Edition*, Ashgate, Aldershot 2007 pp. 207ff.; Gert Albert, "Idealtypen und das Ziel der Soziologie," *Berliner Journal für Soziologie* 17 (2007) pp. 51–75; Bernhard K. Quensel, *Max Webers Konstruktionslogik: Sozialökonomik zwischen Geschichte und Theorie*, Nomos, Baden-Baden 2007 pp. 129ff.; Sven Eliaeson, *Max Weber's Methodologies. Interpretation and Critique*, Polity Press, Cambridge 2002 pp. 46ff.; Fritz Ringer, *Max Weber's Methodology. The Unification of the Cultural and Social Sciences*, 2nd ed. Harvard University Press 2000 pp. 110ff.;

²⁴ Georg Jellinek, *Allgemeine Staatslehre* (1900), 3rd edition, Darmstadt 1960 p. 25f.

²⁵ *Ibid.* pp. 34–5, 36.

²⁶ *Ibid.* pp. 37, 38–9.

time. It is only in a letter to Heinrich Rickert, of 16 June 1904, that Weber states that he named his concept of the “ideal type” after “what Jellinek (*Allgemeine Staatslehre*) calls ‘ideal type’ (*Idealtypus*).”²⁷ This gives rise to the suspicion that there is some confusion at work in Weber’s adoption, since Jellinek’s *idealer Typus* was something entirely different from that which Weber understood as “ideal type.” It was Jellinek himself who in the second edition of his epochal work drew attention to affinities and differences between Weber’s usage and his own, respectfully and with no sense of a claim to priority.²⁸ Weber’s appropriation – assuming that it did not involve a conceptual switching around – took the form of modification and further development: in a dual conceptual movement akin to “castling” in chess he made the “empirical type” an “ideal type.” In so doing, he rendered Jellinek’s approach to legal theory of general use in social science methodology.

But it is also possible to go about matters the other way around and project this method back on to issues of political theory from which it had originally been formed. Weber’s strategy offers a point of departure for the clarification of an old problem that remains a current problem. Use of the ideal type makes it possible for Weber to resolve a central problem for the theory of the state, making it possible to conceptualise “the state” in all its complexity, abstraction, heterogeneity and historical mutability: he excludes all the “mutable” aspects from the complex, heterogeneous, historical and contemporary phenomenal forms and preserves what is constant and common to all states. In doing this, he constructs the state as an empirical type. His treatment in the “Basic Sociological Concepts” and the essay on objectivity demonstrate that he seeks to bring about a “reduction of complexity,” to use current social science jargon. In so doing, he immediately bypasses the pitfalls that have dogged virtually all conceptions of the state over the past two hundred years. Among the numberless attempts to formulate a clear conception, most of which are today rightly forgotten, there is not one that has prevailed. That is also true of the conception of the state advanced by Max Weber’s mentor Georg Jellinek, who did seek

²⁷ Cited by Wolfgang J. Mommsen, *Max Weber. Gesellschaft, Politik und Geschichte*, Suhrkamp Verlag, Frankfurt a. M. 1982 p. 279 n. 45.

²⁸ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 40. By contrast, Hermann Heller was considerably less gracious and presented Weber’s method as a simple plagiary of Jellinek. But his harsh criticism is related to the fact that he had no time for Weber’s conception, arguing that its “lack of utility” for the political theorist was “entirely clear” (Hermann Heller, *Staatslehre*, ed. Gerhart Niemeyer, Sijthoff, Leiden 1934 pp. 61ff.). He did not deign to provide any more plausible argument. See for Weber’s conceptual movement Jens Kersten, *Georg Jellinek und die klassische Staatslehre*, J. C. B. Mohr (Paul Siebeck), Tübingen 2000 pp. 131ff.; Andreas Anter, “Max Weber und Georg Jellinek. Wissenschaftliche Beziehung, Affinitäten und Divergenzen,” in Stanley L. Paulson, Martin Schulte (eds), *Georg Jellinek*, J. C. B. Mohr (Paul Siebeck), Tübingen 2000 pp. 77ff.

to do justice to the complexity of the problem by advancing two separate concepts of the state, both social and legal,²⁹ an approach disowned by the literature dealing with state and politics.³⁰ It is Max Weber who cut the old Gordian knot represented by the theory of the state, developing a conception of the state, which as will become clear, even today retains its validity.

2 A state without qualities? The question of the state's purpose

Max Weber's method is as effective as it is simple: he abstracts from substantive dimensions and renounces all definition of the state in respect of its aims and purpose. But this does not mean, as has been claimed for half a century, that he disputes the existence of such aims. Instead, he emphasises that *all* states have and do pursue particular aims, noting especially social and cultural aims together with the concern for political order.³¹ However, none of the aims hitherto pursued by a state are capable of serving as an ideal-typical characteristic for the concept of the state. If Weber introduces a means and not an end as his form of definition, then this also implies that an end does exist. Simply by virtue of the fact that the state is defined in terms of a means there has to be an aim, an end, even several.³²

Light can be shed upon the relation of means to ends from another direction, for not only does existence of means imply an end but an end also implies a means. Max Weber does not elaborate the relation of means to end, but his remarks on "physical force" contextualises this means when he states that it is neither the norm or unique, but merely the *ultima ratio*.³³ Max Weber is in no way a fetishist of force in the way that is so often suggested. It is just as misguided to treat him as a theorist of the purpose of the state on the basis of a few comments that he made during the war, to the effect that Germany had the duty of defending its culture against other countries, inventing a "theory of the aim of protecting something good *against outsiders*."³⁴ The antipacifist text "Between Two Laws" does not by

²⁹ Jellinek, *Allgemeine Staatslehre*, op. cit. espec. pp. 174ff.

³⁰ Most decisively by Hans Kelsen, *Der soziologische und der juristische Staatsbegriff. Kritische Untersuchung des Verhältnisses von Staat und Recht*, 2nd ed. J. C. B. Mohr (Paul Siebeck), Tübingen 1928 pp. 127ff. See also Heller, "Die Krisis der Staatslehre," op. cit. p. 296.

³¹ *Wirtschaft und Gesellschaft* Part I Ch. 1 §17.2.

³² "The definition of the means arises from a reversal of the definition of an end. A means is therefore something Which is used to realise an envisaged end. A means is nothing apart from the moment in which it is called upon to serve in this way." Hans Hug, *Die Theorien vom Staatszweck*, Keller, Winterthur 1954 p. 6. This general comment of Hans Hug can also be read as a commentary on Weber's theory of the state.

³³ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 §17.2 (WuG 30).

³⁴ Hug, *Die Theorien vom Staatszweck*, p. 18.

any stretch of the imagination express anything like this,³⁵ nor does it come close to anything that could be called a "theory." From his earliest to his last writings, Weber had challenged the existing state, but none of these challenges amount to the articulation of an "end" for the existence of the state; instead they are directed to contemporary tasks and objectives, primarily national and socio-political objectives.

Although Weber expressly abstracts from the idea of an end or purpose when defining the state, it is possible to detect the outlines of such an idea: for the administrative staff makes use of the monopoly of force for executive implementation of orders,³⁶ lending a specific direction to state action in the realisation of these "orders." But does this involve the specification of an end or purpose for the state? The definition leaves two important questions open. That the "executive realisation of orders" is a functional characteristic of the state is plain, but what these "orders" might be is not. Nowhere in his writings is the concept of "orders" (*Ordnungen*) defined. Nonetheless, the ordering properties of the concept of the state are linked to the elementary connection of "state" and "order": it is the "interest in order"³⁷ that is the prime contributor to the formation of a central instance that in turn monopolises physical force and guarantees legal security, protection and internal peace. This interest is reflected in the principal discourses on the early modern state, above all that of Hobbes. Just as this interest in order is a core motor, the order so created is an unambiguous product of the modern state: "It is often thought that the state is held together by force, but what really binds it is solely the basic feeling of order that all possess."³⁸

Even if Weber places more emphasis upon force than the ordering element, the latter still plays an important role in his understanding of the state. He interprets and assesses the emergence of the modern state as a process of centralisation, monopolisation and "statalisation"³⁹ of ordering functions that had hitherto been exercised by decentralised instances. The rulers of the bureaucratic principalities of early modernity pursue an interest, which Weber summarised as follows: "The Prince wants 'order'."⁴⁰ This

³⁵ Weber, "Between Two Laws," in his *Political Writings*, ed. Peter Lassman, Ronald Speirs, 6th ed. Cambridge University Press, Cambridge 2008 pp. 75–6.

³⁶ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 §17.

³⁷ Winfried Schulze, "Gerhard Oestreichs Begriff 'Sozialdisziplinierung in der frühen Neuzeit'," *Zeitschrift für Historische Forschung* Bd. 14 (1987) p. 267. See also Andreas Anter, *Die Macht der Ordnung. Aspekte einer Grundkategorie des Politischen*, 2nd ed., J. C. B. Mohr (Paul Siebeck), Tübingen 2007 pp. 207ff.; Julien Freund, "Der Begriff der Ordnung," *Der Staat* Bd. 19 (1980) pp. 325ff.

³⁸ Georg Wilhelm Friedrich Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, 8th ed., Cambridge University Press, Cambridge 2003 pp. 288f. (§ 268), trans. revised.

³⁹ Weber, *Gemeinschaften*, MWG I/22-1 p. 208 (WuG 516)

⁴⁰ Weber, *Recht*, MWG I/22-3 p. 569 (WuG 488)

statement can be generalised, for the state has the same interest: the state wants “order.” This finds expression in Weber’s concept of the state where he ascribes to the state the function of executively realising orders. Not only does the concept of “order” remain unexplained here, it is also unclear what “executive realisation” means. In Weber’s view the modern state is marked out by its monopoly over these ordering functions, but no state is capable of regulating or establishing *all* ordering functions in an authoritarian manner. What is however important is that he uses the plural and talks of *orders* and not *order*. Underlying this is an understanding that the state does not consist of one, possibly monistic, order, but rather of a variety of heterogeneous, competing orders.

Max Weber’s use of the plural here leads us to the core problem of the end or purpose of a state, for in any one state there are a number of rival conceptions of order. One particular view in respect of one particular end or purpose of the state corresponds not only with a particular conception of order but also with a particular set of values. When Weber says that the interests of a state cannot be “objectively” determined – that is, cannot be determined without the intervention of a value judgement⁴¹ – then this is also true of the aims and purposes of the state. While he excludes values from his conception of the state, this does not mean that he wishes to keep them “value free” in some way or other; rather it is quite plain from his comments that such abstinence follows from his efforts to construct an ideal type. That Weber was prevented by his conviction regarding the inherent plurality of irreconcilable values from defining the state in terms of a central integrative “purpose”⁴² is an insight which is on the right track: Weber sees himself confronted with such a variety of purposes and values for the state that they just cannot be reduced to a common denominator valid for all states. This is especially true of the pluralistic state, a state that is subject to a diversity of expectations, a state that contains quite heterogeneous and contradictory interests and values. Once one abandons the idea of a homogeneous conception of order that all share in common, one has to take account of the plurality and heterogeneity of conceptions relating to the ends or purpose of the state.

Max Weber refused to anchor the aim or purpose of the state within a conceptualisation of the state, since this aim or purpose was ill-suited to idealtypical definition. This refusal is, at the same time, of decisive importance by virtue of a historical consciousness of the plurality, relativity and mutability of such aims or purposes. Here Weber stands directly in an unbroken line of German thinking about the state. August Ludwig Schlözer had in the later eighteenth century already come to the conclusion that no end or

⁴¹ Weber, “On the Situation of Constitutional Democracy in Russia,” in his *Political Writings*, op. cit. p. 45.

⁴² Gerhard Hufnagel, *Kritik als Beruf. Der kritische Gehalt im Werk Max Webers*, Propyläen, Frankfurt a. M. 1971 p. 181.

purpose of the state was "for ever" or "for eternity," since "new forces in the state" were constantly emerging and that "conjunctures" occurred which compelled one to rethink.⁴³ Robert von Mohl emphasised that "there is not simply one proper purpose for the state, but such a diversity of ends, in themselves equally proper, as there are different species of state."⁴⁴ During the nineteenth century, the question of the purpose of the state became a topic of controversy in German political thought,⁴⁵ so that Franz von Holtendorff concludes that "the notion of the state's purposes, like other topics of speculative thinking, remains an unresolved question."⁴⁶

Both this debate and also Max Weber's own positions have to be placed in the context of an ever-increasing number of aims and purposes that nineteenth-century states were supposed to meet. As Wilhelm Roscher noted, everywhere the "domain of state purposes" was extending, for the state was no longer simply responsible for external security but also increasingly for "domestic legal security" as well as "the welfare, education, and even the comfort of the people."⁴⁷ The change and extension of the work of the state was one of the foremost topics discussed in contemporary political economy, described most clearly by Adolph Wagner, who presented his "Law of the Increasing Extension of State Activity" on "the basis of empirical observations."⁴⁸ It is certain that Weber knew of this "Law." His argument, that the state fulfilled such a number of aims that it was no longer possible to take account of them ideal-typically, should not only be placed in the context of statements by Roscher and Wagner but also read in terms of the ever-accelerating intensive and extensive leaps made during these years in state activities and state tasks, leading to an inflation in the proclaimed tasks and purposes of the state.⁴⁹

⁴³ Johann Josef Haigold (August Ludwig Schlözer), *Neuveraendertes Rußland oder Leben Catharinae der Zweyten/Kayserinn von Rußland*, Erster Theil, Mietau, Leipzig, 1767 "Vorrede" n.p.

⁴⁴ Robert von Mohl, *Die Polizei-Wissenschaft nach den Grundsätzen des Rechtsstaats*, Bd. I, Laupp, Tübingen 1832 p. 5.

⁴⁵ Still very useful here is Jellinek, *Allgemeine Staatslehre*, op. cit. pp. 230ff.; see also Hans von Frisch, "Die Aufgaben des Staates in geschichtlicher Entwicklung," *Handbuch der Politik*, Bd. I (1912) p. 46.

⁴⁶ Franz von Holtendorff, *Die Principien der Politik. Einleitung in die staatswissenschaftliche Betrachtung der Gegenwart*, 2nd edition, Lüderitz, Berlin 1879 p. 62.

⁴⁷ Wilhelm Roscher, *System der Volkswirtschaft*, Bd. I. *Die Grundlagen der Nationalökonomie*, 6th ed. Cotta, Stuttgart 1866 p. 156.

⁴⁸ "The scope and the substance of state activity has, by comparison with earlier periods of our peoples, been subject to an extraordinary *extension* and *change*, and this movement continues onward... The development of modern social life, of technology, of means of communication presents new challenges to the function of the state." Wagner, *Finanzwissenschaft*, Erster Theil, C. F. Winter, Leipzig 1877 p. 25.

⁴⁹ See Tibor Süle's detailed and solidly-based work *Preußische Bürokratietradition. Zur Entwicklung von Verwaltung und Beamtenenschaft in Deutschland 1871–1918*, Vandenhoeck & Ruprecht, Göttingen 1988 pp. 25ff.

German political theory argued over not only what the “proper” aim or purpose of the state should be but also whether the state did indeed have such a purpose. Categorical hostility to the state was typical of writers such as Adam Müller⁵⁰ or Georg Waitz,⁵¹ who represented a dogma according to which the state was an end in itself. Carl Ludwig von Haller mocked the way in which “the new philosophers hemmed and hawed over the definition of their *Staatszweck*,” maintaining instead his “truth” that the state had “no such thing” as a purpose or end.⁵² Adolf Lasson dismissed “endless debates on the state and its ends” and took the view that it would be better “to just cease talking about the purpose of a state” since the state had “absolutely nothing to do” with a purpose or end.⁵³ Max Weber had shared nothing with those who argued that the state was an end in itself. He merely said that it was not possible to posit such a purpose as an element of the concept of the state, but in no respect did he dispute the existence of such ends or suggest that the state was free of any such connection to ends.

To properly appreciate his position, we need to place him in the context of contemporary German political theory, whose intellectual and historical situation is marked by the decline through the nineteenth century of the doctrine that the state had a particular purpose. Weber did not belong to the conservative-organicist school which maintained that the state was an end in itself and was hostile to all talk of state purposes; instead, he represented, down to the last detail, the position taken by Hugo Preuß. The latter regarded “purpose as a thoroughly useless element” in the “construction of the concept of the state,” claiming that the “spirit of modern science” forbade the “inclusion of purpose in the concept of the state.”⁵⁴ Preuß did not make clear what he meant here by “spirit,” and so fails to provide an entirely solid basis for his thesis, but he here formulated the position upon which Weber later took his stand. And to some extent Weber provided a retrospective foundation for Preuß’s thesis: an empirico-historical argument, related to the plurality, relativity and historicity of state ends and purposes. It is exactly these three elements that Weber can take from Georg Jellinek, who was the first to investigate the purposes of the state from the perspective of their historical becoming. Jellinek used historical and empirical material to demonstrate the “transformation of states’ objectives” and out of this developed a typology that distinguished between the universal, objective and

⁵⁰ Adam Müller, *Die Elemente der Staatskunst*, Bd. I, Sander, Berlin 1809 p. 66.

⁵¹ Georg Waitz, *Grundzüge der Politik*, Homann, Kiel 1862 p. 11.

⁵² Carl Ludwig von Haller, *Restauration der Staatswissenschaft*, Bd. I, Steiner, Winterthur 1820 pp. 467, 470.

⁵³ Adolf Lasson, *System der Rechtsphilosophie*, Guttentag, Berlin and Leipzig 1882 pp. 312, 313, 289.

⁵⁴ Hugo Preuß, *Gemeinde, Staat, Reich als Gebietskörperschaften. Versuch einer deutschen Staatskonstruktion auf Grundlage der Genossenschaftstheorie*, Springer, Berlin 1889 p. 80.

relative aims and purposes of the state.⁵⁵ It was Jellinek's historico-empirico understanding, shared by Max Weber, that opened up a pragmatic perspective, which instead of proclaiming this or that objective for the state, addressed itself to empirical analysis.⁵⁶

The contemporary theoretical discussion of the state in which Weber took position and developed his concepts was distinguished by the prevailing opinion that there were a great number of solutions to the question of the state's objective, since each social grouping and each political party had their own particular conception of the proper objective for the state, as a consequence of which the question could not be resolved absolutely.⁵⁷ If one reviews contemporary standpoints, three features that are of constitutive importance for an understanding of state objectives recur: plurality, relativism and historicity. Since exactly these three elements are of decisive importance for Weber's exclusion of state aims and purposes from his definition of the state, it can be said that his stance corresponded to the dominant opinion of his time. Hence he makes no great departure from tradition, but rather develops his own concept of the state on the basis of mainstream political theory.

And so the severe criticisms levelled against Weber since the 1920s can best be treated as rearguard actions. Rudolf Smend thought Weber's approach to be utterly misconceived since the state existed to realise particular purposes; Smend not only accused him of "agnosticism," but argued that Weber understood nothing of the "nature and substance of the state."⁵⁸ Hermann Heller thought that Weber's "agnosticism" on this point ended up with the "desolate view" that the state be defined by its means.⁵⁹ Feelings

⁵⁵ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 230. He consigns universal state aims and purposes to the "domain of arbitrary and baseless ideas"; while for him the question of objective state aims and purposes is an "idle" one (p. 231).

⁵⁶ In the early twentieth century writers never tired of praising Jellinek's achievement; he had for example "shown the way out of a confusion that has prevailed for centuries, setting us on the path to clear discussion of the problem" (von Frisch, "Die Aufgaben des Staates in geschichtlicher Entwicklung," op. cit. p. 47); he had shown how to group and arrange the sheer variety of disparate state objectives (Adolf Menzel, *Beiträge zur Geschichte der Staatslehre*, Hölder, Vienna, Leipzig 1929 p. 65).

⁵⁷ von Frisch, "Die Aufgaben des Staates in geschichtlicher Entwicklung," op. cit. p. 46. Scepticism regarding the prospect of identifying absolute objectives for the state were also prevalent in contemporary American political science; Charles H. Cooley declared that he was mistrustful of any dogmatic statement of the proper aims and purposes of the state, suggesting that these should be relativised (*Social Organization*, Scribner's, New York 1909 p. 403). Edward A. Ross thought any attempt to definitively identify such objectives to be an idle undertaking (*Principles of Sociology*, The Century, New York 1920 p. 624).

⁵⁸ Rudolf Smend, "Verfassung und Verfassungsrecht" (1928), in his *Staatsrechtliche Abhandlungen und andere Aufsätze*, 2nd edition, Duncker & Humblot, Berlin 1968 pp. 222, 123, 184.

⁵⁹ Hermann Heller, *Staatslehre*, op. cit. p. 203.

of desolation prevailed both during the Weimar period and after the Second World War. Criticism of Weber turned into a constitutive moment for the philosophical and normative development of political science, which drawing upon ideas from classical antiquity, sought to re-establish what political theory and the social sciences had long forgotten: a doctrine of the “best form of state” and of the “proper ends of the state.” Weber’s “agnostic” stance was a constant irritant to the leading lights of this movement, Leo Strauss and Eric Voegelin. As Wolfgang Welz rightly says, they were “determined to make Weber their adversary right from the start,” an adversary largely adopted by the younger representatives of this tendency.⁶⁰ Following on from Smend, Strauss and Voegelin, the younger Wilhelm Hennis condemned Weber’s conception of the state as “an image of absolute subjectivism,” “empty of meaning and value”; he attacked the definition of the state independent of its purposes since this surrendered “any *telos* in rulership,” becoming a “meaningless thing, able to serve each and every end.”⁶¹

There is a connection between this development in the issue of the state’s purpose and that of the reception of Max Weber. All efforts to revive the now “unmodern” question of the state’s purpose had to be directed against Max Weber, who became in this way a negative identity. However, neither these efforts nor the hostile stance vis-à-vis Max Weber were to last very long, becoming – by the end of the 1960s at the very latest – themselves

⁶⁰ Gangolf Hübinger, Jürgen Osterhammel, Wolfgang Welz, “Max Weber und die Wissenschaftliche Politik nach 1945. Aspekte einer theoriegeschichtlichen Nicht-Rezeption,” *Zeitschrift für Politik* Bd. 37 (1990) pp. 187, 189. Welz’s otherwise excellent study unfortunately neglects the decisive role played by Weber’s conception of the state in the reception of the philosophico-normative tendency.

⁶¹ Wilhelm Hennis, “The Problem of the German Conception of the State,” in his *Politics as a Practical Science*, Palgrave, Basingstoke 2009 pp. 23, 24. This position still defined his view of Weber in his Habilitation dissertation, published as *Politik und praktische Philosophie* (1963), Ernst Klett, Stuttgart 1977 p. 75. Of course, during the 1980s Hennis revised his position, inverting it and putting Weber back on his feet: he confessed that he had “never had a clear conscience” about the distance he took from Weber, and he expressed the hope “now to have understood Weber better.” (*Max Weber’s Central Question*, Threshold Press, Newbury 2000 p. vii.) Max Weber was now presented in a quite different light: “Weber’s authority seems to recommend that the old central question of political science (what is the best political order?) be abandoned as insoluble...” (*Max Weber’s Central Question* p. 86). This represents a decisive, if late, turning-point for the one-time vigorous critic of Weber. This turn is both away from the questions of the proper purpose of the state and the nature of the ideal state, questions which even Max Weber and his contemporaries no longer posed. – See now Lawrence A. Scaff, “Wilhelm Hennis, Max Weber, and the Charisma of Political Thinking,” in Andreas Anter (ed.), *Wilhelm Hennis’ Politische Wissenschaft. Fragestellungen und Diagnosen*, J.C.B. Mohr (Paul Siebeck), Tübingen 2013 pp. 307–325; Hinnerk Bruhns, “Wilhelm Hennis, Max Weber und die Wissenschaft vom Menschen,” *ibid.* pp. 171–291.

just as “unmodern” as discussion of the purposes of the state had been since 1900. Today there is “no theory of the aims and purposes of the state worth taking seriously,”⁶² the questions of the purposes of the state has for a long time been “not a matter of scientific debate,”⁶³ and in the legal and social sciences there prevails a broad consensus that any question regarding the meaning or purpose of the state and its institution is irresolvable.⁶⁴

For Friedrich Jonas, letting go of the question concerning the “meaning and purpose” of social phenomena means a “turn away from irresolvable high-level problems”; he celebrates the “neutralisation of the question of meaning” as a condition for the conduct of an empirical “modern science,” considering those “who still ask after meaning and purpose” to be hopelessly “anachronistic.”⁶⁵ As with Hugo Preuß, “modern” is here the magic word which pretends to the status of an argument, and with the aid of which this question of “meaning and purpose” would be conducted *ad absurdum*. Here Max Weber is obviously a representative of progress: “So for example Adam Smith no longer, like Steuart, asked after the meaning and purpose of the economy, Durkheim no longer – as did Marx – asked after the meaning and purpose of society, and Max Weber no longer – as did Hegel – asked after the meaning and purpose of the state.”⁶⁶ Even Niklas Luhmann praised Weber for making clear that the political system was not oriented to specific ends and that, therefore, theoretical conceptualisation of the state had to start from the means it deployed.⁶⁷

Today, Max Weber’s approach of excluding ends from the concept of the state seems to be entirely accepted by legal and political theory; the prevailing opinion is that the state cannot be tied down to particular aims and purposes, since states have the potential to make any ends their own. Explanations of this are varied. They range from the older legal positivist position taken by Hans Kelsen, who argued that it was in the nature of the state “to have no particular end at all,”⁶⁸ to the statist-decisionist position

⁶² Niklas Luhmann, *Zweckbegriff und Systemrationalität. Über die Funktion von Zwecken in sozialen Systemen*, 6th ed. Suhrkamp, Frankfurt a. M. 1998 p. 92.

⁶³ Klaus Hesse, *Zur Entwicklung der Staatszwecklehre in der deutschen Staatsrechtswissenschaft des 19. Jahrhunderts*, Grote, Cologne 1964 p. 9.

⁶⁴ See for example Niklas Luhmann, “Ends, Domination, and System,” in his *The Differentiation of Society*, Columbia University Press, New York 1982 pp. 20–46.

⁶⁵ Friedrich Jonas, *Die Institutionenlehre Arnold Gehlens*, J. C. B. Mohr (Paul Siebeck), Tübingen 1966 p. 31.

⁶⁶ *Ibid.* p. 31.

⁶⁷ Luhmann, “Ends, Domination, and System,” *op. cit.* p. 21. Naturally he is here concerned with the rationality of rulership, but his comments can be applied to Max Weber’s concept of the state. Luhmann’s position, that one cannot understand a “system” from the perspective of its purpose (p. 23) is already anticipated in Weber’s concept of the state.

⁶⁸ Hans Kelsen, *Allgemeine Staatslehre*, Springer, Berlin 1925 p. 40.

of Herbert Krüger, who categorically ruled out the idea that it was possible “to assign particular ends to the state as an abstract entity,” since the state could not simply switch its aims and purposes according to prevailing exigencies, but had rather to have a “blank cheque” for its actions.⁶⁹ This line of argument can of course invoke the name of Carl Schmitt, to whom it is obviously indebted; there is however no connection to the thinking of Max Weber, who in no respect assigned such unlimited powers to the state. His is a historico-empirical perspective that excludes ends from the definition of the state on methodological grounds.

To some extent history has proved Weber right. It was after all the states of the twentieth century that set themselves all conceivable kinds of aims, not to speak of two major experimental “state aims,” the one aimed at the planned extermination of millions of people, the other at the liquidation of entire classes. As Hans Peter Bull says, “states have in fact made so much their specific business, have had as complete an impact upon their citizens as one could possibly conceive. ... ‘The’ state is capable of anything ... It ‘has been everywhere.’”⁷⁰ While this statement is meant only to reinforce his position – that the state cannot be identified in terms of its aims – it is open to other interpretations. Indeed, the fact that the state “is capable of anything” leads to the question of whether a normative determination of state action is possible. At present German constitutional theory does not concern itself with this question, since the Federal Republic is far removed from being capable of anything – thanks to a strong constitutional order, the establishment of state objectives in Basic Constitutional Law and its integration into supranational orders. But judicial theory and political science, as they are not concerned with existing states but with the structural forms and functional operation of “the” state, have to pose such questions.

In this regard it is entirely possible to forge a connection to Max Weber. He sets out on the path of terminological reorientation by rolling out an entire catalogue, not of state *objectives*, but state *functions*, listing the “basic functions of the state” as follows:

[T]he establishment of the law (legislature); the protection of personal security and public order (police), the maintenance of established law (judiciary), the pursuit of hygienic, pedagogic, social policy and other cultural interests (the various branches of administration), finally of course also organised external defence (military administration).⁷¹

This is a canon of “basic functions” to which modern theory of the state could sign up without hesitation. But what is of decisive importance here is

⁶⁹ Herbert Krüger, *Allgemeine Staatslehre*, Kohlhammer, Stuttgart 1964 p. 760.

⁷⁰ Bull, *Die Staatsaufgaben nach dem Grundgesetz*, 2nd ed. Athenäum, Kronberg 1977 p. 33.

⁷¹ Weber, *Gemeinschaften*, MWG I/22-1 p. 209 (WuG 516).

that Weber talks of *functions*, not aims, anticipating in this way subsequent conceptual development in legal and social sciences. The differentiation of the aims of the state from its functions, already outlined by Jellinek,⁷² has become accepted by contemporary judicial theory, although we still lack a precise conceptual definition of “tasks of the state,” “aims of the state,” “ends of the state” and “state functions,” all of which turn up in the literature as equivalent synonyms.

Abandoning the questions of the meaning and purpose of the state made possible a turn to its functions and tasks. These latter questions are among the most elementary in political science, whether in respect of the empirical perspective upon the functions exercised by the state or in the normative dimension of the functions that the state *ought* to exercise. Such a normative problematic by no means excludes an orientation to Weber, which requires only that the difference between “is” and “ought” be explicitly maintained, any statement concerning “what should be” to be clearly marked as such. This represents the core of his postulate regarding value judgements.⁷³

Giving the constant change in the state's structural form and modes of functioning, Weber's concept of the state has the advantage of being open to comparative analysis. The fact that it is defined in a formal manner does not preclude its use as a foundation for normative investigation, since it does not itself necessarily imply any normative content. A comparative analysis aimed, for example, at the distinction of democratic from totalitarian states can augment the formal concept of “state” with additional attributes so that the specific character of “the state” can be rendered more precise and open to normative evaluation. It is in this sense that Martin Kriele advocates an abstract concept of the state, an abstractness that says nothing about the quality of the state, but one which can by classificatory means – “democratic” or “totalitarian” – be defined exactly.⁷⁴ If this is accepted then one can find aspects of international law and human rights that derive from an abstract and formal concept of the state. Since it is only a *state* that can be recognised internationally and admitted to the United Nations, “there is great deal to be said for not lending substantive content to the concept of the state, but rather keeping it at a level of abstraction that makes it possible to characterise all members of the United Nations as states.”⁷⁵ Consequently Kriele takes the view that “emptying the concept of the state of all content” is even a “precondition for the establishment of world peace,” for this depends primarily on the “universal validity of human rights”: since international law applies only to recognised states, its validity is “fundamentally

⁷² Jellinek, *Allgemeine Staatslehre*, op. cit. pp. 230ff.

⁷³ See Ch. 4 below for discussion of how value judgements relate to Weber's conception of the state.

⁷⁴ Kriele, *Einführung in die Staatslehre*, op. cit. p. 54.

⁷⁵ *Ibid.* p. 53.

challenged" so long as a political body is not recognised to be a state.⁷⁶ It is certainly an exaggeration to suppose that an abstract conception of the state is a "precondition for the establishment of world peace," a logic that is clearly indebted to the role of the UN in the politics of détente during the 1970s; moreover, this more or less entirely obscures Weber's methodological arguments in favour of a formal definition of the state. If we were to concur with Martin Kriele's "Idea for a Formal and Abstract Concept of the State with a Cosmopolitan Aim" then Weber's definition of the state would already have been of service in the universalisation of international law and the maintenance of world peace.

Two hundred years of theoretical discussions has demonstrated that little is gained with a substantive conception of the state. Only with the creation of an abstract and formal conception of the state were the preconditions created for the investigation and identification of the historico-empirical reality of states, making possible a comparative analysis of states both past and present. It is for this reason that today one has to start from Weber. He makes no claim to have once and for all defined the state; he makes a point of its historical contingency, and in one instance refers to the state of his own time.⁷⁷ The fact that the state is in a permanent state of transition has consequences for the construction of an ideal-typical concept of the state which abstracts from mutable aspects; Weber considers this work of construction to be in principle unending, for as the state changes so does its ideal type need to be reformulated on the basis of fresh empirical materials. As far as he is concerned, the "constantly advancing flow" of empirical events constantly poses new problems to science, for which it is consequently unavoidable that ever *newer* ideal-typical constructs will be formed.⁷⁸

3 The monopoly of force

The key criterion that distinguishes the state from all other historical forms of rule is, for Max Weber, the monopolisation of force.⁷⁹

Today the use of force is considered "legitimate" only to the degree that it is permitted or prescribed by the state. ... This manner in which the state lays claim to the monopoly of rule by force is as essential a current feature as is its character as rational "institution" and continuous "organisation."⁸⁰

⁷⁶ Ibid. p. 54.

⁷⁷ Weber, "Basic Sociological Concepts," op. cit. p. 357.

⁷⁸ Weber, "Objectivity," op. cit. p. 398.

⁷⁹ See fn. 18 above.

⁸⁰ Weber, "Basic Sociological Concepts," op. cit. p. 357.

If he emphasises that this is formally characteristic of today's state, then this is a purely *formal* criterion that says nothing about the *substantive content* of state action. As we have already seen, in his remarks on the concept of the state he makes a series of other qualifications which make clear first of all that force is neither the sole nor normal means applied, second that the nature of the state is by no means exclusively a matter of force, and third that the application of force is only a last resort when other means have failed.⁸¹

Of course, Weber never did elaborate his conception of force, but in his definition of the state he talks of a specific type of force: *legitimate physical* force. Both of these attributes are important specifications. In the first place he is concerned with physical, hence open, direct force aimed at the human body,⁸² and second with legitimate force, so that not only is the category of legitimacy anchored in the concept of the state, but that the monopoly of force is linked to legitimacy. We will come back to this, but in his discussion of the conception of the state there is no elaboration of the consequences of this, since legitimacy is left to one side and only simple force is discussed. As he said in his lecture "The Profession and Vocation of Politics," lacking force the concept of state would disappear, leaving only anarchy.⁸³ Here force is elevated to a *conditio sine qua non*. According to Weber's line of argument, all acquiescence to the state involves acquiescence to force, and he leaves no doubt at all about his own acquiescence. His position can be summed up as no force, no state.

But Weber is no apologist of force; it was his historical studies that led him to his conclusions concerning the constitutive role of violence. This historical perspective is most clearly evident in his treatment of the nature of "political groupings" in *Economy and Society*, which in his own understanding historically pre-existed the state, but which in this context appears as a synonym for the state, on account of their possessing a monopoly of physical force.⁸⁴ Using examples from European history, he maintains that all political formations are based on force, distinguished only by the nature and degree of application and threat of application.⁸⁵ Despite gradual differentiation, all political groupings have this common feature: every community has resorted to physical force to protect its interests.⁸⁶ Weber has in view two perspectives: force directed outward and that directed inward, the latter

⁸¹ *Ibid.* p. 356.

⁸² Even in 1870 Constantin Frantz established that force was a "*physical category*" (Frantz, *Die Naturlehre des Staates als Grundlage aller Staatswissenschaft*, C. H. Winter, Leipzig 1870 p. 60). But one hundred years later one was led to emphasise, "on account of the Babylonian linguistic confusion that has arisen around the concept of force," that the monopoly of force related only to physical force (Rudolf Wassermann, *Politisch motivierte Gewalt in der modernen Gesellschaft*, Hanover 1989 p. 20).

⁸³ Weber, "The Profession and Vocation of Politics," in his *Political Writings*, op. cit. p. 310.

⁸⁴ Weber, *Gemeinschaften*, MWG I/22-1 p. 208 (WuG 516).

⁸⁵ *Ibid.*, pp. 223f. (WuG 520).

⁸⁶ *Ibid.*, pp. 208f. (WuG 516).

being decisive since those exposed to violence are in the first instance among those subject to coercion.⁸⁷

Weber is primarily interested in the internal political dimension of force. His concept of the state relates to the *domestic* exercise of force, since it is only in this context that the state is capable of exercising a monopoly of force. Regarding *both* perspectives, he diagnoses significant historical processes, taking account of the external exercise of force characteristic of increasing imperial expansion⁸⁸ and on the domestic front the process of monopolisation on the part of a central instance. He here assesses “only the monopolisation of legitimate violence on the part of the territorial political organisation,”⁸⁹ in which “only” is of great importance since violence continues to exist and the only thing to have changed is the agency competent to exercise it. Weber considers violence to be more or less an anthropological constant; it is “quite plainly something that is in itself primeval.”⁹⁰

The monopolisation of force by a central instance is the outcome of a complex process in which those who dispose of power locally are successively expropriated. Since the different stages of this process are difficult to distinguish and occur at different rates from region to region, it is difficult to identify the point at which the monopoly of force is born, a point at which the state is born, if we adhere to Weber’s definition of the state. The current literature argues about the actual timing; prevailing opinion dates the monopoly of force from the early sixteenth century. Weber refrains from committing himself on this point, but emphasises that the social formations of the Middle Ages lacked access to a monopoly of force: “The things we are now accustomed to regard as the content of the unified ‘supreme authority’ (*Staatsgewalt*) fell apart under that system into a bundle of individual entitlements in various hands. There was as yet no question of a ‘state’ in the modern sense of the word.”⁹¹ The process of monopolisation was not only restricted to force but was also realised in administration, legislation, judicial decision-making and other sectors of the state sphere. Weber interpreted the emergence of the modern state as a comprehensive process of the monopolisation and centralisation of power in new state structures.⁹²

⁸⁷ Ibid., p. 208 (WuG 515).

⁸⁸ Ibid., pp. 228ff. (WuG 524ff.).

⁸⁹ Ibid., p. 209 (WuG 516).

⁹⁰ Ibid. p. 208.

⁹¹ Weber, “Suffrage and Democracy in Germany,” in his *Political Writings*, op. cit. p. 101.

⁹² Rule by the state involves “the routinisation of centralised rule,” which means: “First thing in the morning we look at the clock and see the time as set centrally, we consume water, light and warmth delivered centrally at (we hope) centrally controlled prices, meet dismally around the breakfast table (bound together by the family and marriage law), on leaving the house thread ourselves into the channels of road traffic regulations, and cannot even assert ourselves if someone parks in front of our garage.” (Heinrich Popitz, *Phänomene der Macht*, 2nd ed., J. C. B. Mohr (Paul Siebeck), Tübingen 1992 p. 259f.).

In this he stands in the tradition of Tocqueville, the first great analysis of centralisation.⁹³ However, Weber never did elaborate this perspective on the origins of the monopoly of force; remarks relate to it remain scattered throughout his work.

The development and extension of the monopoly of force is inseparably connected with the development and extension of sovereignty, which he calls a "material attribute of today's institutional state."⁹⁴ Monopoly of force and sovereignty are terms that he does not distinguish conceptually⁹⁵ and are two sides of the same coin. The monopoly of force is primarily directed to domestic processes, while sovereignty unites the domestic with the external perspective. The distinction between the two becomes obvious when one considers that sovereignty can be partially relinquished in the context of economic or military alliances, whereas the monopoly of force is indivisible, for in its absence the state is jeopardised. It is for this reason that the monopoly of physical force is the fundamental characteristic of the state, and sovereignty is more of a secondary criterion. Max Weber has to be taken at his word: if he says that sovereignty is a "material attribute," this reserves the superlative for the monopoly of force, for it is the "most material" attribute of the state. The category of sovereignty plays no part worth mentioning in Weber's thinking about the state, nor in any other part of his writings; and in this he fundamentally distinguished himself from the treatment of the state by his contemporaries. Many of these regarded sovereignty as the "soul" of German state doctrine,⁹⁶ and it has for three hundred years, since

⁹³ Alexis de Tocqueville, *Democracy in America*, Penguin Books, London 2003 pp. 784ff.; id., *The Ancien Régime and the French Revolution*, ed. Jon Elster, Cambridge University Press, Cambridge 2011 pp. 39ff., 59ff.; for centralisation see further Roger Boesche, *The Strange Liberalism of Alexis de Tocqueville*, Cornell University Press, Ithaca, London 1987 p. 123ff., 129ff., 133ff.

⁹⁴ Weber, *Recht*, MWG I/22–3 p.312f. (WuG 400).

⁹⁵ Even in literature they are only too often used synonymously, as in for example Detlef Merten, *Rechtsstaat und Gewaltmonopol*, J. C. B. Mohr (Paul Siebeck), Tübingen 1975 p. 32. So far it is only sovereignty and state power that have been the subject of demarcation – see Jellinek, *Allgemeine Staatslehre*, op. cit. p. 464. Sovereignty is usually understood to be what Weber called rulership (*Herrschaft*).

⁹⁶ "From both scholarly and political points of view the ABC of the state lies in the conception that sovereignty is the most important characteristic of the state or of state power." (Claus-Ekkehard Bärsch, "Der Gerber-Laband'sche Positivismus," in Martin Sattler (ed.), *Staat und Recht. Die deutsche Staatslehre im 19. und 20. Jahrhundert*, List, Munich 1972 p. 425. That is very doubtful. The idea and reality of sovereignty seem today to be increasingly questioned given the "obvious loss of sovereignty that the state has suffered through transfer of its capacity to make strategic dispositions" to supranational organisations, as well as through economic, military and political integration (Claus Offe, "Die Staatstheorie auf der Suche nach ihrem Gegenstand. Beobachtungen zur aktuellen Diskussion," *Jahrbuch zur Staats- und Verwaltungswissenschaft* Bd. 1 (1987) p. 313).

the time of Bodin,⁹⁷ been regarded as the key feature of the state. Weber abandoned this tradition in his conceptualisation of the state.

But all the same, his definition of the state is not lacking theoretical and historical preconditions. The question of the relationship of state and violence is central to early modern political thinking, its most striking initial expression being Hobbes' figure of Leviathan, born from a fear of violence and who ends the potentially murderous violence of all against all, guaranteeing protection, legal security and inner peace to those who subordinate themselves to his dominion.⁹⁸ Both Hobbes and Weber think of the state in terms of violence and physical force, but in historical contexts and so from different perspectives. While Hobbes still seeks to explain how and why violence is to be domesticated, Weber is no longer interested in a theoretical foundation for the state, since thinkers of his time take it for granted that internal peace and legal security can only be assured by a central coercive power.

The idea of the monopoly of violence that can be detected implicitly in Hobbes, Bodin, Kant⁹⁹ and Schopenhauer¹⁰⁰ was first formulated not by Max Weber, but by Rudolf von Ihering, who defined "coercive force" as the "*absolute monopoly of the State.*"¹⁰¹ This understanding rapidly became a commonplace in later nineteenth century writings on the state; it was a conception shared for example by Adolf Lasson, for whom the state marked itself out by its being an "organised supreme force," monopolising the coercion of "physical force."¹⁰² As subsequently with Weber, he regarded this as the deciding factor: "This characteristic is entirely sufficient to clearly distinguish the state from all else with which it might be confused."¹⁰³ Weber's

⁹⁷ As is well-known, in his *Six Books* Bodin not only introduced the figure of sovereignty into thinking about the state – which itself had very significant consequences – but in so doing also provides the first theoretical account of the modern state. See Jean Bodin, *On Sovereignty. Four Chapters from the Six Books of the Commonwealth*, ed. Julian Franklin, Cambridge University Press, Cambridge 1992.

⁹⁸ Thomas Hobbes, *Leviathan*, ed. Richard Tuck, Cambridge University Press, Cambridge 1996 Ch. XX, "Of Dominion Paternal, and Despotical" pp. 138 ff.

⁹⁹ Kant conceives the power of the state to be "*irresistible*, and no rightfully established commonwealth can exist without a force of this kind to suppress all internal resistance." Immanuel Kant, "On the Common Saying: "This may be True in Theory, but it does not Apply in Practice," in his *Political Writings*, ed. Hans Reiss, Cambridge University Press, Cambridge 1991 p. 81.

¹⁰⁰ Schopenhauer has the Prince speak these words: "I rule over you by force, and so my force excludes all others; for I will not tolerate any apart from those that are mine." (Schopenhauer, "Zur Rechtslehre und Politik" in his *Sämtliche Werke*, Bd. V, ed. Wolfgang Freiherr von Löhneysen, Suhrkamp, Frankfurt a.M. 1986 p. 294).

¹⁰¹ Rudolf von Ihering, *Law as a Means to an End* (1877), trans. Isaac Husic, Boston Book, Boston 1913 p. 238. Some years before, Rudolph Sohm defined coercive force as "the monopoly of the State" (*Die Fränkische Reichs- und Gerichtsverfassung* (1871), 2nd ed. Duncker & Humblot, München, Leipzig 1911 p. XIV).

¹⁰² Lasson, *System der Rechtsphilosophie*, op. cit. p. 283, 293.

¹⁰³ *Ibid.* p. 285.

conception of the state is borrowed almost word for word from German state theorists of the Wilhelminian Empire and is therefore entirely consistent with the contemporary conception of the state. In respect of conceptual and contemporary history, it is interesting to note that the express use of the term "monopoly" came into use after an important historical moment: the foundation of the Second German Empire. No German theorist used the word "monopoly" in connection with the state before 1871. This caesura was emphasised by Max Weber,¹⁰⁴ and it clearly also had a heuristic effect, since it focussed the gaze of German state theorists on the nature of monopoly.

At the same time, Weber adopted an important position in the development of German state theory. No one else formulated so clearly as Weber the idea that the monopoly of violence was an elementary criterion of the state, and it is certainly no accident that he became known as *the* theorist of the monopoly of force, constantly referred to as such in legal and social science commentary whenever there is talk of the monopoly of force. Laying emphasis on the monopoly of the use of force had by the later twentieth century become redundant, given the prevailing acceptance of its necessity: "Among present-day writers on the state the idea of state monopoly of force seems to have become uncontroversially established. Max Weber's conception of the state has thus become not only a fact, but understood to be a judicious, protective instrument of power in the most vital interests of society."¹⁰⁵ Niklas Luhmann emphasises that no state could exist without exercising a monopoly of force, Weber having "correctly" defined this as the "indispensable condition of the formation of the modern state."¹⁰⁶ Heinrich Popitz shares with Weber the view that the specific nature of state rule consists in "the extraordinary consequences of the monopolisation of centralised territorial rule."¹⁰⁷ According to Ulrich Matz, Weber's renowned theory of the state gives the clearest guidance on the relationship of state and violence.¹⁰⁸ And even Norbert Elias has confirmed Weber's position: in his book *The Civilizing Process*, he shows that ruling groups first became states when they gained a monopoly of violence – such that the monopoly of violence and physical force is the condition of existence of the state.¹⁰⁹

¹⁰⁴ Weber, "The National State and Economic Policy," in his *Political Writings*, op. cit. pp. 21–2.

¹⁰⁵ Dietmar Willoweit, "Die Herausbildung des staatlichen Gewaltmonopols im Entstehungsprozess des modernen Staates," in Albrecht Randelzhofer, Werner Süß (eds), *Konsens und Konflikt*, de Gruyter, Berlin 1986 p. 316.

¹⁰⁶ Niklas Luhmann, *Political Theory in the Welfare State*, trans. John Bednarz, de Gruyter, Berlin, New York 1990 p. 74.

¹⁰⁷ Popitz, *Phänomene der Macht*, op. cit. p. 258.

¹⁰⁸ Ulrich Matz, *Politik und Gewalt. Zur Theorie des demokratischen Verfassungsstaates und der Revolution*, Alber, Freiburg 1975 p. 157.

¹⁰⁹ Norbert Elias, *The Civilizing Process* Vol. 2, trans. Edmund Jephcott, revised ed., Blackwell, Oxford 2000.

But Weber is not always cited as an authority in regard to the monopoly of force. For almost half a century his concept of the state was the subject of fierce disagreement among legal and political theorists. Hermann Heller for example thought the idea of defining the state exclusively in terms of violence to be pointless;¹¹⁰ during the 1960s, Wilhelm Hennis recommended that one should “get rid of the authoritarian fantasy” of defining the state in terms of a monopoly of force;¹¹¹ even at the beginning of the 1970s, Roman Herzog vigorously rejected Weber’s definition of the state.¹¹² Many of his critics were like rabbits caught in headlights when it came to Weber’s concept of violence, and this fixation hindered a genuine discussion of his concept of the state.

Criticism was marked not only by sloganising (of which Weber himself was not entirely innocent) but also by the lack of any alternative to Weber’s concept. Hans Peter Bull remarked that the emphasis upon violence as the leading feature of the state “struck a false note for discussion and can have dangerous consequences.” He admitted that the monopoly of force was “the most important achievement in the work of the early modern state” but also argued that such an emphasis upon the monopoly of force on the part of the state was today superfluous, and it was more fitting “to consider whether there were other and very different special qualities with which the state could be characterised.”¹¹³ What such qualities might be he did not however say, nor did he say why the note was false or what the dangerous consequences might be. If the monopoly of force is the “most important achievement” of the modern state, then it seems fairly obvious to define the state in terms of this feature. Likewise, Helmut Willke’s claim that the prevailing definition of the state “as the monopoly of the legitimate exercise of physical force is not only deficient, but also misleading”¹¹⁴ remains unsupported. What is really very interesting about the reception of the Weberian conception of the state is that it provides a true reflection of twentieth-century debate in the political and legal sciences. Every tendency, every school has sought to establish itself by marking itself off from this concept or borrowing from it. The “Weber Test” remains revealing: tell me what you think of Weber, and I’ll tell you who you are.

If we consider the present position, it is clear that not only has Weber’s concept of the state become established and can rely upon a broad consensus but also that it is more relevant than ever, as shown by the continuing debate

¹¹⁰ Heller, *Staatslehre*, op. cit. p. 203.

¹¹¹ Wilhelm Hennis, “Aufgaben einer modernen Regierungslehre,” *Politische Vierteljahresschrift* Bd. 6 (1965) p. 431.

¹¹² Roman Herzog, *Allgemeine Staatslehre*, Athenäum, Frankfurt a. M. 1971 p. 155.

¹¹³ Bull, *Die Staatsaufgaben* op. cit. p. 71.

¹¹⁴ Helmut Willke, *Ironie des Staates. Grundlinien einer Staatstheorie polyzentrischer Gesellschaft*, Suhrkamp, Frankfurt a. M. 1992 p. 221. His thesis is owed primarily to system-theoretical dogmatism.

on the monopoly of force.¹¹⁵ This discussion turns, first, to the question of the role of the monopoly of force in a democratic state, the nature of its function in securing due legal process and domestic peace, and the extent to which it serves as an instrument of rule; and second, to the fact that this monopoly is increasingly endangered. "It seems that at present the centuries old evolutionary development of the state has gone into reverse," a reversal which increasingly limits the effective execution of its monopoly of force.¹¹⁶ Offe considers state functions to be retreating before social forces that have punctured the system of the state monopoly of force. Sheldon Wolin for his part considers that the "universal phenomenon of terrorism" has rendered the state monopoly on violence "highly tenuous," concluding that Weber's concept of the state has become obsolete: "It has become evident in recent decades that, whatever the 'uniqueness' of the modern state may be, it does not consist in a monopoly of the means of violence."¹¹⁷ But is this true?

There is no doubt that many present states have had gaps in their monopoly of force. But there is little enough new in that: such gaps have been part of the modern state since its early days, evident in every historical phase, from peasant wars to workers' strikes, up to and including violent protest and terrorist attacks. Max Weber himself witnessed events that shook the state's monopoly of force, and one can hardly assume that he was not aware of the fragile nature of the state's monopoly. Of course, there is no record of this in his writings, even though this concerns a core problem of every state and every theory of the state, ultimately touching on the validity of the concept of the state itself.

If we are to discuss whether it is still fitting to talk in terms of a monopoly of violence, then we have to begin with the idea of monopoly, since in this context the term means something different to the production and sale of

¹¹⁵ See James J. Sheehan, *The Monopoly of Violence*, Faber & Faber, London 2010; Thomas Gutmann/Bodo Pieroth (eds), *Die Zukunft des staatlichen Gewaltmonopols*, Nomos, Baden-Baden 2011; Catherine Colliot-Thélène, "Das Monopol der legitimen Gewalt," in Andreas Anter, Stefan Breuer (eds), *Max Webers Staatssoziologie*, Nomos, Baden-Baden 2007 p. 39ff; Freia Anders, Ingrid Gilcher-Holtey (eds), *Herausforderungen des staatlichen Gewaltmonopols*, Campus, Frankfurt/New York 2006 p. 18ff.; Walter C. Opello, Stephen J. Rosow, *The Nation-State and Global Order*, Rienner, London 2004 p. 140ff.; Catherine Colliot-Thélène, "La fin du monopole de la violence légitime?," *Revue d'études comparatives Est-Ouest*, vol. 34 (2003), p. 5ff.; Wolfgang Reinhard, *Geschichte der Staatsgewalt*, C.H. Beck, Munich, 3rd ed. 2003, p. 125ff.; Gianfranco Poggi, *Forms of Power*, Cambridge 2001 p. 12ff.; Andreas Anter, "Von der politischen Gemeinschaft zum Anstaltsstaat: Das Monopol der legitimen Gewaltsamkeit," in Edith Hanke, Wolfgang J. Mommsen (eds), *Max Webers Herrschaftssoziologie*, J. C. B. Mohr (Paul Siebeck), Tübingen 2001 p. 121ff.; Stefan Breuer, *Der Staat. Entstehung, Typen, Organisationsstadien*, Rowohlt, Reinbek b. Hamburg 1998; Sheldon Wolin, "Postmodern Politics and the Absence of Myth," *Social Research* Vol. 52 (1985) pp. 225ff.

¹¹⁶ Offe, "Staatstheorie," op. cit. p. 313.

¹¹⁷ Wolin, "Postmodern Politics," op. cit. p. 226.

matches. An economic monopoly is relatively easy to detect and implement; but this is not the case where violence is monopolised, for this can never be absolute. No state, not even a total state, is capable of closing down all competing sources of violence.¹¹⁸ Monopolisation always remains incomplete. This is part of the nature of violence; if we take Max Weber's standpoint, then it is a form of human action that is always there, whether latent or manifest. It has been with us since Cain slew Abel. A society free of violence might be a goal worth striving for, but this is a utopian objective that so far has remained unrealised, and the monopoly of violence on the part of the state does not bring about a society free of violence.

The inherent incompleteness of monopoly compels us to re-specify and reformulate what state monopoly of violence really involves. Both conceptually and practically, the problem is that a "true" monopoly can only be partially realised. The monopoly of violence has to be understood not in absolute terms but rather in a gradual and teleological sense: it requires constant renewal, assertion and implementation. The prospects for such implementation depend on two elementary conditions: first, the institutionalisation of the means of violence in the state, and second, the legitimating basis that assures that such claims will be recognised. In this gradual and processual sense, monopoly means, first, that the state can only *aim* to prohibit violence exercised by non-state agencies since this prohibition is not directly expressed as a legal command; second, that only the state is permitted to possess the means of implementing its claim; and third, that ultimately the state is capable of shutting down new sources of violence if all else fails.¹¹⁹

Furthermore, the monopoly of force can only work if the ruling order has legitimation at its disposal; likewise and in reverse, every legitimate state order requires a monopoly of force. This interdependence is inherent to Max Weber's concept of the state, and he talks of the monopoly of legitimate violence: as with any other form of rule, the state has to be founded upon legitimacy if it is to have any chance of enduring, while the legitimate exercise of state rule depends upon the monopoly that assures the implementation of legitimate decisions. Of course, Max Weber exaggerates when he places violence in the foreground, but his concept of the state contains the compelling implication that the core of state rule must involve the *legitimate* disposal of the means to violence.

¹¹⁸ This is mainly a problem for free states, and hardly at all for totalitarian states: "To overpower, kidnap, torture and kill someone in a free state is just about the easiest thing for a clique of terrorists to do. ... In dictatorial or even totalitarian countries such incidents hardly ever occur." Manès Sperber, "Über die Gewalt von unten," *Merkur* 25 (1975) p. 216.

¹¹⁹ Here Carl Schmitt's famous phrase coincides with Weber's understanding: "Sovereign is he who decides on the exception." (Carl Schmitt, *Political Theology. Four Chapters on the Concept of Sovereignty*, Cambridge, Mass. 1985 p. 5.)

The implications of his concept of the state touch upon the present-day democratic state based upon the rule of law; this can only exist if state power is in a position to guarantee and implement the law, a circumstance taken for granted by modern politico-legal dogma. Weber did in his sociology of law emphasise the connection between the monopoly of force and "legal order," but he paid no attention at all to the special nature of this monopoly in a *democratic state based upon the rule of law*. Here monopoly has an essential significance, since it is the guarantee that "the given legitimate democratic policy is implemented."¹²⁰ Without a monopoly of force, the law is no longer binding; in its absence there would simply be arbitrary acts; the rule of law and the monopoly of force are inextricably linked.

The fact that violence, in the sense outlined here, is monopolised by the state does not mean that the problem of violence is resolved once and for all. It constantly recurs, since in the first place its monopolisation does not imply its abolition, and in the second place, it is displaced to a new level: the state must itself either threaten or use violence if it is to realise its claim to monopoly. Every state finds itself in a double bind: the promise of putting an end to the uncontrolled violence of all against all is realised at the cost of the state itself becoming a potential source of violent action.¹²¹ This entire problem of force and violence is a constant undercurrent in Weber's writing, but becomes plain only in a very few passages, most clearly in the sociology of religion where he notes the inner dynamic of violence:

Violence and the threat of violence inevitably engender by the inescapable logic of all action ever newer violence. In this Reason of State pursues, both internally and externally, its own inner logic.¹²²

Here a quite fatalistic perspective appears, expressed by his favourite terms "inexorable" and "inevitable" and revealing a vicious circle: violence breeds violence. And this is true both of the interior of the state and of the relationships between states.

¹²⁰ Willoweit, "Die Herausbildung des staatlichen Gewaltmonopols," op. cit. p. 321.

¹²¹ For Heinrich Popitz force is a "necessary condition" for the maintenance of an order, since this is able "to forcefully protect itself when threatened with violence." (Popitz, *Phänomene der Macht*, p. 63.) "No state can exist without force; for if it renounced the use of force it would have to tolerate the violence of its inhabitants domestically and externally that of other states." Theodor Eschenburg, *Staat und Gesellschaft in Deutschland*, Schwab, Stuttgart 1956 p. 43. Alexander Passerin d'Entrèves also emphasises that that the existence of the state is bound up with force: "The State 'exists' in so far as a force exists which bears its name." *The Notion of the State*, Oxford University Press, Oxford 1967 p. 2.

¹²² Weber, "Intermediate reflection on the Economic Ethics of the World Religions," in *The essential Weber*, op. cit. p. 224, trans. revised (RS I 547).

The problem of violence became important for Weber during the Great War and the period immediately following it. This is apparent in his contemporary political writings where he devotes attention to the relationship of the state, war and violence. There is a precarious relationship between violence within one state and that between states. The power which secures internal peace is at the same time the power likely to unleash the greatest possible violence, that of open war. Max Weber is far removed from any idea that freedom from violence is a possibility: he endorses the exercise of violence both internally and externally. But there is a tension evident between the martial pose that he adopts in his antipacifist writings and the critique of violence that he makes in his remarks on the inner logic of violence. He anticipates aspects of Walter Benjamin's "Critique of Violence." Like Weber, Benjamin considers the monopoly of force to be the leading feature of the state, and freedom from violence an illusion.¹²³ He seeks to sharpen apprehension of the latent presence in the state of violence.¹²⁴ This is just what Weber seeks to do. His remark in 1919 that "At the present moment, the relation between the state and violence is a particularly intimate one"¹²⁵ has lost nothing in its contemporary relevance. As scholarly and political debate over the relation of the state and violence demonstrates, this intimacy continues to exist.

In the late twentieth century, there are increasingly signs that the internal, territorial monopoly of force on the part of a state is extending into a cosmopolitan monopoly of violence: a worldwide monopoly of the legitimate right to wage war. But even a monopoly of this kind offers no prospect of the eternal peace that Kant sought or a "completely pacified globe,"¹²⁶ the prospect that Carl Schmitt dreaded. The idea that a world monopoly of violence means an end to all war is hardly possible. However, the creation of institutions for the effective implementation of this monopoly is certainly among the leading political tasks of the present. Karl Otto Hondrich states this very clearly:

Just as social peace is predicated upon the concentration of violence in the state, so international peace is unattainable without the existence of a plausibly intimidating cartel of dominant states, with which, if one is optimistic, ever more states associate themselves. Its regulation and legitimation are delicate matters, the way to it is long, disagreeable, full of risks and traps.¹²⁷

¹²³ Walter Benjamin, "Critique of Violence" (1921), in his *Selected Writings* Vol. 1, trans. Edmund Jephcott, Harvard University Press, Cambridge 1999 pp. 236–252, 239.

¹²⁴ *Ibid.* p. 244.

¹²⁵ Weber, "The Profession and Vocation of Politics" in his *Political Writings*, op. cit. p. 310.

¹²⁶ Carl Schmitt, *The Concept of the Political*, Chicago University Press, Chicago 2007, p. 35.

¹²⁷ Karl Otto Hondrich, "Wenn die Angst nachläßt," *Der Spiegel* Nr. 30 (20 July 1992) p. 31.

It is an irony of history that the first signs of a global monopoly of violence have emerged at a time when the internal monopoly of violence enjoyed by the state is increasingly under threat. The ultimate breakdown of this monopoly would also bring about the destruction of the state. But there is no need to prepare a swansong for the state. History shows that nearly all states have at one time or another had to struggle to retain their monopoly. So far, the modern state has withstood the crises to which it has been subjected.

4 The state as institution¹²⁸

An important aspect of the constancy and stability of the state is its sociological nature as an *institutional enterprise*.¹²⁹ In the "Basic Sociological Concepts," the state is categorised as an "institution." What is the political significance of this category? Weber defines as an "institution," a corporate group "whose statutes can within a given domain be (more or less) successfully imposed upon all whose action exhibits specified characteristics."¹³⁰ Linked to this, the (relatively) unwieldy definition in the commentary that follows lays emphasis on three criteria that are at the same time of decisive relevance to his conception of the state: an institution is, first, a corporate group with "rational" statutory orders, which, second, apply "to all" within the institution, and third, "are therefore *imposed* orders in a quite specific sense."¹³¹

The first criterion is of significance with respect to the state since it indirectly furnishes the state with the attribute of rationality: if an "institution" is always a rational institution, so then "state" always means "rational state institution."¹³² The second criterion has as a consequence that no one can escape the demands of an ordered life within the state. The significance of the third criterion becomes plain when related to a remark in the 1913 essay on categories, where Weber distinguishes imposed institutional statutes from those that are introduced by "agreement,"¹³³ going on to establish that the latter play hardly any role at all. He introduces no historical examples or proofs, conducting instead a somewhat dogmatic argument which concludes with the statement that almost all institutional statutes "are imposed, not agreed."¹³⁴ Based as it is on a sociology of rulership,

¹²⁸ Institution is used in the following consistently as a translation of *Anstalt* [trans.].

¹²⁹ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 1 §17. See below Ch. VI.2 for a discussion of Weber's conception of *Betrieb*.

¹³⁰ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 1 §15.

¹³¹ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 1 §15.2.

¹³² See Ch. V.5 for a discussion of this.

¹³³ Weber, "On Some Categories of Interpretive Sociology," in his *Collected Methodological Writings*, op. cit. p. 297 (WL 468).

¹³⁴ *Ibid.* p. 298 (WL 469).

this position conforms with his scepticism of the idea that state rule could be based upon agreement. He does not here mention at all the long history of contract theory, a theory which in another context he rejected decisively, stating that the “hypostatization of the ‘regulative idea’ of the ‘contract establishing the state’” is “pure fiction.”¹³⁵ Wilhelm Hennis states quite rightly that “Nowhere in Weber’s sociology of domination can I find the faintest positive reference to the modern conception of contract.”¹³⁶ Since this idea of an original contract has no relevance outside Weber’s treatment of rule, this judgement can be safely extended to all of Weber’s writings.

Max Weber’s anticontractarianism defines his conception of the modern state, and in this he stands in the tradition of David Hume. The latter argued against the idea that the state was founded upon “consent and a voluntary compact,” this idea being “not justified by history or experience” for “Almost all the governments, which exist at present, or of which there remains any record in history, have been founded originally, either on usurpation or conquest, or both, without any pretence of a fair consent.”¹³⁷ An important aspect of Max Weber’s conception of an institution can also be found in Hegel, who arguing against the idea of the “state as a contract,” stated that “the arbitrary will of individuals is not in a position to break away from the state.”¹³⁸ But in which tradition does Weber stand regarding his definition of the state as an *institution*? In a passage in his sociology of law he commented that the conception of an institution derived from late Roman canon law but had first been developed by modern theory;¹³⁹ but

¹³⁵ Weber, “R[udolph] Stammler’s ‘Overcoming’ of the Materialist Conception of History,” *ibid.* p. 211 (WL 335). Of course, the idea of a contract was not necessarily regarded by its proponents as a historical fact, but rather as a heuristic hypothesis. So, for example, Thomas Hobbes did not think of it as an agreement that had at some point been signed and sealed, rather that it was a necessary fiction capable of providing a convincing argument for obedience to the state order. For Kant, an original contract is merely “an *idea* of reason, which nonetheless has undoubted practical reality...” (Immanuel Kant, “On the Common Saying: ‘This May be True in Theory, but it does not Apply in Practice,’” in his *Political Writings*, ed. Hans Reiss, 2nd edition, Cambridge 1991 p. 79).

¹³⁶ Hennis, “Voluntarism and Judgement. Max Weber’s Political Views in the Context of his Work,” in his *Max Weber’s Central Question*, *op. cit.* p. 190.

¹³⁷ David Hume, “Of the Original Contract,” in his *Political Essays*, ed. Knud Haakonssen, 5th ed. Cambridge University Press, Cambridge 2006 pp. 189–90.

¹³⁸ Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, 8th ed. Cambridge University Press, Cambridge 2003 p. 106 (§ 75, addition).

¹³⁹ Weber, *Recht*, MWG I/22-3 p. 397 (WuG 429). For the origins of the concept of “Anstalt” see Siegfried Hermes, “Der Staat als ‘Anstalt’. Max Webers soziologische Begriffsbildung im Kontext der Rechts- und Staatswissenschaften,” in Klaus Lichtblau (ed.), *Max Webers ‘Grundbegriffe’*, VS Verlag, Wiesbaden 2006 pp. 184–216; Andreas Anter, “Charisma und Anstaltsordnung. Max Weber und das Staatskirchenrecht seiner Zeit,” in Hartmut Lehmann, Jean Martin Ouedraogo (eds), *Max Webers Religionssoziologie in interkultureller Perspektive*, Vandenhoeck & Ruprecht, Göttingen 2003 pp. 29–49, 40ff.

so far as the state goes, this leaves things entirely open. It is clear that by the nineteenth century the idea of the state as an institution had become established in German political thinking. Fichte defined the (absolute) state in this way, in so doing binding together the elements of coercion and the absence of free will; criteria that would be of decisive importance for Weber's understanding of "institution." It was obvious to Fichte that individuals lived in states unwillingly, "that this institution was a *coercive* institution."¹⁴⁰

While Fichte foregrounded coercion, Friedrich Julius Stahl systematised the idea of the state as an institution and in so doing emphasised the impersonal aspect; from which he drew the conclusion that the state was "an institution" which had nothing in common with "*direct personal or private rule*."¹⁴¹ Treitschke saw the state as an institution for the protection of order,¹⁴² and for Constantin Frantz, who understood the state to be an "institution,"¹⁴³ this was already part and parcel of the prevailing doctrine. Nonetheless, throughout the nineteenth century, and into the twentieth and so contemporary with Weber, there was no clear concept of "institution." Jellinek for instance complained of a completely "undeveloped doctrine of the state as an institution," while also maintaining that the "concept of institution is one of the most confused in all jurisprudence."¹⁴⁴

Max Weber obviously took this complaint to heart. The concept of institution, lacking clear definition in contemporary political theory, was precisely defined in his basic sociological concepts, thereby providing a conceptual and theoretical foundation for the analysis of the state as an institution. The significance of this achievement can only be understood if we take account of the prevailing confused state of affairs. The extent of the achievement is demonstrated by Otto Hintze's warm words: that "keen thinkers" had created the "dry legal category of 'institution'," but it took a master like Max

¹⁴⁰ Johann Gottlob Fichte, *Die Grundzüge des gegenwärtigen Zeitalters* (1806), Meiner, Hamburg 1978 p. 150.

¹⁴¹ Friedrich Julius Stahl, *Rechts- und Staatslehre auf der Grundlage christlicher Weltanschauung. Zweite Abtheilung. Die Lehre vom Staate und die Principien des deutschen Staatsrechts*, Heidelberg 1846, pp. 109–10. "The Prince possesses power not by virtue of his person, but by virtue of the nature of the institution, hence not according to his private will and for his private purposes, but restricted and defined by the purpose, and according to the laws, of the institution." p. 110.

¹⁴² Heinrich von Treitschke, *Die Gesellschaftswissenschaft*, Hirzel, Leipzig 1859 p. 10.

¹⁴³ Frantz, *Die Naturlehre des Staates* op. cit. p. 54.

¹⁴⁴ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 165. He made an exception only of Gierke, whose "illuminating" investigations had created some clarity. Stefan Breuer is of the opinion that Gierke had some influence on Weber's conception of the institution ("Max Webers Staatssoziologie," *Kölner Zeitschrift für Soziologie und Sozialpsychologie* Jg. 45 (1993) pp. 202–03).

Weber to create conceptual clarity.¹⁴⁵ Hintze argued that after Weber “there was no longer any reason to hide for ideological reasons the bare fact that for us the state is basically nothing other than an institutional enterprise possessing coercive force,”¹⁴⁶ but overlooked the fact that this “bare fact” had stood revealed in German political theory for over a century past. Max Weber is in no respect the leading light that Hintze makes him. And he assumes almost Messianic elements when Hintze sees no further reason “to darken the light of this new matter-of-factness in which we are bathed,” having revealed the state to be an “institutional enterprise.”¹⁴⁷

The “light of this new matter-of-factness” was however quickly extinguished, for this understanding of the state as an institution played no further role in theory of the state for over fifty years. It was Wilhelm Hennis who reminded us of it when he described the interpretation of the state as an institution “as among the most acute and earliest decodings of the internal law of development of the modern state.”¹⁴⁸ His recommendation that in dealing with the modern state as an institution one should begin with Max Weber should give heart to political theory. Hennis noted quite rightly that Weber’s conception of an institution represented a part of a specifically German approach to the state. His thesis, that Weber took Prussia for Germany,¹⁴⁹ does not however do justice to the conception, for it has an ideal-typical character and is in no respect simply a reflection of the Wilhelminian state; it is part of the ideal-typical understanding of the modern state.

5 The criterion of the political

In Weber’s concept of the state the definition of the political serves primarily to distinguish the state from hierocratic institutions. But it does far more than this – raising the question of not only what his definition of the political is but also what is the relation of state and politics. The latter is even more compelling given the manner in which Weber’s definition of *Politik*¹⁵⁰ is linked to the state, described as “... the leadership, or the exercise of influence on the leadership, of a *political* association, which today means a *state*”; or as the “striving for a share of power or for influence on the distribution of power, whether it be between states or between groups of people contained

¹⁴⁵ Otto Hintze, “Der Staat als Betrieb und die Verfassungsreform” (1927), in his *Soziologie und Geschichte*, ed. Gerhard Oestreich, Vandenhoeck & Ruprecht, Göttingen 1964 p. 206.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.* p. 207.

¹⁴⁸ Hennis, “Legitimacy,” *op. cit.* p. 89.

¹⁴⁹ *Ibid.*

¹⁵⁰ The single German term *Politik* translates into English as both “politics” and “policy” [trans.].

within a single state."¹⁵¹ The argument here becomes circular: if we consider the concept of the state then we run across the criterion of the political, and if we ask after the concept of the political we end up being referred back to the state.

This circularity points to the interdependence of both concepts, which are so closely connected that they are mutually defined. Weber's understanding of the political is largely of its time, recapitulating almost word-for-word Schäffle's conception of the political, who restricted it to "the sphere of state phenomena, to action of and through the state."¹⁵² Jellinek sharpened this interdependence and ended up identifying the concepts with each other: "'Political' means 'of the state'; the concept of the political already contains the concept of the state."¹⁵³ No such equation is made anywhere in Max Weber's writing, but his definitions of the state and of the political clearly borrow from Jellinek and Schäffle, to whom he is moreover indebted for the division of priority between the two concepts: Schäffle articulated this ranking most clearly when stating that before one could determine "what politics might be, we first have to know what the *state* is."¹⁵⁴ We can detect exactly this understanding in Weber, since his definition of *Politik* is preceded by a definition of the state.¹⁵⁵ This approach does not however alter the fact that each concept is constantly linked with the other, although neither Schäffle nor Jellinek nor Weber touch on this, even in passing.

Carl Schmitt was the first to recognise this inherent circularity, and summed up the conceptual sociological position of his time: the state appeared to be "somewhat political" while the political appeared to be "somewhat statal" – an unsatisfactory circularity indeed.¹⁵⁶ Set in this context his famous phrasing¹⁵⁷ appears to be only the antithesis of Jellinek and Weber, for it opens up the prospect for Schmitt's concept of the political, no longer founded upon "the state" and which seeks to overcome the equation of the statal with the political. It can however be doubted whether this attempt to "destatalise" the concept was successful, since his Tacitistic

¹⁵¹ Weber, "The Profession and Vocation of Politics," in his *Political Writings*, op. cit. pp. 310, 311.

¹⁵² Albert Schäffle, "Über den wissenschaftlichen Begriff der Politik," *Zeitschrift für die gesamte Staatswissenschaft* Jg. 53 (1897) p. 580. Gustav Rümelin had also previously defined "die Politik" as the "free leadership of the state as a whole" ("Ueber das Verhältniß der Politik zur Moral" (1874), in his *Reden und Aufsätze*, Laupp, Freiburg, Tübingen 1875 p. 144).

¹⁵³ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 180.

¹⁵⁴ Schäffle, "Über den wissenschaftlichen Begriff der Politik," op. cit. p. 586.

¹⁵⁵ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 §§16, 17; id., "The Profession and Vocation of Politics," op. cit. pp. 310–11.

¹⁵⁶ Carl Schmitt, *The Concept of the Political*, University of Chicago Press, Chicago 2007 p. 20.

¹⁵⁷ "The concept of the state presupposes the concept of the political," *ibid.* p. 20.

formulation of the distinction of friend and enemy¹⁵⁸ provides no convincing criteria of the political, while the political cannot be understood in the absence of some kind of link to the state. Such diverse writers as Hermann Heller, Ulrich Scheuner and Niklas Luhmann all rightly emphasise that the two concepts cannot be treated as if they were quite separate, for they are in fact inseparable.¹⁵⁹ The link that Max Weber made between the two concepts is therefore in no respect superseded, and rather still represents prevailing opinion. His position can be described as an exact reversal of that of Carl Schmitt: the concept of the political presupposes the concept of the state.

Weber did not however have just *one* concept of the political but essentially three. First of all, he understood “politics” to be the leadership of a state;¹⁶⁰ secondly as influence over the distribution of *power* in the state;¹⁶¹ thirdly his political writings are shot through with the short and simple assertion that “politics” always means “struggle.”¹⁶² There is of course a semantic affinity between these two moments, but they are in no respect identical; for such a passionate nominalist this conceptual inconsistency is surprising. We can only conclude that he was not especially interested in an analytical conception of the political. Unlike his other definitions, he here cites in support common language usage when stating that political questions are questions of power and to pursue politics is to strive for power.¹⁶³ Here also we can

¹⁵⁸ Ibid. p. 26. This is borrowed almost word-for-word from the Spanish Tacitist Baltasar Álamos de Barrientos: “lo político es la distinción entre amigo e enemigo” – *Tácito español ilustrado con aforismos*, Madrid 1614, noted by Günter Maschke, *Der Tod des Carl Schmitt. Apologie und Polemik*, Vienna 1987 p. 80. On literary aspects of the motif “enemy” see my essay “Das Lachen Carl Schmitts. Philologisch-ästhetische Aspekte seiner Schriften,” *Literaturmagazin* 33 (1994) pp. 158ff.

¹⁵⁹ Hermann Heller was of the view that “a clear basic concept” could be formed only by relating the political to the state (*Staatslehre*, op. cit. p. 204). Ulrich Scheuner states that the two concepts have to be kept “indissolubly” together, arguing that the concept of the political must be understood in terms of the state (Scheuner, “Das Wesen des Staates und der Begriff des Politischen in der neueren Staatslehre,” in Konrad Hesse et al. (eds), *Staatsverfassung und Kirchenordnung. Festgabe für Rudolf Smend*, J. C. B. Mohr (Paul Siebeck), Tübingen 1962 pp. 226, 253). Niklas Luhmann does suggest that the concepts of state and of politics are involved in a way that is difficult to make sense of,” but he does recognise at least that that state “has assumed a relationship to the state” (Luhmann, “State and Politics: Towards a Semantics of a Self-Description of Political Systems,” in his *Political Theory in the Welfare State*, op. cit. pp. 117–154, 122).

¹⁶⁰ Weber, “The Profession and Vocation of Politics,” op. cit. p. 309.

¹⁶¹ Ibid. p. 311.

¹⁶² “Rather, the essence of all politics, as we shall emphasise repeatedly, is *conflict*” (Weber, “Parliament and Government,” in his *Political Writings* p. 173). Ultimately Carl Schmitt’s friend-enemy conception runs back to this because the conception of an enemy presumes “conflict,” and since the real prospect of conflict must always be presents if one is to talk of politics (Schmitt, *Concept of the Political*, op. cit. p. 32f.), there is behind his friend-enemy thesis nothing other than a Weberian conception of politics as struggle.

¹⁶³ Weber, “The Profession and Vocation of Politics,” op. cit. p. 311.

detect an affinity to Jellinek, who defined politics as the “striving to acquire and retain power” within the state and defined by the state.¹⁶⁴

Both resort to “usage” and the conceptual inconsistencies express uncertainty about a “scientific” definition of the political, an uncertainty that we can see not only in Max Weber but also in his contemporaries. Schäffle sums up the complaint of many thoughtful “practical men”:

...that they find the social sciences have no answer to the question, while one could search almost in vain texts on the state sciences for a clear definition and discussion of the nature of politics, and would in any case never find any agreement.

In his view this was because

not only in common usage but also in the sciences “politics” is a very inconstant concept, a many-faced protean form, seeming to mock all effort at certain accommodation, a rubber-like thing which can be pushed and pulled about at will.¹⁶⁵

This stream of metaphors not only captures the state of discussion contemporary with Max Weber but also suggests one of the causes of this lack of clarity. Consensus over the “nature” of the political can hardly be formed because individual experiences of “the political” are heterogeneous, and in each historical situation the political assumes a new form, having to be conceived and defined anew.

Max Weber is quite clear on this, both as a scholar and a “practical man.” We can see that he does not wish to set forth a timeless definition by the fact that he refers to “today” – the situation in 1919. Nowhere does he claim to be giving a scholarly or “scientific” response to the question concerning the nature of politics. Criticism of Weber always overlooks this point. Hennis rightly emphasises the historical relativity of the identification of politics with power, which was quite obviously based upon an orientation to world politics during an era of imperialism;¹⁶⁶ but to use this argument against Weber is to push at an open door, since Weber himself emphasised the importance of the contemporary political context.

Despite its strict relation to a particular moment, Weber’s conception remained for half a century one of the most influential and widespread views of the nature of the political. This had direct consequences for the (self) understanding of political science which, were one to pursue the identification of politics and power, would be a science of power. It was exactly

¹⁶⁴ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 17.

¹⁶⁵ Schäffle, “Über den wissenschaftlichen Begriff der Politik,” op. cit. p. 579.

¹⁶⁶ Wilhelm Hennis, *Politik und praktische Philosophie* (1963), Klett-Cotta, Stuttgart 1977 pp. 10–11.

this conception that became so dominant in Anglo-American¹⁶⁷ and in German¹⁶⁸ political science, so that by the 1960s there could be a “prevailing view” that “political science was concerned with the question of the acquisition, distribution, use and control of power,” that political phenomena were “power phenomena” and that power represented the “specific criterion of the political.”¹⁶⁹ Sontheimer, a bitter opponent of this “prevailing view,” blamed it on Max Weber, not entirely unjustly since as Hennis irritably pointed out, it was Weber’s authority that lent this view an almost classical status.¹⁷⁰ It was therefore no accident that during the 1960s Weber’s concept of the political became a fixed pole in debate over the self-understanding of German political science. Denunciation of political science’s fixation upon power and expressions of enmity toward Max Weber became a routine for, above all, representatives of the philosophical-normative tendency.¹⁷¹

¹⁶⁷ Harold D. Lasswell and Abraham Kaplan conceive political science as “the study of shaping and sharing power” (*Power and Society. A Framework for Political Inquiry*, Yale University Press, New Haven 1951 p. XIV). For Hans J. Morgenthau politics is a “struggle for power,” power therefore being the central object of political science (*Politics among Nations. The Struggle for Power and Peace*, Knopf, New York 1961 p. 27).

¹⁶⁸ Ossip K. Flechtheim defined political science as a discipline which investigated the state from the aspect of power (*Grundlegung der politischen Wissenschaft*, Hain, Meisenheim 1958 p. 70). Representatives of the “Realist School” in particular made “power” into the fundamental concept of political science (Gottfried-Karl Kindermann, “Philosophische Grundlagen und Methodik der Realistischen Schule von der Politik,” in Dieter Oberndörfer (ed.), *Wissenschaftliche Politik*, Rombach, Freiburg 1966 pp. 251 ff.).

¹⁶⁹ Kurt Sontheimer, “Zum Begriff der Macht als Grundkategorie der politischen Wissenschaft,” *ibid.* pp. 198, 197.

¹⁷⁰ Hennis, *Politik und praktische Philosophie* (1963), *op. cit.* p. 7.

¹⁷¹ Wilhelm Hennis warned that the “hollowing out of our discipline” brought about by the equation of politics with power must be halted (“Aufgaben einer modernen Regierungslehre,” *op. cit.* p. 431). Arnold Bergstraesser, mentor of the Freiburg School, resolutely dismissed the prospect of a political science oriented to power (*Politik in Wissenschaft und Bildung*, Rombach, Freiburg 1961 pp. 63ff.). Taking support from his teacher Bergstraesser and targeting Weber, Hättich sought an “open politico-sociological concept of the political,” although exactly what this might be remained obscure (“Der Begriff des Politischen bei Max Weber,” *Politische Vierteljahresschrift* Bd. 8 [1967] p. 49). Another student of Bergstraesser, Kurt Sontheimer, argued that a political science which understood itself as a science of power mistook the nature of politics (“Zum Begriff der Macht,” *op. cit.* p. 208). His argument, aimed against Weber, was “power could not be made the founding category for the understanding of the political since all human groups and organisations develop power relations,” such that a band of gangsters was in this respect no different from the modern state (p. 202). This line of argument is completely off the point, since Weber did not talk of the power of this or that group, let alone gangs, but exclusively of *state* power. Sontheimer’s misunderstanding is par for the course in seeking to “refute” Weber on the basis of a very shaky understanding of his writings. This can be the only explanation for the remarkable absence of a postwar reception of Weber, a process which presents a series of endless misunderstandings. As Wolfgang Welz rightly noted, representatives of the philosophico-normative tendency were not interested in the analysis of Weber’s writings, which they always read selectively and in a consciously partisan fashion (Hübinger, Osterhammel, Welz, “Max Weber und die Wissenschaftliche Politik nach 1945,” *op. cit.* p. 189).

Vehement and polemical criticism of Weber's concept of the political did however end abruptly at the end of the 1960s, since when there have been only sporadic critical remarks in the literature, such as Ulrich Matz's view that "power is the last thing that one could found an empirical science upon."¹⁷²

There are I think three reasons for the disappearance of this once-routine criticism. First of all, criticism of Weber was an expression of a search on the part of German political science for self-understanding, seeking to be either a "science of democracy" or alternatively a "critical science," but which in either case seemed to involve the need to distance oneself from Weber. Once the discipline was firmly established there was no longer any need to insist on this distance. Second, the developing Weber renaissance brought about the abandonment of the older critical positions, which now looked "unmodern." Third, it is evident that major debates over the nature of politics or the aims and purposes of the state no longer occur. A professionalised political science appears to have pragmatically decided "to avoid discussion of the definition the political" and recognise the fact that "there is no unambiguous conceptual definition," a consensus existing only on the fact that politics is a "complex phenomenon."¹⁷³ And so we remain where we were in 1897. Even one century later, we can describe the current state of discussion in Schäffle's terms – that the social sciences have no answer to the question, that one sought in vain for a clear definition and discussion of the nature of politics, that there was in any case no agreement to be found, that "politics" is a very inconstant concept, a many-faced protean form. This Proteus is clearly made of very tough stuff and still mocks any Menelaus from the science of politics.

The question, "what is politics?" is like that of Pontius Pilate; one can only shrug and wonder what the answer might be. A very important cause of this apparently inescapable difficulty is the manner in which the field of political relationships is a constantly moving one, each new period needing a new concept of politics – in the same way that each new era needs a new political science.¹⁷⁴ Today one would have to define politics in a different way to Max Weber, at least not describe it as the "striving for power"; the domain of politics has altered, and "politics" has become a complex process of structures and actions that cannot any longer be reduced to a simple striving for power.

¹⁷² Ulrich Matz, "Über die Unbestimmbarkeit von Macht," in Hans Maier et al. (eds), *Politik, Philosophie, Praxis. Festschrift für Wilhelm Hennis*, Klett-Cotta, Stuttgart 1988 p. 248.

¹⁷³ Ulrich Druwe, "Politik" in *Handbuch Politikwissenschaft*, Rowohlt, Reinbek bei Hamburg, 1987, pp. 396, 395, 393.

¹⁷⁴ "A new political science is needed for a totally new world." (Tocqueville, *Democracy in America*, op. cit. p. 16).

But all the same there is no doubt that politics has a great deal to do with power – in this nothing has changed since the time of Max Weber. We are awash with literature on the power of institutions, political systems and international relations. Today we would not take up Weber's definition without reservation, but we still need it. This not only goes for power, but also its connection to the *state*, in the absence of which the political cannot be conceived and defined. Any attempt to arrive at a "state free" or "destatalised" definition leads either to the aporia of dazzling formulations like those of Carl Schmitt, who pretends to put forward a post-statal concept but in fact merely resorts to pre-statal conceptions, or to the current consensus, which considers the question to be unanswerable and simply avoids it.

It is certainly no accident that this state of affairs coincides exactly with recent views on the conception of the state, which is quietly put to one side as something that is unexplained and not therefore worth discussing.¹⁷⁵ In the very moment that we abandon the concept of the state and declare the question of the concept of the political to be obsolete, it becomes evident that, after all, the concept of the political presupposes that of the state. So far it is evident that political science has not succeeded in defining and disentangling the relationship of state and politics, and that the relation of state and politics requires some fundamental reflection. Any future attempt to delineate the concept of the political cannot be separated from the need to renew efforts to construct a conception of the state. Consequently Max Weber's concept of the state cannot be avoided.

¹⁷⁵ Niklas Luhmann, *Social Systems* op. cit. p. 462.

2

State and Rulership

I too was born in Arcadia.
I too have sworn to liberty.
But into the worst the mass does lead itself.
And the shrewdest, the best, the most fitting,
By far the most acceptable to *free* souls,
Is really only, I cannot deny:
Fixed law and steadfast command.

(Theodor Fontane, *Fester Befehl*)

Max Weber was not born in Arcadia. Practically all the contexts in which he analyses the state are shot through with the idea that the state is primarily a relationship of force and *rule*.¹ It is characterised by a structure of command and compliance, and can only exist if those who are ruled accept this rule. Weber did not intend to reduce the state to this relationship of rule, but he often enough emphasised that the state could not be understood without taking account of this relationship. This was not only true for the state but for every social relationship, every social institution and every social action. As far as Weber was concerned, “all areas of communal action” were marked by rulership,² which is accordingly a universal element of human existence and which is among the most elementary conditions for the consolidation of social relationships. It permits “rational consociation (*Vergesellschaftung*) to arise out of amorphous communal activity (*Gemeinschaftshandeln*).”³

Rulership, the central “phenomenon of everything social,”⁴ is a fundamental concept of Max Weber’s. And his sociology of rulership, which has

¹ Weber, “The Profession and Vocation of Politics,” in his *Political Writings*, ed. Peter Lassman, Ronald Speirs, 6th ed. Cambridge University Press, Cambridge 2008 pp. 309–369 (310).

² Weber, *Herrschaft*, MWG I/22-4 p. 127 (WuG 541).

³ *Ibid.*

⁴ Weber, *Gemeinschaften*, MWG I/22-1 p. 270 (WuG 539).

been seen as his “politology,”⁵ lies at the core of his work.⁶ His problematic concerns the emergence, mode of functioning, the structural form and the legitimacy of rule – a problematic which has become a classic of modern political thinking.⁷ In this, Max Weber’s understanding of rulership corresponds closely with that of Georg Simmel – who regarded the “fact of rulership”⁸ as a constant social phenomenon; every liberation from rulership almost always proved to be “at once the acquisition of some form of rulership,”⁹ a “constant sociological core,”¹⁰ constantly regrouping around those who command and those who obey.¹¹ This structure is likewise decisive for the modern state.¹² For both Weber and Simmel there is no freedom from rule in sight, neither in the past nor in the future.

⁵ Dolf Sternberger, “Das Wort ‘Politik’ und der Begriff des Politischen,” *Politische Vierteljahresschrift* Bd. 24 (1983) pp. 6–14 (7f.).

⁶ See the detailed study by Stefan Breuer, “Herrschaft” in der Soziologie Max Webers, Harrassowitz, Wiesbaden 2011, the standard work on the subject. However, one cannot agree with his judgement in the first edition of the book that the sociology of rulership is “not really properly part of Weber’s work,” and that it is a “half-completed structure” whose stability occasions “justified concerns” (*Max Webers Herrschaftssoziologie*, Campus, Frankfurt a.M. 1991, p. 31). Even this critical structural engineer admits that, of all the constructions planned in the founding years of sociology, the “maintenance and development” of the Weberian sociology of rulership is the one “most worth” pursuing, and that its conceptual structure still seems capable of elaboration seventy years later (p. 31). Breuer’s excellent study proves exactly this point. See further Liesbeth Huppel-Cluysenaer, Robert Knecht, Oliver W. Lembcke (eds), *Legality, Legitimacy and Modernity. Reconsidering Max Weber’s Concept of Domination*, Reed Business, ‘s-Gravenhage 2008; Gianfranco Poggi, *Incontro con Max Weber*, Il Mulino, Bologna 2004 pp. 105ff.; Furio Ferraresi, *Il fantasma della comunità. Concetti politici e scienza sociale in Max Weber*, Franco Angeli, Milano 2003 pp. 377ff.; Edith Hanke, Wolfgang J. Mommsen (eds), *Max Webers Herrschaftssoziologie*, J. C. B. Mohr (Paul Siebeck), Tübingen 2001; Wolfgang Schluchter, *Die Entstehung des modernen Rationalismus*, Suhrkamp, Frankfurt a.M. 1998 pp. 220ff.

⁷ This is expressed especially clearly at the beginning of Rousseau’s *Social Contract*. Weber is, however, far removed from the astonishment that David Hume expresses, for whom nothing seems more surprising than the ease with which the many are ruled by the few and the unconditional submissiveness with which men subordinate their own opinions and passions to those of their ruler: “Nothing appears more surprising to those, who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission, with which men resign their own sentiments and passions to those of their rulers.” David Hume, “Of the First Principles of Government,” in his *Political Essays*, ed. Knud Haakonssen, 5th ed. Cambridge University Press, Cambridge 2006 p. 16.

⁸ Georg Simmel, *Soziologie, Untersuchungen über die Formen der Vergesellschaftung* (1908), Suhrkamp, Frankfurt a. M. 1992 p. 270.

⁹ *Ibid.*, p. 252.

¹⁰ *Ibid.*, p. 260.

¹¹ *Ibid.*, pp. 245f.

¹² *Ibid.*, pp. 246.

When Max Weber characterises the state as a “relation of *rulership*,” and in turn treats “rulership” as “the chance that a command of a particular kind will be obeyed by given persons,”¹³ then the state is characterised by a structure of command and compliance. And since Weber sometimes simply equates rulership with “authority,”¹⁴ even just identifying it with “authoritative power of command,”¹⁵ the state is for him a relation not only of rule but also of authority. Here there is a clear affinity with the position of Robert Piloty, who treated authority as the chance of finding compliance for a command by a ruler, and defined the “execution of commands by a ruler” as an essential “feature of state power.”¹⁶ The fact that the concept of authority was not defined by Weber and was only vaguely related back to “command and compliance” reflects the thinking of the time, in which the old question “what is authority?” remained unanswered in all contemporary writing. That is as true of Mikhail Bakunin,¹⁷ who despised authority, as it is of Ludwig Stein,¹⁸ who was an apologist for it.

The conception of the state as a relation of rulership consisting of command and compliance is *the* paradigm of political thought in the later nineteenth and early twentieth centuries. For Nietzsche the state is “a structure of domination,” an institution that “can command”¹⁹; According to Constantin Frantz, it was rule that made the state a state in the first place;²⁰ Carl Friedrich von Gerber understood “state power” to be “the power to rule,” and “rule” therefore as “a concept belonging specifically to the law of the state (*Staatsrecht*).”²¹ This programmatic formulation made the doyen of positivist state law the originator of the idea that ruling was the prime

¹³ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 16.

¹⁴ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 1.

¹⁵ Weber, *Herrschaft*, op. cit. p. 135 (WuG 544).

¹⁶ Robert Piloty, “Autorität und Staatsgewalt,” *Jahrbuch der Internationalen Vereinigung für vergleichende Rechtswissenschaft und Volkswirtschaftslehre* 6/7 (1904) pp. 551–576 (552f.).

¹⁷ As an anarchist Bakunin reviled authority “with all his heart,” but had no answer to the important question “What is authority?” – see his *God and the State* (1873), Cosimo Classics, New York 2008 pp. 28f.

¹⁸ In his essay on authority Ludwig Stein gets no further than commonplace observations that authority is the positive “pole in all social constructs,” “the soul of discipline,” or the “indispensable precondition of all culture” – “Autorität. Ihr Ursprung, ihre Begründung und ihre Grenzen,” *Schmollers Jahrbuch* 26 (1902) pp. 899–928 (899, 909, 911).

¹⁹ Friedrich Nietzsche, *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, Cambridge University Press, Cambridge 2006 p. 58.

²⁰ Constantin Frantz, *Die Naturlehre des Staates als Grundlage aller Staatswissenschaft*, C. F. Winter, Leipzig 1870 p. 168.

²¹ Carl Friedrich von Gerber, *Grundzüge eines Systems des deutschen Staatsrechts*, 2nd edition, Tauchnitz, Leipzig 1869 p. 3.

characteristic of state power.²² This doctrine was reinforced and given more precision by Paul Laband, the most influential teacher of the law of the state in Wilhelminian Germany: he defined “rule” as the right “to command” actions, and reserved this right of rulership to the state, since this was “its especial privilege which it shared with no-one.”²³

Like these two leading protagonists of positive state law, Max Weber also thought “rulership” to be an essential criterion of the state. He did, however, clearly distance himself from their dogma regarding the state’s monopoly upon rulership; for Weber, rulership is very much a “phenomenon of everything social” and by no means confined to the state. It is for this reason that Heino Speer’s view that Weber’s concept of rulership is “made to measure for the state”²⁴ is just as untenable as his argument that the “origin” of Weber’s conception of rulership is rooted in legal positivism and corresponds to that embraced by Paul Laband. Weber instead *turns away* from the reservation of rulership to the state by legal positivism.

From the very beginning, interpretation of Weber’s theoretical statements regarding the state has had difficulty locating its proper intellectual context. Otto Hintze, for example, does argue that the conception of rulership is “very characteristic” of and “fundamental to his concept of the state,” but he then sets off down a blind alley when interpreting this as a reaction against “an idealistic conception of the state based upon natural law,” a reaction that with “hard and decisive realism tears away the veil of a cosy romantic ideology of the state.”²⁵ There was nothing left of this veil to tear away, since the “dream of natural law” had long been “dreamed away,”²⁶ the romantic-idealist-natural law-based conception of the state having long been destroyed by legal positivism. Max Weber’s position is far more an expression of the contemporary conception of the state that linked it to rulership, once he had detached the state from its monopoly of rulership.

²² The idea that Gerber did really found a new tradition in the literature has met with general agreement since it was first mooted around the turn of the century in Jellinek’s *Allgemeine Staatslehre* (1900), 3rd ed. Wissenschaftliche Buchgesellschaft, Darmstadt 1960 p. 429), a view that has survived up to now. See for instance Olivier Jouanjan, “Die Belle époque des Verwaltungsrechts,” *Handbuch Ius Publicum Europaeum*, Bd. IV, C. F. Müller, Heidelberg 2011 pp. 425–458 (430).

²³ Paul Laband, *Das Staatsrecht des deutschen Reiches*, Bd. I, 2nd edition, J. C. B. Mohr (Paul Siebeck), Freiburg 1888 pp. 64ff.

²⁴ Speer, *Herrschaft und Legitimität*, Duncker & Humblot, Berlin 1978 p. 21.

²⁵ Otto Hintze, “Max Webers Soziologie” (1926), in his *Soziologie und Geschichte*, Vandenhoeck & Ruprecht, Göttingen 1964 pp. 135–147 (142).

²⁶ *Ausgeträumt* – this striking formulation is from Bernhard Windscheid, “Recht und Rechtswissenschaft. Greifswalder Universitäts-Festrede” (1854), in his *Gesammelte Reden und Abhandlungen*, ed. P. Oertmann, Duncker & Humblot, Leipzig 1904 p. 9.

On *this* point he also differed fundamentally from Georg Jellinek, who – like Gerber and Laband – considered “rulership” to be a capacity that “only the state” possessed.²⁷ It is, however, true that Jellinek modified the dogma put forward by Gerber and Laband, thereby creating an important point of departure for Weber. Jellinek emphatically denied “the nature of the state is ruling, and no more is to be said”²⁸ and argued that there were also “social” functions of the state in addition to those related to its “rule.”²⁹ The year his *Allgemeine Staatslehre* was published, 1900, turned out to be symbolic. This is the turning point from nineteenth century conceptions of the state, dominated by Gerber and Laband, to those of the twentieth century, for whom Max Weber became the touchstone. The common thread to all of these theorists – Gerber/Laband, Jellinek and then Weber – is that they all insisted that “without the relation of rulership it is not possible to conceive a state.”³⁰ For Georg Jellinek, “ruling” meant being in possession of the capacity of “unconditional command.”³¹ Besides this, he had a second conception of rulership that worked without “command and compliance,” which was the capacity of being able “to impose one’s will upon others unconditionally.”³² We find this definition almost word-for-word in Max Weber, although it is ordered to “power,” which he understands to be the “the chance, within a social relationship, of enforcing one’s own will even against resistance, whatever the basis for this chance might be.”³³ Here, once again, Weber quarries from Jellinek’s terminology, as in the case of the “ideal type” castling Jellinek’s concept while at the same time rendering it more

²⁷ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 180.

²⁸ *Ibid.*

²⁹ *Ibid.*, p. 400. This is the core of his “two-sided-theory.” See Oliver Lepsius, “Die Zwei-Seiten-Lehre des Staates,” in Andreas Anter (ed.), *Die normative Kraft des Faktischen. Das Staatsverständnis Georg Jellineks*, Nomos, Baden-Baden 2004, pp. 63–88; Jens Kersten, *Georg Jellinek und die klassische Staatslehre*, J. C. B. Mohr (Paul Siebeck), Tübingen 2000 pp. 145ff.; Andreas Anter, “Georg Jellineks wissenschaftliche Politik,” *Politische Vierteljahresschrift* 39 (1998), pp. 503–526 (515ff.).

³⁰ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 180.

³¹ *Ibid.*, p. 429. For the relationship between Weber and Jellinek see Realino Marra, *La religione dei diritti. Durkheim – Jellinek – Weber*, G. Giappichelli Editore, Torino 2006 pp. 50ff., 99ff.; Stefan Breuer, “Von der sozialen Staatslehre zur Staatssoziologie. Georg Jellinek und Max Weber,” in Anter (ed.), *Die normative Kraft des Faktischen*, op. cit. pp. 89–112; Hans Joas, “Max Weber and the Origin of Human Rights,” in Charles Camic et al. (eds), *Max Weber's Economy and Society*, Stanford University Press, Stanford 2005 pp. 366–382; Duncan Kelly, *The State of the Political: Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt and Franz Neumann*, Oxford 2003 pp. 97ff.; Ferraresi, *Il fantasma della comunità*, op. cit. pp. 333ff.; Andreas Anter, “Max Weber und Georg Jellinek,” in Stanley L. Paulson/Martin Schulte (eds), *Georg Jellinek*, J. C. B. Mohr (Paul Siebeck), Tübingen 2000 pp. 67–86.

³² Jellinek, *Allgemeine Staatslehre*, op. cit. p. 180.

³³ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 16.

precise. For Weber, without a structure of command and compliance there is no rule, just a form of power, and in his view no state can be built just on the exercise of power.³⁴

Weber occupies a central position in the development of German thinking on the state. He liberates the concept of rulership, annexed in the nineteenth century by legal doctrine as a state monopoly, from its place among the properties of the state and transforms it into a general sociological category. Political theory made no attempt to reverse this appropriation. Instead, what can be observed in social and legal theory after Weber is a questioning of rulership itself. Heinz O. Ziegler for instance diagnosed a disruption of the "old idea of 'rulership'" and a "continuous demolition of the prestige associated with all elements of rule."³⁵ In 1933 Hans Freyer suggested that "rulership" "was the concept of contemporary thought which was most taboo."³⁶ And for Niklas Luhmann "rulership" is only a "bland and conceptually imprecise" idea that survives almost exclusively as an object of criticism.³⁷ If these assessments are right, then Weber's conception of the state in terms of rulership belongs in the museum of obsolete theories.

But a glance at the development of the theory of the state since the 1920s reveals that rulership as an element central to the definition of the state is by no means obsolete. For Hermann Heller the state is an order based on rulership³⁸; Wilhelm Hennis thinks it perfectly obvious that the execution of

³⁴ Vollrath is right to say that Weber's sociology "has first and foremost to be understood in terms of his adoption and reworking of Jellinek's conceptions," but he does not tell us which conceptions these are and how they are reworked ("Max Weber: Sozialwissenschaft zwischen Staatsrechtslehre und Kulturkritik," *Politische Vierteljahresschrift* 31 (1990) p. 102). He stops at the general observation that "German political thought" "has from the very beginning been almost exclusively concerned with the category of rulership" (p. 103). Jellinek's transition "from a purely juridical perspective to a meta-juridical sociological perspective" is "precisely the step that Max Weber made" (p. 104). Weber's work is therefore, according to Vollrath, "determined by the crisis-ridden problematic of German legal state doctrine as disclosed by Jellinek" (p. 105). Vollrath's claim that he traces at the most fundamental level the linkages between the thought of Max Weber and Georg Jellinek (p. 103) is nowhere fulfilled. Quite elementary aspects of their thinking linking the state to rule, such as Weber's break with the idea that the state enjoyed a monopoly of rulership, or his transformation of Jellinek's conception of rulership, are nowhere discussed by Vollrath.

³⁵ Heinz O. Ziegler, *Die moderne Nation. Ein Beitrag zur politischen Soziologie*, J. C. B. Mohr (Paul Siebeck), Tübingen 1931 p. 277.

³⁶ Hans Freyer, *Herrschaft und Planung. Zwei Grundbegriffe der politischen Ethik*, Hanseatische Verlagsanstalt, Hamburg 1933 p. 23.

³⁷ Niklas Luhmann, "Politische Steuerung: Ein Diskussionsbeitrag," in Hans-Hermann Hartwich (ed.), *Macht und Ohnmacht politischer Institutionen*, Westdeutscher Verlag, Opladen 1989 pp. 12–16 (12).

³⁸ Hermann Heller, *Die Souveränität. Ein Beitrag zur Theorie des Staats- und Völkerrechts*, De Gruyter, Berlin 1927 p. 91.

rule is an aspect of the state³⁹; Roman Herzog thinks rule is a characteristic of the state⁴⁰ and for Stefan Breuer it is naive to believe in a disappearance of rule in future state practice.⁴¹ All of these positions demonstrate that rulership remains central to understanding of the state and that the line of development in which Weber stands reaches almost unbroken into the present. Discussion of “freedom from domination” turned out to be a short-lived intermezzo. The idea of freedom from rule is no more on the radar than that of freedom from the state. Of course, in contemporary literature no-one writes about “command and compliance” any more; instead, another category that Weber linked indissolubly with rule has come to the fore: legitimacy.

1 State and legitimacy

Legitimacy, however, is an absolutely unromantic category. (Carl Schmitt, *Political Romanticism*)

Nonetheless, great souls have need of legitimacy. One senses in noble hours the upstanding rigour of outer space. (Robert Musil, *The Man without Qualities*)

Unlike contemporary state theory, dominated as it was by legal positivism, Max Weber did not stop at a description of the state as the incorporation of rulership but introduced a category without which the relation of state and rulership could not be conceived: legitimacy. This is the Archimedean point of his sociology of rule. In his view, no rule can last if it lacks a legitimate basis. It is the “chance” that the action of the ruled is oriented by actors’ belief in the existence of a legitimate order” that bestows “validity” on this order.⁴² As with almost all sociological phenomena, the concept of “chance” is a prime qualification: rule is only the chance of rule, validity only the chance of validity, and legitimacy can, as Weber emphasises, “naturally only be treated as a *chance*.”⁴³ For him, rule without legitimacy is fundamentally not rule, but rather a stage in the mere exercise of power with little prospect of permanence. And so the state also requires a legitimating foundation that can provide validity for its order.

³⁹ Wilhelm Hennis, “Legitimacy. On a Category of Civil Society” in his *Politics as a Practical Science*, Palgrave Macmillan, Basingstoke 2009 pp. 77–120 (81).

⁴⁰ Roman Herzog, *Allgemeine Staatslehre*, Athenäum, Frankfurt a. M. 1971 p. 102.

⁴¹ Stefan Breuer, “*Herrschaft*” in *der Soziologie Max Webers*, op. cit. p. 240. See also Maurizio Bach, “Europa als bürokratische Herrschaft,” in Gunnar Folke Schuppert et al. (eds), *Europawissenschaft*, Nomos, Baden-Baden 2005 pp. 575–607.

⁴² Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 5.

⁴³ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 1.

From Weber's point of view, the question of the legitimacy of a state is one of when, how and why state rulership is recognised and respected on the part of those who are ruled. Its existence can certainly not be based upon naked force. As Talleyrand is supposed to have said, you can do everything with bayonets except sit on them;⁴⁴ the same Talleyrand who is considered to be the inventor of the word "legitimacy,"⁴⁵ and who considered this to be a "necessary element" and the "sole firm guarantee" of the stability of the state.⁴⁶ Carl von Rotteck also emphasised that state rule cannot base itself on naked force but instead requires consent, arguing that "the predicate *legitimate*" could be granted only to governments *founded upon law*.⁴⁷

And so Max Weber is not the first to have conceived and used this category. But it is Weber who made it an elementary analytical category for the comprehension of the nature of state rule, and so formed the basic foundation for the modern understanding of legitimacy. The category of legitimacy played no significant role in political theory *before* Weber and was, in fact, entirely excluded from the entirety of positivist state theory of his time.⁴⁸ Jellinek is no exception here: he never once employs the concept of "legitimacy" in his *Allgemeine Staatslehre*.⁴⁹ However, one remark does allude to an important aspect of Weber's later conception of legitimacy: if belief in the justness of rule is lacking, then "the existing order can only be maintained through external force, which is ultimately unsustainable"; but once the order is recognised, then "circumstance thought just as unreasonable will be treated as just."⁵⁰

It is only in Max Weber's writings that state, rulership and legitimacy come to form an indissoluble relationship. Whoever says "state and rulership" must – at the latest since Weber – also say "legitimacy." Every contemporary theory of the state has to deal with the question of what motivates adherence to a state order, and on what basis they are considered valid. Today legitimacy is a

⁴⁴ "On peut tout faire avec des baïonnettes sauf s'asseoir dessus." The saying is also attributed to Émile de Girardin – see Othon Guerlac, *Les citations françaises*, Armand Colin, Paris 1957 p. 325.

⁴⁵ Carl von Rotteck, "Legitimität," in Rotteck and Welcker, *Staats-Lexikon*, Johann Friedrich Hammerich, Altona 1847, Bd. 8 pp. 476–481 (477).

⁴⁶ Talleyrand, *Memoiren des Fürsten Talleyrand*, ed. Herzog von Broglie, Bd. 2, Albert Ahn, Cologne and Leipzig 1891 p. 111.

⁴⁷ Rotteck, "Legitimität," op. cit. p. 476.

⁴⁸ Martin Kriele, *Einführung in die Staatslehre. Die geschichtlichen Legitimitätsgrundlagen des demokratischen Verfassungsstaates*, 6th ed. Kohlhammer, Stuttgart 2003 pp. 14ff.

⁴⁹ There is one unimportant remark on historical usage in tradition "theory of legitimacy" (Jellinek, *Allgemeine Staatslehre*, op. cit. p. 344).

⁵⁰ *Ibid.*, p. 342. This remark is made in the context of his well-known, but usually trivialised, conception of "the normative force of the factual" (p. 338); that the command of state authority, if often enough issued and *obeyed*, "simply becomes a moral norm to be followed." (p. 339) See Kersten, *Georg Jellinek und die klassische Staatslehre*, op. cit. pp. 367ff.; Anter, "Georg Jellineks wissenschaftliche Politik," op. cit. p. 520ff.

central concept for the analysis of state and politics. On the one hand, it offers “the key to understanding almost all the problems of state theory,”⁵¹ while on the other it is “a basic problem for the philosophy of the state,”⁵² indeed “the most difficult of all questions when it comes to a theory of the state.”⁵³ It is very striking that almost all studies latch on to this question – openly or covertly, in agreement or rejecting – as posed by Weber: “Wherever the category of legitimacy turns up in modern social science it is at root Weber’s concept.”⁵⁴ This enthrallment, for which Hennis provides a critical diagnosis, is clearly so disabling “that in political science we have not got much further than Max Weber’s theory of legitimacy,” as Ulrich Scheuner claims.⁵⁵

The prominence and force of this category, which is moreover a key concept for Weber’s theory of rulership and the state, are in striking contrast with the fact that the concept is defined nowhere in his writings. This is all the more surprising given that he otherwise hardly ever left a concept undefined. His enthusiasm for conceptual construction sat this one out. There is not one point in his “sociological categories” where there is a definition of legitimacy; nor is there anywhere anything like an approximation to such a definition.⁵⁶ In this respect, Weber failed to remedy a fault to which attention had already been drawn by Carl von Rotteck, who in 1847

⁵¹ Kriele, *Einführung in die Staatslehre*, op. cit. p. 8.

⁵² Richard Schottky, “Die staatsphilosophische Vertragstheorie als Theorie der Legitimation des Staates,” in Peter Graf Kielmansegg (ed.), *Legitimationsprobleme politischer Systeme*, Westdeutscher Verlag, Opladen 1976, pp. 81–107 (81).

⁵³ Hennis, “Legitimacy,” op. cit. p. 81.

⁵⁴ Hennis, “Legitimacy,” op. cit. p. 89.

⁵⁵ Ulrich Scheuner, “Die Legitimationsgrundlage des modernen Staates,” in Norbert Achterberg, Werner Karawietz (eds), *Legitimation des modernen Staates*, Franz Steiner, Wiesbaden 1981 pp. 1–14 (4). Here the older and wiser teacher of legal state theory seeks above all to tick off political science. But for such admonishment to be truly convincing, it helps to know what one is talking about. This is obviously not the case with Scheuner: when talking of the “chance of obedience,” he relates this to Weber’s concept of legitimacy (p. 9), whereas this actually relates to his concept of rulership.

⁵⁶ For today’s discussion of Weber’s concept of legitimacy see Stefan Breuer, “Herrschaft” in der Soziologie Max Webers, op. cit. pp. 202ff.; Chris Thornhill, Samantha Ashenden (eds), *Legality and Legitimacy: Normative and Sociological Approaches*, Nomos, Baden-Baden 2010; Patrice Duran, “Légitimité, droit et action publique,” *L’Année sociologique* 59 (2009) pp. 303–344; Oliver W. Lembcke, “The Dynamics of Legitimacy: A Critical Reconstruction of Max Webers’s Concept,” in Liesbeth Huppel-Cluysenaer, Robert Knegt, Oliver Lembcke (eds), *Legality, Legitimacy and Modernity*, op. cit. pp. 33–46; Stefan Breuer, “Legitime Herrschaft,” in his *Max Webers tragische Soziologie*, J. C. B. Mohr (Paul Siebeck), Tübingen 2006, pp. 63–79; Michel Coutu, Guy Rocher (eds), *La légitimité de l’État et du droit. Autour de Max Weber*, Saint-Nicolas 2005; Peter Lassman, “The rule of man over man: politics, power and legitimation,” in Stephen Turner (ed.), *The Cambridge Companion to Weber*, Cambridge University Press, Cambridge 2000 pp. 83–98.

complained of the “lack of clarity in the concept,” resulting in “entirely arbitrary usage.”⁵⁷ Now Weber’s understanding of legitimation is not quite so “indefinite” and is not employed in any “arbitrary” manner. But since we cannot start off with a crystal clear definition, we need to approach the relationship between state and legitimacy though the back door, as it were.

Legitimacy is the twin sister of the modern state. If a state order can only survive for as long as it is regarded as legitimate, then an intimate relationship emerges between state and legitimacy that does not have to be overt, but which becomes all the clearer in situations where order is disturbed. States of exception of this kind reveal most clearly the nature of legitimacy. Weber wrote as an engaged scholar and publicist who witnessed one such moment when order was disturbed, and deployed his sociological categories in his analysis: “The collapse of what had in Germany been legitimate rule up to 1918 showed how the fracturing of allegiance to tradition by the war on the one hand, and the loss of prestige through defeat on the other, ... undermined compliance and so opened the way to the overthrow of rule.”⁵⁸ It was exactly at the time of the downfall of the Reich that the political and scholarly issue of legitimacy arose, and his judgment on the fate of the German monarchy, allegiance to which he had often enough confessed, is both laconic and unambiguous: “‘Historical’ legitimacy is finished.”⁵⁹ The consequences that he draws from this judgement are further proof of the decisive relevance of the perspective opened up by the concept of legitimacy when he considers that it is necessary for a new and “legitimate” form of government to arise, which under the prevailing circumstances could only be a democratic government.⁶⁰

The problem of legitimacy is rendered transparent when state orders collapse, a problem that during times of crisis is ever-present and virulent. The history of the twentieth century has shown that when a belief in legitimacy is disturbed the structure of state rule is shaken, as in 1956 in Hungary and 1968 in Paris; or it can even collapse, as in 1918 in Germany, 1979 in Teheran and 1989/1990 in the states of the Eastern Bloc. But there have also been storms in teacups. For instance, the bitter controversies over the “legitimation crisis” that during the mid-1970s dogged the social sciences and unsettled political science conferences⁶¹ certainly had far less to do with

⁵⁷ Rotteck, “Legitimität,” op. cit. p. 476.

⁵⁸ Weber, WuG 155.

⁵⁹ Weber, “Deutschlands künftige Staatsform” (1918), in his *Zur Neuordnung Deutschlands*, MWG I/16, pp. 91–146 (103).

⁶⁰ *Ibid.*, p. 105.

⁶¹ Participants in the German Political Science Association’s Conference of 1975 in Duisburg reported vehement polemical arguments. See Wilhelm Hennis’s contribution to this: “Legitimacy. On a Category of Civil Society” in his *Politics as a Practical Science*, op. cit. pp. 77–120.

any real “legitimation crisis,”⁶² but they were instead ideological battles between entrenched positions within the academic system. Niklas Luhmann later summarised the debate retrospectively as one “conducted in terms of ideology and ‘ideological critique’.”⁶³ Even at the time, Wilhelm Hennis questioned how such extensive debate could blow up over the “problems of legitimation” when the “principles and legal foundations of the state have been so little questioned and contested in the era of the Federal Republic.”⁶⁴

While Weber is very clear about the relationship between the destabilisation of legitimacy and the collapse of an order, he remains very vague about the *emergence* of legitimacy. His remark that all rule seeks to “arouse and cultivate belief in its ‘legitimacy’”⁶⁵ does not really get us very far in reaching a satisfactory understanding of the process of legitimation. He is primarily interested in vertical relationships: the rulers make demands of those “below” them, and those below address their legitimating beliefs “upwards.” A legitimating effect must already be present in the horizontal plane before it can work vertically, but Weber shed little light on this.

Apart from this, it is apparent that the domain within which legitimating processes play out is very restricted: to the “relation of legitimacy between the rulers and the administrative staff.”⁶⁶ According to this perspective, it would not be the relationship between rulers and ruled that was of critical importance for legitimacy, but rather the relationship between the rulers and their staffs. As far as *state* rule is concerned, the legitimating beliefs of the members of state organs and institutions would be of prime relevance, in which the decisive processes of the emergence and decline of legitimacy would play out. In the context of the history of the twentieth century, this does make sense, since the destabilisation and collapse of state orders was always preceded by the fact that rulers could no longer count upon the “pliability” and “compliance” of their staffs. Weber is therefore right to emphasise the elementary role of the administrative apparatus in processes of legitimation and delegitimation. This perspective is based upon his two leading *a priori* in his sociology of rule: firstly, that all rule “functions” as administration;⁶⁷ secondly, that all administration needs a structure of

⁶² Jürgen Habermas, *Legitimation Crisis*, Polity Press, London 1988; Charles Taylor, “Legitimation Crisis?,” in his *Philosophy and the Human Sciences*, Cambridge University Press, Cambridge 1985 pp. 248–88.

⁶³ Niklas Luhmann, “Selbstlegitimation des Staates,” in Norbert Achterberg, Werner Krawietz (eds), *Legitimation des modernen Staates*, Franz Steiner, Wiesbaden 1981 p. 65–82 (65).

⁶⁴ Hennis, “Legitimacy,” op. cit. p. 77.

⁶⁵ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 1.

⁶⁶ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 1.3.

⁶⁷ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 1.3. See also Breuer, *Max Webers Herrschaftssoziologie*, pp. 23ff.

rule, since to function it requires “powers of command.”⁶⁸ In state rule this interdependence is closer, and even assumes the form of an identity: state rule *is* administration. Hence the concept of “administrative state” which Carl Schmitt introduced with such great effect in twentieth century political theory⁶⁹ is for Weber, strictly speaking, just a tautology.

Although Weber’s perspective dominates contemporary state theory, the majority of commentators do not think that he has “satisfactorily” resolved the question of how legitimacy first emerges.⁷⁰ There is consequently a vast number of attempts to sharpen Weber’s schematic concept of legitimation through interpretation and criticism.⁷¹ Here Weber’s conception has given rise to flights of fantasy on the part of many authors. Prewo for instance regards legitimacy as “a particular socio-cultural oil that can be applied to tightly-bound relationships of rule and which smoothes the path of interconnected actions, while at the same time protecting the entirety of relationships and action processes against the penetration of foreign bodies (like engine oil absorbs impurities), and, finally, lending the whole a glistening, golden hue.”⁷² Quite apart from the literary qualities of this, there are also serious misunderstandings. It is difficult to conceive how one can in all seriousness claim that Weber’s conception is “manipulative,” that the “social Darwinist point of departure” of his sociology implies “from the first that legitimation is founded upon deception.”⁷³ Even if this opinion remains

⁶⁸ Weber, *Herrschaft*, MWG I/22-4, p. 139 (WuG 545).

⁶⁹ Carl Schmitt, *Legality and Legitimacy*, Duke University Press, Durham N.C. 2004 pp. 3ff. Carl Hermann Ule’s stated opinion that Schmitt was the first to use this term in Germany (“Über das Verhältnis von Verwaltungsstaat und Rechtsstaat,” in his *Staats- und Verwaltungswissenschaftliche Beiträge*, Kohlhammer, Stuttgart 1957 p. 127) is however untenable; as early as 1912 Walther Rathenau wrote that the “administrative state” represented the “ideal form for the state” (Rathenau, *Zur Kritik der Zeit*, S. Fischer, Berlin 1912 p. 126).

⁷⁰ Stefan Breuer, “Rational Domination,” *Law and State* 44 (1991) pp. 92–125 (105).

⁷¹ See, for example, Duran, “Légitimité, droit et action publique,” op. cit.; Lembcke, “The Dynamics of Legitimacy,” op. cit.; Breuer, “Legitimate Herrschaft,” op. cit.; Michel Coustou, Guy Rocher (eds), *La légitimité de l’État et du droit*, op. cit.; J. G. Merquior, *Rousseau and Weber. Two Studies in the Theory of Legitimacy*, Routledge & Kegan, London 2006 pp. 89ff.; Lassman, “The rule of man over man,” op. cit. pp. 86ff.; Breuer, *Max Webers Herrschaftssoziologie*, op. cit. pp. 19ff.; Weyma Lübke, *Legitimität kraft Legalität. Sinnverstehen und Institutionenanalyse bei Max Weber und seinen Kritikern*, J. C. B. Mohr (Paul Siebeck), Tübingen 1991 p. 9ff.; Habermas, *Legitimation Crisis*, op. cit. pp. 97ff.; Wolfgang Schluchter, *The Rise of Western Rationalism*, trans. Guenther Roth, University of California Press, Berkeley 1985 pp. 84ff.

⁷² Rainer Prewo, *Max Webers Wissenschaftsprogramm. Versuch einer methodischen Neuerschließung*, Suhrkamp, Frankfurt a. M. 1979.

⁷³ Michael Zängle, *Max Webers Staatstheorie im Kontext seines Werkes*, Duncker & Humblot, Berlin 1988 pp. 82, 69. It remains a mystery as to quite what the “manipulative theoretical founding moment of Weber’s theory of legitimation” which Zängle thinks he has revealed might be.

exceptional in Weber commentary, it simply goes to show that grotesque distortions of his positions have no limits. The passion for interpretation and criticism is founded not least upon the fact that Weber's concept of legitimation remains unclear. And it is perhaps no accident that he avoided being too precise here: he is less concerned about legitimacy *as such* than an ideal-typical registration of the differing empirical *types* of perceptions of legitimacy. This interest is reflected in his setting up three types of legitimate rule. Since the modern state is a form of legal rule,⁷⁴ the question of its legitimacy can only be a question of the legitimacy of its legality.

2 Staring into the depths with a clear head: the legitimacy of legality

Weber's arguments concerning legal rule show what the modern state rests upon: "on a belief in the legality of statutory orders."⁷⁵ State rule is "rule by virtue of 'legality', by virtue of belief in the validity of legal *statute* and the appropriate juridical 'competence' founded upon rationally devised rules."⁷⁶ It rests upon the belief that all law is rationally formed⁷⁷ and that "the legitimacy of rule becomes the legality of a general *rule*, purposively conceived, formally correct in its construction and promulgation."⁷⁸ Since rule rests upon "command and compliance," state rule is characterised by a particular kind of compliance: it is "the law," which is obeyed – an "impersonal order" to which state bodies are themselves subordinate.⁷⁹

If legal rule is based upon the "basic idea" that "any law can be created" – and any existing law altered – by formally correct statutory action,⁸⁰ and if the law has the character of a "technical apparatus lacking any substantive sanctity,"⁸¹ then there is, according to Fritz Loos, "no doubt that the belief in legality that Weber describes is one specific to legal positivism."⁸² But is this view, the one that prevails in the commentary on Weber, actually correct? It is true that one of the central tenets of legal positivism is that positive law

⁷⁴ Weber, *Herrschaft*, MWG I/22-4, p. 727.

⁷⁵ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 2.

⁷⁶ Weber, "The Profession and Vocation of Politics," in his *Political Writings*, op. cit. pp. 309–369 (312).

⁷⁷ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 3.1.

⁷⁸ Weber, "Einleitung in die Wirtschaftsethik der Weltreligionen," in *Gesammelte Aufsätze zur Religionssoziologie* Bd. I, J. C. B. Mohr (Paul Siebeck), Tübingen 1920 p. 273.

⁷⁹ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 3.1.

⁸⁰ Weber, *Herrschaft*, MWG I/22-4 p. 726 (WL 475).

⁸¹ Weber, *Recht*, MWG I/22-3, p. 639 (WuG 513).

⁸² Fritz Loos, *Zur Wert- und Rechtslehre Max Webers*, J. C. B. Mohr (Paul Siebeck), Tübingen 1970 p. 124. Heino Speer shares this view that the concept of legal rule is based upon legal positivism (*Herrschaft und Legitimität*, Duncker & Humblot, Berlin 1978 pp. 76f.).

in and of itself alone imposes duties and obligations,⁸³ not requiring any higher principles for its validity.⁸⁴ But this by no means implies that Max Weber was himself a legal positivist, for his questioning of legitimacy marks him off clearly from legal positivist thinking.⁸⁵

In what context should we therefore place Max Weber's conception of legitimacy through legality? Hitherto no effort has been made to identify the theoretical source for this idea. It can be found almost word-for-word in a treatise of Joseph von Held, a theorist of the state and "Royal Bavarian Privy Councillor": he not only emphasises that the state recognises only "compliance with the existing laws"⁸⁶ but also equates legitimacy with "conformity to the law," even stating that legitimacy is "identical with legality."⁸⁷ This was the position taken by Max Weber, although in a rather more elaborated form. But is he right in arguing that belief in statute law established in a formally correct manner is a sufficient basis for legitimation? Can mere formal legality prompt belief in legitimacy? Time and again that has been questioned and argued over. Consequently the history of the reception of this argument is at the same time a history of criticism.

Carl Schmitt was first out of the blocks when he demonstrated that the system of legality led into a "formalism" lacking any content, robbing "legality of any power to convince."⁸⁸ For Reinhard Bendix, Max Weber's conception is "questionable" since it depends on a circularity.⁸⁹ Wilhelm Hennis notes that Weber's concepts fail to effect a "qualitative, critical-normative

⁸³ Kriele, *Einführung in die Staatslehre*, op. cit. p. 14.

⁸⁴ The "transformation of the law into legality is a consequence of legal positivism," as Carl Schmitt emphasises – "Das Problem der Legalität" (1952) in his *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954*, Duncker & Humblot, Berlin 1958 pp. 440–451 (447).

⁸⁵ See Ch. 5.4 for a discussion of Weber's relationship to legal positivism.

⁸⁶ Joseph von Held, *Grundzüge des Allgemeinen Staatsrechts oder Institutionen des öffentlichen Rechts*, Brockhaus, Leipzig 1868 p. 78.

⁸⁷ *Ibid.*, p. 215. He even anticipates Carl Schmitt's critique of legality when he refers to "mere legality in contrast to legitimacy" (p. 217). Two decades earlier Carl von Rotteck had equated "legitimacy" with "legality," understanding by this "nothing other than the statutory or recognised legal validity or lawfulness" of a legitimacy which was related to "political relationships" (Rotteck, "Legitimität," op. cit. p. 476).

⁸⁸ Schmitt, *Legality and Legitimacy*, op. cit. p. 29. His student Otto Kirchheimer, while a leftist, came to a similar conclusion in an article of the same name published the same year ("Legality and Legitimacy," *Die Gesellschaft* Vol. 2, No. 7 (1932) pp. 1–19). Schmitt drew on this article (op. cit. p. 9). However, it is Carl Schmitt who first opened up the full significance of the legality problematic at a critical point for a republic that was, six months later, "legally" abolished – something that he had already predicted.

⁸⁹ "... laws are legitimate if they have been enacted; and the enactment is legitimate if it has occurred in conformity with the laws prescribing the procedures to be followed." (Bendix, *Max Weber. An Intellectual Portrait*, Routledge, London 1998 p. 419.)

demarcation of legitimacy and illegitimacy.⁹⁰ In the opinion of Richard Münch, belief in the legitimacy of legality is no kind of explanation of its actual validity, it is rather something which itself has to be explained.⁹¹ Heino Speer poses the rhetorical question of whether Weber “has missed the basic problem of legality.”⁹² From the heights of communicative reason, Jürgen Habermas hands down the conclusion that Max Weber’s assumption that there was an inherent rationality in the law as such “which could form a basis for the legitimating power of legality” was unproven.⁹³ If Stefan Breuer concludes that “According to the majority of his interpreters, Weber did not satisfactorily answer” the question of the legitimacy of legality,⁹⁴ this is almost an understatement. Criticism and rejection are almost unanimous. Even Weyma Lübke concedes that the conception of legality “is an unresolved problem in Weber interpretation”⁹⁵ that has not established itself in the social and legal sciences.

The unanimity of the criticism stands in a paradoxical relationship to the fact that Weber’s conception remains the dominant point of orientation for nearly all theoretical and empirical studies of the legitimacy of the state. Quite obviously these remain transfixed by the idea. Robert Grafstein has also noted this curious state of affairs:

Max Weber’s concept of legitimacy occupies a paradoxical position in modern political science. On the one hand, it has proved to be the dominant model for empirical investigations of legitimacy. On the other hand, it has met with almost universal criticism by those political philosophers who have evaluated it.⁹⁶

Moreover, uneasiness with the concept starkly contrasts with the recognition that Weber’s diagnosis is “realistic”⁹⁷ as well as “correct.”⁹⁸ History has provided disastrous confirmation. It was the “legal” seizure of power

⁹⁰ Hennis, *Politics as a Practical Science*, op. cit. p. 89.

⁹¹ Richard Münch, *Legitimität und politische Macht*, Westdeutscher Verlag, Opladen 1976 p. 65.

⁹² Speer, *Herrschaft*, op. cit. p. 73.

⁹³ Jürgen Habermas, “Wie ist Legitimität durch Legalität möglich?,” *Kritische Justiz* 20 (1987) pp. 1–16 (11f.).

⁹⁴ Breuer, “Rational Domination,” op. cit. p. 115 (with further examples).

⁹⁵ Weyma Lübke, *Legitimität kraft Legalität*, op. cit. p. 16.

⁹⁶ Robert Grafstein, “The Failure of Weber’s Conception of Legitimacy: Its Causes and Implications,” *British Journal of Political Science* Vol. 43 (1981) pp. 456–472 (456).

⁹⁷ Breuer, “Rational Domination,” op. cit. p. 97.

⁹⁸ Kriele, *Einführung in die Staatslehre*, op. cit. p. 23. Even Carl Schmitt praises Weber for having properly posed “diagnosis and with it also a prognosis.” Schmitt, “Das Problem der Legalität,” op. cit. p. 447. He here fundamentally revises the position he adopted in 1932.

by the National Socialists⁹⁹ that showed that both the ruled and the state's administrative staff were extremely open to manipulation and that a new order can count on a greater probability of conformity if it is created in a "legal" and "formally correct" manner. That certainly has less to do with the idea that the Germans are a people with a touching faith in legality¹⁰⁰ than with more general sociological conditions. The Milgram experiment and studies on the authoritarian personality have shown "how realistic Weber's diagnosis was (and, incidentally, by no means confined to typically German traits)."¹⁰¹

Not least in favour of Weber's thesis is the evident empirical and historical truth that the modern state is legitimated by legality and has been as such a resounding success.¹⁰² Its structural form and mode of functioning are codified by legality.¹⁰³ All of this is especially true of the type of state that has developed in theory and in practice since the nineteenth century, and which today characterises all current civilised states: the state based upon the rule of law. The principles of legal rule that Weber put forward are at root also those of the state based upon the rule of law, in which the administration is bound by laws and the legislature is bound to the constitution.¹⁰⁴

While Max Weber's description of the relationships between the state, rulership and legitimacy do have a certain plausibility from an empirical and historical perspective, this does not alter the fact that it cannot generate a substantive and normative theory of legitimation – nor does it seek to do so. Johannes Winckelmann's forceful and insistent attempt to read a normative dimension into Max Weber's conception, and so rescue it from the stigma of formalism,¹⁰⁵ remained an ill-fated enterprise that was met with unanimous rejection.¹⁰⁶ A normative theory of legitimation can only be developed if

⁹⁹ Forsthoﬀ expresses with especial clarity the instrumental understanding of legality shared by National Socialist specialists on state law: "The revolution is only now possible as the assumption of power, that is, in a legal form. Only from this perspective is the National Socialist Revolution comprehensible as a legal revolution." Ernst Forsthoﬀ, *Die Verwaltung als Leistungsträger*, Kohlhammer, Stuttgart, Berlin 1938 p. 9.

¹⁰⁰ Schmitt, "Das Problem der Legalität," op. cit. p. 446.

¹⁰¹ Breuer, "Rational Domination," op. cit. p. 97.

¹⁰² Helmut Willke, *Ironie des Staates. Grundlinien einer Staatstheorie polyzentrischer Gesellschaft*, Suhrkamp, Frankfurt a. M. 1992 p. 11.

¹⁰³ "The principle of legality is closely bound up with the modern conception of the State." Alexander Passerin d'Entrèves, *The Notion of the State*, Blackwell, Oxford 1967 p. 144.

¹⁰⁴ See Ch. 5.4 for a discussion of Weber's understanding of the state based upon the rule of law.

¹⁰⁵ Johannes Winckelmann, *Legitimität und Legalität in Max Webers Herrschaftssoziologie*, J. C. B. Mohr (Paul Siebeck), Tübingen 1952.

¹⁰⁶ Lübke, *Legitimität kraft Legalität*, op. cit. p. 12; Prewo, *Max Webers Wissenschaftsprogramm*, op. cit. pp. 559ff.; Wolfgang J. Mommsen, *Max Weber and German Politics. 1890–1920*, University of Chicago Press, Chicago 1990 p. 452; Habermas, *Legitimation Crisis*, op. cit. pp. 97ff.

Weber is placed explicitly to one side.¹⁰⁷ But this does not mean that the much-criticised conception of “formalism” is *a priori* should be considered only negatively. Max Weber himself had a very positive regard for it, seeing in it the “enemy of arbitrariness, the twin-sister of freedom.”¹⁰⁸

Weber's conception of legitimation has preoccupied generations of legal theorists, sociologists and political scientists and will continue to do so. The question of the relationship of the state, legitimation and legality remains a central theoretical problem that is renewed from one historical situation to the next. Stefan Breuer considers that the “sustained power of attraction” of this discussion indicates that Weber's concept “goes right to the heart of a central problem of modernity.”¹⁰⁹ The problems contained in his conception are exactly those problems that face the contemporary sciences of law and politics: Ulrich Matz maintains “that the theory of the democratic constitutional state is today on the edge of an abyss” since they invoke higher legal principles such as human dignity, liberty and equality but do not, and cannot, base the state on higher values and principles.¹¹⁰ But do these depths have to make one feel dizzy? When Weber talks of particular higher legal principles, and always self-consciously proclaimed his own values while at the same time consciously distancing himself from any definition of state legitimacy in terms of substantive categories, then he had already taken up position above these depths, and without any dizziness.

3 Charismatic rule in the modern state?

Max Weber does not entirely equate legitimacy with legality, despite what the majority of his critics believe. He clearly states that a belief in legitimacy is “for ‘legal’ rule *never* purely legal,” being both “traditionally conditioned” by virtue of having become “established” and also “charismatic in a negative sense: that persistent and conspicuous failure ruin *every* government, break their prestige and prepare the way charismatic revolutions.”¹¹¹ As with every other

¹⁰⁷ Fritz Loos embarked upon a strategy of this kind, arguing on the one hand that belief in the legitimacy of formal law was “not a belief in formal legitimacy as such, but rather on the material values of the liberty and equality of the citizen that it secures,” while on the other arguing that one would certainly “look in vain” for such material values in Max Weber's sociology of rulership. Loos, *Zur Wert- und Rechtslehre Max Webers*, op. cit. p. 129.

¹⁰⁸ Max Weber, contribution to Discussion at the 1910 Conference of the German Sociological Society, *Gesammelte Aufsätze zur Soziologie und Sozialpolitik*, J. C. B. Mohr, Tübingen 1924 p. 480 – here Weber borrows Ihering's dictum. See Rudolph von Ihering, *Geist des römischen Rechts*, Vol. 2, 3rd ed. Breitkopf & Härtel, Leipzig 1887 p. 471.

¹⁰⁹ Breuer, *Max Webers Herrschaftssoziologie*, op. cit. p. 20.

¹¹⁰ Ulrich Matz, *Politik und Gewalt. Zur Theorie des demokratischen Verfassungsstaates und der Revolution*, Karl Alber, Freiburg 1975 p. 129.

¹¹¹ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 13.

ideal type, legal rule never appears in its pure form, but always in a compound. Hence the legitimacy of the modern state is not exhausted solely by legality. If the question of legitimacy becomes especially critical in times of crisis, and while it is exactly in such periods that charisma can have such a powerful impact, then we need to examine the role of charisma in the modern state.

After all that has so far been said about the concept, nature and structure of the modern state, charismatic legitimacy can only have marginal relevance here – for charismatic rule sits ill with a structure characterised by rational, institutionalised and impersonal criteria. Charismatic rule rests upon “exceptional dedication to the saintliness of the heroic qualities or the exemplary nature of a person, and the orders which that persons opens up or creates.”¹¹² It is “typically unpredictable,” for it is constantly in danger of becoming “routinised” by tradition, legalisation or rationalisation, through which the type then reverts to one of the other two types.¹¹³ No state can be based upon such an unstable and unpredictable form of rule. The properties of constancy, stability and rationality that characterise the state are certainly not those that Weber ascribes to charismatic rule. Nowhere does he discuss this question of incompatibility, but his discussion of the “reconstruction” and “objectification” of charisma¹¹⁴ offers the possibility of finding some kind of answer to this problem.

Charismatic rule in the “pure” sense is always a product of “unusual” situations and arises from an “aggravation,” from a “dedication to hero-worship.” When it flows back into “everyday constraints,” it is “as a rule broken, transposed and bent ‘institutionally.’”¹¹⁵ This progression is associated with a

¹¹² Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 §2. On Weber's concept of charisma see Joshua Derman, “Max Weber and Charisma: A Transatlantic Affair,” *New German Critique* 38 (2011) pp. 51–88; Jeffrey Edward Green, “Max Weber and the Reinvention of Popular Power,” *Max Weber Studies* 8 (2008) pp. 187–224; Hans-Ulrich Wehler, “Das analytische Potential des Charisma-Konzepts,” in Andreas Anter, Stefan Breuer (eds), *Max Webers Staatssoziologie, Nomos*, Baden-Baden 2007 pp. 175–189; Christopher Adair-Toteff, “Max Weber's Charisma,” *Journal of Classical Sociology* 5 (2005) pp. 189–204; Stephen P. Turner, “Charisma reconsidered,” *Journal of Classical Sociology* 3 (2003) pp. 5–26; Stephen P. Turner, Regis A. Factor, *Max Weber: The Lawyer as Social Thinker*, Routledge, London, New York 1994 pp. 113ff.; Andreas Anter, “Charisma und Anstaltsordnung: Max Weber und das Staatskirchenrecht seiner Zeit,” in Hartmut Lehmann, Jean Martin Ouédraogo (eds), *Max Webers Religionssoziologie in interkultureller Perspektive*, Vandenhoeck & Ruprecht, Göttingen 2003 pp. 29–49, 45ff.; Stefan Breuer, *Max Webers Herrschaftssoziologie* op. cit. pp. 33ff. and 215ff.; Wolfgang Schluchter, *Religion und Lebensführung. Bd. 2: Studien zu Max Webers Religions- und Herrschaftssoziologie*, Suhrkamp, Frankfurt a. M. 1991 pp. 535ff.

¹¹³ Weber, *Herrschaft*, MWG I/22-4 p. 460 (WuG 656), and *Economy and Society* Part One Ch. 3 §11. On the routinisation of charisma see Dirk Käsler, *Revolution und Veralltäglicung. Eine Theorie postrevolutionärer Prozesse*, Nymphenburger, Munich 1977 pp. 161ff. On the fate of traditionalised and legalised charisma see Breuer, *Max Webers Herrschaftssoziologie* op. cit. pp. 216ff.; and Schluchter, *Religion und Lebensführung*, Bd. 2, op. cit. pp. 538ff.

¹¹⁴ Weber, *Herrschaft*, MWG I/22-4 pp. 489ff. (WuG 661ff.).

¹¹⁵ *Ibid.*, p. 489 (WuG 661).

process of transformation in the sociology of rulership that is significant in regard to the modern state. In the course of the "reconstruction" and "objectification" of charismatic authority, "beliefs in personal revelation and heroism" give way to the rule of impersonal "lasting structures," in which charisma is no longer attached to the *person* but to the *position* and can become some kind of "institutional charisma" (*Amtscharisma*).¹¹⁶ Since this form has clear affinities to the structure and functioning of state rule, charismatic rule is perfectly feasible in the modern state: on the one hand, on a temporary basis, in charismatic revolutions;¹¹⁷ on the other, on a permanent basis, in the form of reconstructed, objectified, institutionalised and depersonalised charisma.

But is it really possible to talk of charismatic authority if it is "broken," "bent"¹¹⁸ and depersonalised? Would this not instead be a quite different type of rule: legal or traditional rule? Is charismatic rule not by definition "exceptional" and attached to the "quality of a personality"?¹¹⁹ These questions are of decisive importance for our question of whether lasting charismatic rule is possible in the modern state, but these are questions that Weber leaves open. Using Weber against Weber, it is hard to argue that objectified "institutional charisma" has that much to do with genuine charisma. Even if one keeps with the concept of charisma, it is plain that charismatic rule in the modern state is of vanishingly small significance. Weber concedes that routinised charisma can only be effective as short-lived "mass emotions during elections and similar occasions." The fate of charisma here assumes tragic aspects, since "personal charisma" based upon personal heroism basically serves as the instrument of alien interests when, following its routinisation, it becomes the source of legitimation for the *successors* to the charismatic hero.¹²⁰ The fate of charisma resembles that of the hero in classical tragedy whose fate is settled even before he sets foot on the stage. He is not only condemned to failure from the very beginning, but is also the involuntary agent of his own enemies.

Max Weber illustrates the routinisation of charisma with an instructive example, that of a king in a constitutional monarchy:

The parliamentary king is retained, despite his powerlessness, because, through his mere existence and the fact that force is exercised "in his name," the *legitimacy* of the existing social and propertied order is guaranteed by virtue of his charisma. All those with an interest in this order must fear that his fear that his removal would undermine belief in the "lawfulness" of this order.¹²¹

¹¹⁶ *Ibid.*, pp. 526f. (WuG 674f.).

¹¹⁷ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 13.

¹¹⁸ Weber, *Herrschaft*, p. 489 (WuG 661).

¹¹⁹ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 10.

¹²⁰ Weber, *Herrschaft*, MWG I/22-4 p. 559 (WuG 679f.).

¹²¹ *Ibid.*, pp. 561f. (WuG 680).

The lot of the parliamentary king is an especially clear case of the role of charisma in the modern state. The charismatic authority of the monarch serves only to secure the legitimacy of a political system for which it is merely a figurehead. The king himself is powerless. He exercises only representative functions, and “political guidelines” are determined by others, as happens today in Great Britain, Sweden, Spain or Holland.

Weber’s sober assessment of the sociology of rule is wilfully at odds with the *values* he expressed with respect to the monarchy in his 1904 St. Louis address.¹²² Even in October 1918, he confessed to be a “sincere supporter of monarchical institutions, even if limited by parliament – and of the German dynasty in particular.”¹²³ On the basis of personal knowledge Theodor Heuss judged that he was “as far as the German state is concerned a monarchist,”¹²⁴ even “at heart a convinced supporter of the monarchy,” as Weber’s student Karl Loewenstein confirmed.¹²⁵ In this positive evaluation of the monarchy, it was not only feelings that played an important role (even if he often enough set them firmly aside), but also “technical state” aspects that he always sought to highlight: the monarchy is in a position, like no other state form, of arousing and strengthening belief in the legitimacy of state order, added to which they have the incalculable advantage that the “supreme position in the state is once and for all occupied,” ruling out any struggles for power aimed at achieving this position.¹²⁶ Both claims have long been among the favourite arguments of monarchists and can be found in statements of such divergent thinkers as Talleyrand,¹²⁷ Richard Wagner¹²⁸ or Treitschke.¹²⁹

¹²² Peter Ghosh, “Max Weber on ‘The Rural Community’: A critical edition of the English text,” *History of European Ideas* Vol. 31 (2005) p. 334.

¹²³ Weber, Letter to Gerhart von Schulze-Gaevernitz of 11 October 1918, in his *Briefe 1918–1920*, MWG II/10 p. 260.

¹²⁴ Theodor Heuss, “Max Weber in seiner Gegenwart,” in Weber, *Gesammelte Politische Schriften*, 3rd edition, J. C. B. Mohr (Paul Siebeck), Tübingen 1971 p. XIV.

¹²⁵ Karl Loewenstein, “Max Webers Beitrag zur Staatslehre in der Sicht unserer Zeit,” in Karl Englisch, Bernhard Pfister, Johannes Winckelmann (eds), *Max Weber. Gedächtnisschrift*, Duncker & Humblot, Berlin 1966 pp. 131–146 (132).

¹²⁶ Weber, *Herrschaft*, MWG I/22-4 p. 562 (WuG 681).

¹²⁷ Talleyrand praised in his contrast of monarchical and republican legitimacy “the excellence of the monarchical form of government” which “more than any other” “guaranteed the permanence of state.” Talleyrand, *Memoiren*, op. cit. Bd. 2 p. 112.

¹²⁸ For Richard Wagner the monarchy is *the* functional state form, since there is firstly no struggle to control the supreme position in the state, and secondly the monarch embodies the “basic law” of *stability*, representing the “real driving force of the state.” Richard Wagner, “Über Staat und Religion,” in his *Dichtungen und Schriften* Vol. VIII, ed. Dieter Borchmeyer, Insel Verlag, Frankfurt a. M. 1983 pp. 217–351 (223f.).

¹²⁹ Heinrich von Treitschke considers it a great benefit of the monarchy that it “not only provides, as no other state form, a physical representation of political power and the unity of the people,” but settles once and for all the question: “Who is to be the ruler?” (Treitschke, *Politik. Vorlesungen gehalten an der Universität zu Berlin*, Bd. 2, S. Hirzel, Leipzig 1898 pp. 53, 67).

But does the fact that Weber openly “favoured the retention of the monarchy” mean that, as Wolfgang Mommsen argued, he believed the legitimation of rule by virtue of a belief in legality to be incomparably weaker than rule supported by charismatic or traditional forms of legitimation?¹³⁰ At root, Mommsen argued, only the charismatic form had really legitimating force; it was only the existence of a personality prepared to establish clear values – not abstract due process – that was for him capable of arousing real inner assent to a state order of whatever origin. This is doubtful. Max Weber’s comments on the nature of charismatic rule repeatedly make clear that it is a *specifically* unpredictable and unstable form of rule, which is “regularly broken” and “bent.”

And so we need to reverse Wolfgang Mommsen’s conclusion. Charismatic rule is “incomparably weaker” than the other two forms of rule; it is legal-rational rule that has proved itself to be incomparably stronger, and which has become established in the modern state. For the same reason, we can reject the claims that “it is *not* belief in legality which is the prime mode of legitimacy in the modern state,” that in the modern state there is even a “priority of charisma over a belief in legality.”¹³¹ Weber gives no grounds to doubt that belief in the legality of the modern state is its prime source of legitimacy. Stefan Breuer has convincingly refuted the widely accepted view that, by comparison with the other two types of legitimation, Weber failed to make the legitimising effect of legal rule sufficiently plausible. No less convincingly, Breuer has demonstrated that Max Weber has named the conditions for the effectiveness of rational rule very precisely, his treatment of the other two types remaining vague in this respect.¹³²

For Weber, the fact that in the modern state there are undoubted charismatic elements – either in the form of charismatic revolutions or in that of objectified, routinised and legalised charisma – is as obvious as the primacy of a belief in its legality. But he does not believe that legal-rational rule is the “end of history.” Such rule is open to specific threats and crises that prepare the way for charismatic revolutions, and the history of the twentieth century is a history of events that confirm his diagnosis and prognosis. When he expressly states that

the three basic structural types of rulership cannot simply be placed one after the other in a developmental series, but appear together in the most varied combinations,¹³³

¹³⁰ Mommsen, *Max Weber and German Politics*, op. cit. p. 303.

¹³¹ Zängle, *Max Webers Staatstheorie*, op. cit. pp. 43, 47. He can neither provide an argument to substantiate these claims, nor sources. In the citation that he introduces there is no mention of the *state* at all.

¹³² Breuer, “Rational Domination,” op. cit. p. 105.

¹³³ Weber, *Herrschaft*, MWG I/22-4 p. 513 (WuG 669f.).

this rules out from the very start one of the favoured moves of Weber exegeticists: conceiving the types of rule as an evolutionary sequence,¹³⁴ and on this basis knocking together a historical teleology. All attempts to read Weber as a philosopher of history imply that this clarification has been either deliberately ignored or is simply unfamiliar.

4 From personal to impersonal rule: East Elbia as a precursor of the modern state

The structure of rulership of the modern state is marked out by a characteristic that is quite specific to it, even though Max Weber only ever touches on it in passing: the impersonal character of rule. In the state, one complies with a "legally established *impersonal order*,"¹³⁵ an aspect inseparable from legality, since it is "the law" to which one is subordinated.¹³⁶ Rule by law and impersonal rule are two sides of the same coin. Laws rule, and not persons. If Weber does refer to the state as rule "by human beings over human beings,"¹³⁷ so after all to a thoroughly personal structure, this appears to be inconsistent. But rule in the modern state cannot be entirely "impersonal"; as the unorthodox Constantin Frantz, who simply dismisses the figure of the rule of law, emphasises: "Only *men* can rule. Although one often hears it said that the *law* should rule, that is either an imprecise expression or an empty phrase."¹³⁸ This "imprecise expression" can, however, be rendered more exact and in so doing we can resolve the apparently contradictory position that Weber takes up. The "rule of law" always also reflects or involves "the rule of human beings over human beings." The rule of law does not eliminate existing structures of rule but means only that rulership is exercised in a specific manner: whoever exercises rule acts on the basis of, or in the name of, laws.¹³⁹

This principle of the impersonal rule of law that Weber ascribes to the modern state has been discussed as a normative demand or empirical assertion since antiquity and is as Norberto Bobbio says "one of the most significant and fascinating chapters in the evolution of political philosophy."¹⁴⁰ Plato

¹³⁴ Stefan Breuer rightly notes in regard to this "tried and tested" procedure that it is a basic misunderstanding to interpret "the typology of rule as a unilinear developmental schema." (Breuer, *Herrschaft in der Soziologie Max Webers*, op. cit. p. 26).

¹³⁵ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 2.

¹³⁶ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 3.

¹³⁷ Weber, "The Profession and Vocation of Politics," op. cit. p. 311.

¹³⁸ Frantz, *Die Naturlehre des Staates*, op. cit. p. 185.

¹³⁹ Georg Jellinek first put forward this argument (Jellinek, *Allgemeine Staatslehre*, op. cit. p. 613).

¹⁴⁰ Norberto Bobbio, *The Future of Democracy. A Defence of the Rules of the Game*, Polity Press, Cambridge 1987 p. 138.

extolled the rule of “impersonal laws” in his *Nomoi*,¹⁴¹ in Hobbes the impersonal rule of law is the “mode of functioning”¹⁴² of Leviathan, and for Rousseau the republic is the “just government” of a state ruled by laws.¹⁴³ In the time of Max Weber, the principle that the modern state knew only “compliance with existing laws”¹⁴⁴ found its most militant partisan in Hugo Krabbe, the Dutch political theorist, for whom “*the modern idea of the state*” was that we were no longer ruled by persons but norms.¹⁴⁵ The “authority of the state” and the “authority of the law” were for him “identical,” such that “the foundation of the rule of the state coincided with the binding force of the law.”¹⁴⁶ Georg Simmel – no less engaged as a representative of the principle of impersonal rule – for whom this is “the subordination to a law executed by impersonal forces immune from any influence,”¹⁴⁷ viewed this as a constitutive characteristic of modernity, seeing in impersonal rule a major gain in freedom.¹⁴⁸

What did Weber think of impersonal rule? The key to answering this question can be found in his work on the survey of East Elbian rural workers which was part of a national study conducted by the Verein für Socialpolitik. His account diagnoses the process of decline in the anachronistic and patriarchal structures of East Elbia and can be read as a sociological study of the transition from personal to impersonal rule.¹⁴⁹ East Elbia is a “backward region” in which the patriarchal rule of the Junkers had persisted into the

¹⁴¹ Plato, *Nomoi* IV/7. Among Max Weber's contemporaries Georg Simmel (*Soziologie* op. cit. p. 230), Hugo Krabbe (*Die moderne Staatsidee*, Nijhoff, The Hague 1919 p. 15) and Georg Jellinek (*Allgemeine Staatslehre* op. cit. p. 613) emphasise the importance of Plato. Georg Jellinek was of the view that even the modern theory of a state based upon the rule of law, as represented by Robert von Mohl, Friedrich Julius Stahl or Rudolf Gneist “added little to Plato.” (ibid.)

¹⁴² To which Carl Schmitt insistently drew attention (*The Leviathan in the State Theory of Thomas Hobbes. Meaning and Failure of a Political Symbol* (1938) University of Chicago Press, Chicago 2008 pp. 66ff.).

¹⁴³ Jean-Jacques Rousseau, *The Social Contract and other later Political Writings*, Cambridge University Press, Cambridge 1997 p. 67.

¹⁴⁴ This is the expression coined by Joseph von Held, who is certainly the first German state theorist to formulate it this way (*Grundzüge des Allgemeinen Staatsrechts*, Brockhaus, Leipzig 1868 p. 78).

¹⁴⁵ Krabbe, *Die moderne Staatsidee*, op. cit. p. 9.

¹⁴⁶ Ibid., p. 2. He did however have grounds to complain that this “modern” understanding of the state had not yet been fully accepted: “The theory of the state has failed to take note of this; it has remained firmly attached to the old idea of traditional authority ... It is hard to detach oneself from a concept of personal power formed by centuries of tradition, and liberate oneself from the terminology appropriate to this concept.” (p. 10)

¹⁴⁷ Simmel, *Soziologie* op. cit. p. 229.

¹⁴⁸ Ibid., p. 210.

¹⁴⁹ Weber, *Die Lage der Landarbeiter im ostelbischen Deutschland*. The study originally appeared in 1892 as one volume in the series published by the Verein. It is now Bd. I/3 in the Max Weber Gesamtausgabe, and will be cited as such.

later nineteenth century. Their position depended as much on their political as on their economic power, since they acted both as representatives and functionaries of the state. They possessed “both political authority within the state, and the political and military forces of state power.”¹⁵⁰ The structure of rule made East Elbia a pre-state model. As far as Weber was concerned, there was not here a closed monopoly and centralisation of force but rather an oligopolistic disposition of force for which the large landowners were concessionaires, as it were.

Weber’s sociological gaze was directed first of all to this interconnection of economic structure and political rule, evaluating the East Elbian “agrarian constitution” as “image and foundation” of “state organisation,”¹⁵¹ and then to the mental consequences of authoritarian patriarchal rule: it was

the soil from which the psychological preconditions of military discipline grew. Military obedience was something that came naturally to sons of peasants and rural workers used to patriarchal direction, and it was also part of their vitality beyond the barracks.

It was an everyday experience that “when the master issued a command, he did so *in the common interest of all*, including those who obeyed.”¹⁵² If one places this type of compliance in Weber’s typology of rule, then it is not an “objectively *impersonal* order” that is obeyed¹⁵³ but rather the *personal* command of the “master.” The legitimacy of this order rests not on a belief in the legality of the order but instead on a belief that the command is for the common good.

Weber writes about this order in the imperfect tense. The model of rule that he diagnoses in East Elbia is on the way out: “Since the firm clamp of communal economic interest that holds it all together has been broken, this organisation is approaching its end.”¹⁵⁴ The decisive importance of the legitimacy of “communal economic interest” is evident from the way that the order goes into decline once the “firm clamp” has been broken. Of course, Weber does not – yet – here talk of legitimacy, but the process that he describes is without any doubt to be understood as the collapse of its influence, which inevitably drags the fall of the ruling order with it. With this, the role of the Junker as the representative of a mortal God in East Elbia ceases. The state cannot, as Weber said in 1894 at the Annual Conference

¹⁵⁰ Max Weber, “Developmental Tendencies in the Situation of East Elbian Rural Labourers,” in Keith Tribe (ed.) *Reading Weber*, Routledge and Kegan Paul, London 1989 p. 159.

¹⁵¹ Weber, *Die Lage der Landarbeiter*, MWG I/3 p. 915.

¹⁵² *Ibid.*, pp. 915f.

¹⁵³ Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 2.

¹⁵⁴ Weber, *Die Lage der Landarbeiter*, MWG I/3 p. 916. Here is mistakenly “communal interest” instead of “communal economic interest.”

of the Protestant-Social Congress, "for ever depend upon social ranks which themselves need state support."¹⁵⁵

Instead of the category of legitimacy, which the young Weber does not here employ, he accentuates two other features of the decline of a once tight ruling order in East Elbia. On the one hand he notes the advance of capitalism, which sweeps aside the established mode of production and landownership structure and not only dissolves a once-solid relationship of rulership between large landowners and rural workers but also results in falling wages, the appearance of rural poverty, the displacement of local workers by cheap Polish immigrant labour, and makes class conflict inevitable.¹⁵⁶ On the other he perceives a "psychological" cause for the dissolution of the old structures, and this point leads directly to our topic of impersonal rule. He notes a "marked tendency" among the rural workers to detach themselves from the ties of personal rule, a development that has a "sharply individualist quality."¹⁵⁷ Here for the first time Weber touches upon the theme of a development from personal to impersonal rule. This theme, developing out of his early agrarian studies, can also be traced in his early studies of industrial workers, where he states that the characteristic of modern developments in large industrial concerns is the "cessation of *personal relations of rule*," to be replaced by "*impersonal rule*."¹⁵⁸ He later made good use of this in his later more general reflections on the sociology of rule and the state.

As a "backward region" East Elbia was, until well into the later nineteenth century, a place where authoritarian patriarchal structures had survived, a unique possibility to study the process of transition from personal to impersonal rule. Max Weber's stance with respect to this process – here we come back to our original question – is quite openly sceptical and negative. In the will for independence from personal rule there is expressed "the powerful and purely psychological allure of 'freedom'," which is itself a "great illusion."¹⁵⁹ The young Weber can only think about "freedom" in quotation marks. All the more so then can we here sense an almost melancholic diagnosis of the inevitable decline of an old order, in whose place no "better" order appears. Neither here nor in any other part of his writings can we find a positive assessment of impersonal rule. It seems rather more that he idealised personal rule. As he wrote, alluding to Bismarck, the "rudder of the empire had been for almost a generation in the hands of a powerful large landowner, and all the illustrious qualities that the inherited art of ruling over land and people demonstrated are united in this personality."¹⁶⁰ Even

¹⁵⁵ Weber, "Die deutschen Landarbeiter. Diskussionsbeitrag auf dem fünften Evangelisch-sozialen Kongreß" (1894), in his *Landarbeiterfrage, Nationalstaat und Volkswirtschaftspolitik*, MWG I/4 p. 342.

¹⁵⁶ Weber, *Die Lage der Landarbeiter*, MWG I/3 p. 914.

¹⁵⁷ *Ibid.*, p. 919.

¹⁵⁸ Weber, "Was heißt Christlich-Sozial?" (1894), in his *Landarbeiterfrage, Nationalstaat und Volkswirtschaftspolitik*, MWG I/4 p. 356.

¹⁵⁹ Weber, *Die Lage der Landarbeiter*, MWG I/3 p. 920.

¹⁶⁰ *Ibid.*, p. 928.

though Max writes of the “shadow” of this person, nothing can mute the tenor of praise for the “art of ruling,” which is always an art of personal rule.

5 Democracy and bureaucracy in the modern state

Penthesilea would never have been written if there had been a vote on it; nor would anything have ever appeared by Strindberg, Nietzsche and Greco. (Gottfried Benn)

Every twentieth-century theory of the state has posed the question of the relationship of the state to democracy. Likewise, Max Weber's approach to this question has to be viewed in relation to the emphasis upon rulership in his conception of the state. For Weber, this relationship can only be one which is full of tension: the state is a “relationship of rulership” while democracy involves a “minimisation of ruling force,”¹⁶¹ and democratisation is a process which is aimed “at the minimisation of ‘rule’.”¹⁶² Already in the 1920s Richard Thoma had realised that there was a potential tension between Weber's conceptions of state and of democracy,¹⁶³ but so far no-one has put forward a satisfactory response to the question of the relationship of state and democracy in Max Weber. Although his understanding of democracy has been investigated often enough,¹⁶⁴ even today this relationship

¹⁶¹ Weber, *Herrschaft*, MWG I/22-4 p. 204 (WuG 568).

¹⁶² *Ibid.*, p. 196 (WuG 565).

¹⁶³ Richard Thoma, “Der Begriff der modernen Demokratie in seinem Verhältnis zum Staatsbegriff,” in Melchior Palyi (ed.) *Hauptprobleme der Soziologie. Erinnerungsgabe für Max Weber*, Bd. II, Duncker & Humblot, Munich, Leipzig 1923 pp. 37–64 (37ff.) in pointing out that the application of state theory and sociology to contemporary state forms “is almost exclusively directed to ‘democracies’” and that consequently a clarification of the concept of democracy was necessary (p. 39) retains its pertinence: “There is hardly any state in the world today that does not want to characterise itself as a democracy.” (Karl Dietrich Bracher, *Geschichte und Gewalt. Zur Politik im 20. Jahrhundert*, Severin & Siedler, Berlin 1981 p. 51). This is even more true following the East European revolutions of 1989–1990.

¹⁶⁴ Especially by Wolfgang J. Mommsen in his *Max Weber and German Politics*, op. cit. See further Jean-Marie Vincent, *Max Weber ou la démocratie inachevée*, Editions du Félin, Paris 2009; Christoph Schönberger, “Max Webers Demokratie,” in Anter, Breuer (eds), *Max Webers Staatssoziologie*, op. cit. pp. 157–173; Andreas Anter, “Max Weber und die parlamentarische Demokratie der Bundesrepublik Deutschland,” in Karl-Ludwig Ay, Knut Borchardt (eds), *Das Faszinosum Max Weber*, Universitätsverlag, Konstanz 2006 pp. 353–373; Ferraresi, *Il fantasma della comunità*, op. cit. pp. 418ff.; Steven Pfaff, “Nationalism, Charisma, and Plebiscitary Leadership: The Problem of Democratization in Max Weber's Political Sociology,” *Sociological Inquiry* 72 (2002) pp. 81–107; Alan Scott, “Capitalism, Weber and Democracy,” in *Max Weber Studies* 1 (2000) pp. 33–55; Stefan Breuer, “The Concept of Democracy in Weber's Political Sociology,” in Ralph Schroeder (ed.), *Max Weber, Democracy and Modernization*, St. Martin's Press, New York 1998 pp. 1–13; Sven Eliaeson, “Max Weber and Plebiscitary Democracy,” in: Schroeder (ed.), *Max Weber*, op. cit. pp. 47–60; Peter Breiner, *Max Weber & Democratic Politics*, Cornell University Press, Ithaca, New York 1996 pp. 158ff.; Mommsen, *The Political and Social Theory of Max Weber*, University of Chicago Press, Chicago 1992.

remains obscure. Three questions will be raised in the following: What is the exact form of this relationship? What significance does Weber's conception of the state have for his understanding of democracy? And what role does democracy play in his theory of the state?

Just as there is no complete theory of the state in Weber, there is no complete theory of democracy. It is well-known that his remarks on democracy are not exactly euphoric. He regarded "democracy" in its literal sense as rule by the people to be an illusion:

The *demos* in the sense of an unstructured mass never "administers" itself in large groupings, but is administered, and alters only the mode of selection of the ruling administrative head and degree of influence.¹⁶⁵

It is clear to Weber that a people in a large state never rules itself, but is ruled and only has the opportunity of determining the manner of rule and of changing the rulers. "True democracy" is only possible "in small states," "where the majority of citizens know each other, or can know each other," and where "at least the administration can be supervised by every citizen as is possible in a medium-sized town." By contrast, in the "mass state," where the administration is an anonymous machine, this alters "out of all recognition" – here only bureaucracy rules.¹⁶⁶ This sceptical position is to be understood not only as a general sociological diagnosis but also as a description of the state of his own time.

Weber does not only extend the figure of rule by the people *ad absurdum* but goes one step further in declaring the people's will to be itself an illusion, as can be found in a letter to Roberto Michels: "Such concepts like 'will of the people', 'true will of the people' and so on have not meant anything to me for a long time. They are *fictions*."¹⁶⁷ He does not have a lot of time either for the power of judgment of a "mass" that, while not ruling, still determines the manner in which it is ruled: "The 'mass' as such ... 'thinks only as far as the day after tomorrow'. As we know from experience, the mass is always exposed to momentary, purely emotional and irrational influences."¹⁶⁸ The standpoints that he takes here draw upon a long tradition of scepticism regarding democracy: the idea that there is "nothing more changeable than the ocean of the people's will"¹⁶⁹ is a common one

¹⁶⁵ Weber, *Herrschaft*, MWG I/22 p. 203 (WuG 568).

¹⁶⁶ Weber, "Deutschland unter den europäischen Weltmächten" (1916), in his *Zur Politik im Weltkrieg*, MWG I/15 pp. 157–194 (191).

¹⁶⁷ Weber, Letter to Robert Michels, 4 August 1908, in his *Briefe 1906–1908*, MWG II/5 p. 615.

¹⁶⁸ Weber, "Parliament and Government in Germany under a New Political Order" (1918), in his *Political Writings*, op. cit. pp. 130–271 (230).

¹⁶⁹ Frantz, *Die Naturlehre des Staates*, op. cit. p. IX.

in contemporary state theory, which ultimately declined to “believe in the reality of a *volonté générale*.”¹⁷⁰ Like Weber, Rathenau can only come to the conclusion that democracy is, “as a pure concept, impossible,” since the people can never exercise rule but can only delegate it.¹⁷¹ And the *contradictio in adjecto* inherent to the concept of democracy was formulated most clearly by Treitschke: “Ruling means that there is someone to rule over,” so “if all are supposed to rule, where then are the ruled?”¹⁷²

For Max Weber it was quite obvious that the “major decisions in politics, particularly in democracies, are made by *individuals*.”¹⁷³ There are of course “aristocratic” elements in this conception of politics, something which is quite evident in Nietzsche, who as we shall see had great influence on Weber’s conception of the state. But as far as democracy is concerned, there is only a limited degree of affinity between the two great heroic realists. Weber just did not go in for the kind of polemics that are typical of Nietzsche: who regarded the “democratic idiosyncrasy of being opposed to all rule, and all who wish to rule” to be pure stupidity,¹⁷⁴ who despised modern democracy as “the historic form of the *decay of the state*,”¹⁷⁵ scoffed at the democratic movement as mere “mediocrising”¹⁷⁶ and countered “Rousseau’s passionate foolies and half-lies” with “*Écrasez l’infâme!*”¹⁷⁷ In one crucial aspect Weber is closer to the great pioneer of modern democracy than to its sharpest critic; he adopts exactly the same relativist position that Rousseau had: that a true democracy “never has existed,” and if so, then only in small states.¹⁷⁸ This quantitative aspect also plays a significant role in Weber. The larger the state, the less the chances for democracy; his position could be summed up like this, and it in no respects plays an ideal against reality, as Carl Schmitt has masterfully shown.

Weber’s scepticism of “the people’s will,” which is of course a fundamental difference with Rousseau, does not lead him into an antidemocratic posture but instead into the attempt to develop a concept of democracy fit for the conditions of the state in the twentieth century, taking account of the elementary facts in the sociology of rulership. His views on state and democracy are coloured by rulership. What he says about the state is no

¹⁷⁰ Hermann Heller, *Die Souveränität*, De Gruyter, Berlin, Leipzig 1927 p. 64.

¹⁷¹ Walther Rathenau, *Von kommenden Dingen*, S. Fischer, Berlin 1917 p. 296.

¹⁷² Treitschke, *Politik*, Bd. 2 op. cit. p. 15.

¹⁷³ Weber, “Parliament and Government,” op. cit. p. 222.

¹⁷⁴ Nietzsche, *On the Genealogy of Morality*, op. cit. p. 52, trans. revised.

¹⁷⁵ Nietzsche, *Human, All Too Human* (1878), trans. R. J. Hollingdale, Penguin, London 1994 p. 173.

¹⁷⁶ Nietzsche, *Beyond Good and Evil*, trans. R. J. Hollingdale, Penguin, London 2003 p. 82.

¹⁷⁷ Nietzsche, *Human, All Too Human*, op. cit. p. 169.

¹⁷⁸ Rousseau, *The Social Contract*, op. cit. p. 91. Montesquieu also took exactly this position, believing the rule of the people to be “impossible dans les grandes États” (*De l’Esprit des Lois*, XI/6, Garnier, Paris 1956 p. 116).

less true of democracy: for him, it is a relationship of rule. Weber does not merely contribute to the dismantling of an old and paradoxical problem; he also anticipates new positions. Accordingly, for Niklas Luhmann democracy is *not* "domination of the people over the people," a "short-circuited self-reference of domination," nor even the "negation of domination."¹⁷⁹ Max Weber is quite clear on this.

Not only does he set up a theoretical milestone on the way to a properly sociological and "realistic" concept of democracy but he also prepared the way for our understanding of democracy today. It is quite evident that he influenced Joseph Schumpeter's definition, when the latter wrote that "Democracy means only that people have the opportunity of accepting or refusing the men who are to rule them."¹⁸⁰ Karl Popper expresses himself almost in the same terms, if somewhat more laconically, when he defines democracy as a form of state in which it is possible to dismiss the government.¹⁸¹ Like Max Weber, the great Critical Rationalist did not consider that the word "rule by the people" meant a great deal, since nowhere did the people rule – instead, bureaucracy did everywhere. Weber's relational definition of state and democracy, which served committed democrats like Schumpeter and Popper so well, can also be treated as the prevailing view in today's political theory and political journalism.

Max Weber is indeed a democrat of a quite particular kind.¹⁸² He is the partisan of a constitutional parliamentary state and one of the intellectual mentors of German democracy; he counts democracy among his "political values"¹⁸³ and, after the November Revolution, confesses that he wishes "to help make permanent democratic achievements."¹⁸⁴ Like Tocqueville¹⁸⁵ he is a hesitant democrat who made a late transition from convinced monarchist to democrat, but in so doing never learns to truly love democracy. Max Weber does not love democracy; he loves Marianne, and Else. And, of course, his nation. He admits that for him democracy was "never an end in itself," that he was only "interested in the possibility of an objective

¹⁷⁹ Niklas Luhmann, "The Future of Democracy," in his *Political Theory in the Welfare State*, De Gruyter, Berlin, New York 1990 pp. 231–239 (232).

¹⁸⁰ Joseph Schumpeter, *Capitalism, Socialism and Democracy*, 2nd edition, George Allen and Unwin, London 1947 p. 285.

¹⁸¹ Karl Popper, *The Open Society and its Enemies*, Vol. I, Routledge, London 1995 p. 131.

¹⁸² Edward Shils, "Max Weber and the World since 1920," in Wolfgang J. Mommsen, Jürgen Osterhammel (eds) *Max Weber and his Contemporaries*, 2nd ed., Routledge, London 2010 pp. 547–573 (562).

¹⁸³ Weber, "Deutschland," op. cit. p. 191.

¹⁸⁴ Weber, "Deutschlands künftige Staatsform," op. cit. p. 145.

¹⁸⁵ See the stimulating study by Pierre Manent, *Tocqueville and the Nature of Democracy*, Rowman and Littlefield, Lanham 1997.

national politics,¹⁸⁶ that he valued “the German nation and its future far more highly than any question of the form of the state,”¹⁸⁷ even that for him the form of the state was a matter of complete indifference – since forms of the state were only “technologies like any other machine.”¹⁸⁸ His acknowledgments of democracy are governed mostly by pragmatic premises. If he speaks out strongly in its favour, then it is either for national values or questions of state organisation.¹⁸⁹

His dismissive gestures *vis-à-vis* the age-old question of the form of the state could call for support on Alexander Pope’s well-known verse: “For forms of government let fools contest; Whate’er is best adminster’d is best.”¹⁹⁰ These lines have been cited in political theory and political philosophy for two hundred years;¹⁹¹ Max Weber certainly knew of it and could have used it as an epigraph for his discussion of the form of the state. He too prefers to let fools talk about the form of the state and regards the best state form to be the one with the best administration. Despite the scornful criticism with which argument over the form of the state was already met in the eighteenth century, it remained a favoured theme in discussions of state and politics in the following two centuries. In 1908 Arthur F. Bentley sought to revive a “dead political science” that dealt only with the form of the state, setting out to divide up states according to their incidental attributes, but ending up with a classification lifted from Aristotle.¹⁹² Max Weber’s break with the accepted way of discussing the form of the state was one that was paralleled in the United States, and his “technical” assessment of the question of the form of the state is reflected in the view of Bentley, who considered the differences between state forms to be of a purely technical nature.¹⁹³

¹⁸⁶ Weber, “Das preußische Wahlrecht” (1917), in his *Zur Politik im Weltkrieg*, MWG I/15 pp. 224–235 (234).

¹⁸⁷ Weber, “Parliament and Government,” op. cit. p. 266.

¹⁸⁸ Weber, Letter to Hans Ehrenberg, 16 July 1917, in his *Briefe 1915–1917*, MWG II/9 p. 709.

¹⁸⁹ For instance, in “Deutschlands künftige Staatsform,” op. cit. pp. 99f. On the relationship between nation and democracy see Ch. IV.2.

¹⁹⁰ *The Works of Alexander Pope*, Vol. 2, Tonson, London 1764 p. 79.

¹⁹¹ Josef von Sonnenfels, *Gesammelte Schriften*, Bd. VII, Kurtzbeke, Vienna 1785 p. 91 agreed with Pope. David Hume on the other hand was rather more sceptical (“That Politics may be Reduced to a Science” in *Political Essays* op. cit. p. 4). Kant, who cited the somewhat misleading version of Mallet du Pan, thought it “quite wrong” (*Werke in sechs Bänden*, op. cit. Bd. VI p. 208). For Karl Heinzen the saying is just “a political lie” (*Die preußische Bürokratie*, Leske, Darmstadt 1845 p. 67).

¹⁹² Arthur F. Bentley, *The Process of Government. A Study of Social Pressures*, Chicago University Press, Chicago 1908 p. 162. “...we have a dead political science ... It loves to classify governments by incidental attributes, and when all is said and done it cannot classify them much better now than by lifting up bodily Aristotle’s monarchies, aristocracies, and democracies.”

¹⁹³ *Ibid.*, p. 320: “the differences between governments are ... strictly differences of technique.”

Max Weber's approach to democracy from the point of view of rulership cannot be separated from another sociological magnitude: the bureaucracy. When he talks of democracy then bureaucracy appears as its almost unavoidable shadow, at once twin sister and antagonist. Since in the modern state "genuine rule" lies in the hands of the bureaucracy,¹⁹⁴ hence not under the control of the "people's will," then at least in principle democracy and bureaucracy are natural foes. In fact, from a historical and empirical perspective the opposite is the case: bureaucracy is "the unavoidable accompaniment to modern mass democracy."¹⁹⁵ They emerge together and mutually condition each other. Since the process of democratisation and the implementation of the social state increase the demands on state administration, necessitating in turn the expansion and differentiation of the administrative apparatus, bureaucracy is unavoidably promoted and the rule of the bureaucracy reinforced. Hence it is completely clear for Weber that the bureaucratisation of the state "is everywhere the inescapable shadow of a growing mass democracy."¹⁹⁶ Here again, the quantitative aspect is of decisive importance: "In large states everywhere modern democracy is becoming a bureaucratized bureaucracy."¹⁹⁷ He never tires of pointing to the tension involved in the fact that

"democracy" as such, despite and because of its unavoidable but unsolicited promotion of bureaucracy, is the opponent of the "rule" of bureaucracy, and as such potentially creates very tangible breaches in and hindrances to bureaucratic organisation.¹⁹⁸

What "potential" circumstances might be involved here? And what "breaches" and "hindrances" are here possible? If one checks Weber's writings carefully, there are very few of them:

In the face of the levelling, inescapable rule of bureaucracy, which first brought the modern concept of the "citizen of the state" into being, the ballot slip is the *only* instrument which is at all *capable* of giving the people who are subject to bureaucratic rule a minimum of co-determination in the affairs of the community for which they are obliged to give their lives.¹⁹⁹

Of interest here in this regard are two questions posed by Weber which touch upon the relation of state, democracy and bureaucracy. The first is: How can the "monstrous dominance" of the bureaucracy be kept within bounds and

¹⁹⁴ Weber, "Parliament and Government," op. cit. p. 145.

¹⁹⁵ Weber, *Herrschaft*, MWG I/22-4 p. 201 (WuG 567).

¹⁹⁶ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 5.

¹⁹⁷ Weber, "Socialism" (1918), in his *Political Writings*, op. cit. pp. 272–303 (279).

¹⁹⁸ Weber, *Herrschaft*, MWG I/22-4 p. 213 (WuG 572).

¹⁹⁹ Weber, "Suffrage and Democracy in Germany" (1917), in his *Political Writings*, op. cit. pp. 80–129 (105–6).

truly controlled? And second: How is democracy, in Weber's already limited sense, "at all possible?"²⁰⁰ He saw in "plebiscitarian democracy" an instrument capable of, on the one hand, controlling a power-hungry bureaucracy and, on the other, overseeing the selection of political leaders.²⁰¹ With this idea he killed three birds with one stone. It would first of all strengthen democracy; secondly it would keep the bureaucracy in check; and thirdly, both guarantee the supply of leaders as well as their selection. There is certainly a political impulse in this third element, which is directed against Wilhelminian conditions, since Weber's criticism of the personal rule of Kaiser Wilhelm II centred especially upon his incapacity to rule. Therefore concept of plebiscitarian leadership democracy is not only counter to "leaderless democracy" but rather counter to "leaderless monarchy."²⁰²

Weber was not alone in his criticism, but was joined by two other thinkers with whom he shared an affinity in these, and also other, matters. Walther Rathenau complained about the absence of "direction" and the "lack of leading men" in the post-Bismarckian "militarily dominant power state."²⁰³ Hugo Preuß also argued that there was "in our public life perhaps only one point over which there was complete unanimity," which was "the baffling lack of major political leaders in Germany."²⁰⁴ If one can trust this judgment, then Max Weber was himself here in rare "complete agreement" with the public opinion of his time.

Seeking a positive alternative to leaderlessness Weber looked west: to his model and ideal, English democracy, which had not only thrown up great political leaders, but also laid the foundations for England's successful global

²⁰⁰ Weber, "Parliament and Government," op. cit. p. 159.

²⁰¹ Ibid., p. 231. For this conception see Andreas Anter, "Die westdeutsche Max-Weber-Diskussion und die Begründung der parlamentarischen Demokratie nach dem Zweiten Weltkrieg," in Christoph Cornelißen (ed.), *Geschichtswissenschaft im Geist der Demokratie. Wolfgang J. Mommsen und seine Generation*, Akademie Verlag, Berlin 2010 pp. 257–273, 262ff.; Jeffrey Edward Green, "Max Weber and the Reinvention of Popular Power," *Max Weber Studies* 8 (2008) pp. 187–224; Ferraresi, *Il fantasma della comunità*, op. cit. pp. 418ff.; Pfaff, "Nationalism, Charisma, and Plebiscitary Leadership," op. cit. pp. 81–107; Eliaeson, "Max Weber and Plebiscitary Democracy," op. cit. pp. 47–60; David Beetham, *Max Weber and the Theory of Modern Politics*, 2nd ed. Polity Press, Cambridge 1985 pp. 226ff.; Mommsen, *Max Weber and German Politics*, op. cit. pp. 172ff., 390ff.

²⁰² It is difficult to conceive how Ernst Vollrath could arrive at the claim that Weber's idea of democracy as a means for the selection of leaders was "in truth unpolitical," that the "conception of plebiscitarian leadership democracy" is the "political consequence" of "a specifically unpolitical perception" ("Max Weber," op. cit. p. 105).

²⁰³ Rathenau, *Von kommenden Dingen*, op. cit. p. 323. He put himself forward in this book as one such "leading man," which he undoubtedly was.

²⁰⁴ Hugo Preuß, "Zum sechzigsten Geburtstag Theodor Barths" (1909), in his *Staat, Recht und Freiheit*, J. C. B. Mohr (Paul Siebeck), Tübingen 1926 pp. 550–554 (551).

policy.²⁰⁵ His plea for the parliamentary selection of leaders as the basis of an effective and powerful global policy can certainly also be read as an attempt to win over sections of the national conservative bourgeoisie to the idea of parliamentary democracy. But this was an endeavour which could not hope for an especially good reception, not only because of the anti-democratic make-up of that section of the bourgeoisie but also on account of the fact that in 1918 the idea of a decisive German global policy for which the selection of leaders might be of importance was a thing of the past, at least for the time being. The English model only partially fitted German conditions – the first German democracy remained unloved and had a short life. There were also problems with the construction of a “democracy based upon plebiscitarian leadership.” One of these was that a temporary leader might make himself a permanent fixture, by-passing and undermining the democratic rules. Weber noted this possibility but only remarked that parliament had to control the leader and could remove him “if he has *lost* the trust of the masses.”²⁰⁶ Even if one takes account of the fact that Weber does not have in mind the construction of finished ideas relating to constitution or state his statements remain fragmentary and sketchy, his conception remains unconvincing.²⁰⁷

If one wished to reduce Max Weber's definition of the relationship between state, democracy and bureaucracy to a simple formulation, then we might say that for him democracy is a problem, bureaucracy by contrast the destiny of the modern occidental state.²⁰⁸ His arguments concerning the

²⁰⁵ A nice literary testament of this admiration can be found in Berta Lask's autobiographical novel *Stille und Sturm* (Mitteldeutscher Verlag, Halle 1955), in which Max Weber appears as Max Wormann, and at a New Year party in 1900 held in the house of his friend Reichwaldt (Rickert) enthuses over English democracy, polemicises against his favourite foe Wilhelm II, and wishes that there were a “great democrat” as the leader of the nation (Bd. 1 p. 243); in 1914 Wormann outlines a vision of the “democratisation of Germany on the English model” (Bd. I p. 535). See Andreas Anter, “Männer mit Eigenschaften. Max Weber, Emil Lask und Georg Simmel als literarische Figuren in Berta Lask's Roman “Stille und Sturm”,” *Literaturmagazin* 30 (1992) pp. 156–169.

²⁰⁶ Weber, “Parliament and Government,” *op. cit.* p. 222.

²⁰⁷ Prompted by Wolfgang Mommsen's dissertation, there was from the 1960s intense, if ultimately quite sterile, discussion of whether this idea paved the way for the idea of a totalitarian leader. In this way Weber is made into an inspirational source for National Socialism. This idea is absurd for two reasons. First of all, no National Socialist theorist invoked Weber. Reference here to Carl Schmitt, often enough invoked in this context, is mistaken, since the figure of “plebiscitarian leadership democracy” plays no role in his writings either before or after 1933, while his turn to National Socialism involved a turn away from Weber. Secondly, Weber's ideas are in general incompatible with National Socialist ideas and practice, for this concept is a *democratic* concept, which as we know was not a preoccupation of National Socialism.

²⁰⁸ Pier Paolo Portinaro argues along these lines in his *Max Weber. La democrazia come problema e la burocrazia come destino*, Franco Angeli, Milan 1987 espec. pp. 53ff.

relationship of democracy and bureaucracy laid the basic conceptual and theoretical foundation for present-day discussions of the issue.²⁰⁹ As Bobbio writes, “All states which have become more democratic, have simultaneously become more bureaucratic, because the process of bureaucratization is to a great extent the consequence of the process of democratization.” He goes on to say that Max Weber had “clearly envisaged” this process.²¹⁰ The dangers which bureaucratisation represents for democracy continue to exist. And the tone of today’s discussion remains that of Weber: the situation is serious but not hopeless.

²⁰⁹ See Enrico Peuker, *Bürokratie und Demokratie in Europa*, J. C. B. Mohr (Paul Siebeck), Tübingen 2011; Eva Etzioni-Halevy, *Bureaucracy and Democracy: A Political Dilemma*, 2nd ed., Taylor & Francis, London 2009; William T. Gormley, Steven J. Balla, *Bureaucracy and Democracy: Accountability and Performance*, 2nd ed., CQ Press, Washington 2008; Schönberger, “Max Webers Demokratie,” op. cit. pp. 157–173; Kenneth J. Meier, Laurence J. O’Toole, *Bureaucracy in a Democratic State: A Governance Perspective*, Johns Hopkins University Press, Baltimore 2006 pp. 21ff., 45ff.; Michael Reed, “Beyond the Iron Cage? Bureaucracy and Democracy in the Knowledge Economy and Society,” in Paul du Gay (ed.), *The Values of Bureaucracy*, Oxford University Press, Oxford 2005 pp. 115–140; Bobbio, *The Future of Democracy*, op. cit. pp. 38ff.

²¹⁰ Bobbio, *The Future of Democracy*, op. cit. p. 38.

3

Hermeneutics of the State

German thinkers have credulously deepened the ideology of the state, driving it to the point of idolatry and seeing in it both an institution for the perfection of human nature and a kind of spiritual superperson. One must, therefore, point out very forcefully that this is false.

(Robert Musil, "Anschluss with Germany")¹

1 The Action-oriented conception of the state

If Max Weber defines Sociology as a science "that seeks interpretative understanding of social action, and hence causal explanation of the course and effects of such action,"² it has to be asked whether the *state* can be described in terms of the action-oriented perspective of a hermeneutic sociology of *Verstehen*; and if so, what might such a description look like? The category of action that is elaborated with such virtuosity in the chapter on "Basic Sociological Concepts" is central to the registration, definition and explanation of sociological phenomena. That is also true for the phenomena of power and rulership, state and politics: here for Weber everything can be reduced to "action." When formulating programmatically his conception of action, he puts forward the decisive premise that "Action, in the sense of meaningfully understandable orientation of one's own behaviour, is for us always understood as the behaviour of one or more *individual* persons," since for the interpretative understanding of action by means of sociology *individual* persons are the sole understandable agents "of meaning-related behaviour."³

¹ Robert Musil, *Precision and Soul. Essays and Addresses*, University of Chicago Press, Chicago 1990 p. 91.

² Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 1.

³ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 1.9. For Weber's approach, see Stephen P. Turner, Regis A. Factor, *Max Weber. The Lawyer as Social Thinker*, Routledge, London, New York 1994 pp. 13ff.

There are consequences arising from this axiomatisation for the way in which we treat a social construct like the state. Weber is quite clear that customary and traditional ways of thinking resist his approach. It is a peculiarity of our language and our thought to conceive social constructs – and hence also the state – as “personified” phenomena, something which “especially happens in sociology.”⁴ He consequently sees it as his mission to fight back against this “objectifying” way of thinking. Which is a troublesome task, given the stubborn resistance that customary ways of thought present. Just how far Max Weber saw himself not simply as a missionary, but as bent on sociological enlightenment, becomes plain in a letter to the Freiburg economist Robert Liefmann:

If I am now a sociologist (according to my letter of appointment), then for the most part so that I can put an end to the still prevalent business of working with collective concepts Sociology can only be conducted in terms of the actions of individuals, is therefore strictly “individualistic” in its methods. Regarding the “state,” you still for instance express quite old-fashioned ideas. For sociology, the state is nothing other than the chance that particular forms of specific *action* occur, action on the part of particular individual men. It means nothing else at all.⁵

The state plays an important role in Weber’s projected revolutionisation of social scientific thinking, not least because of the role it plays in his writing as the leading exemplar of the contrast between the “ancient” and “modern” ways of understanding social constructs. He develops his sociological method through a rigorous juridical demarcation that in treating the state as a “legal personality” implies that it is an “individual person.” For sociology, by contrast, “the word ‘state’ ... *only* covers a course of human action of a particular kind.”⁶ He does concede that for legal cognitive purposes the conception of the state as a “person” might be unavoidable, but he specifically excludes this from *his own* account:

For the interpretative understanding of action by means of sociology these constructs remain merely processes and specific behavioural relationships on the part of *individual* persons, since for us these are the sole understandable agents of meaningfully oriented action.⁷

⁴ Weber, “On Some Categories of Interpretive Sociology,” in his *Collected Methodological Writings*, ed. Hans Henrik Bruun, Sam Whimster, Routledge, London 2012 p. 280, trans. revised (WL 439).

⁵ Weber, Letter to Robert Liefmann, 9 March 1920, in his *Briefe 1918–1920*, MWG II/10 p. 946f. (trans. follows Wolfgang Mommsen in Otto Stammer [ed.] *Max Weber Today*, Harper and Row, New York 1972 p. 115 fn. 2).

⁶ Weber, “On Some Categories of Interpretive Sociology,” op. cit. p. 281, trans. revised (WL 439f.).

⁷ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 1.9.

Following this up with a veritable cascade of scholastic distinctions, Weber finally concludes that the state is

a complex arising out of the mutual action of men – **because** specific men and women orient their action in regard to their **conception** that the state exists in this form, or should exist in this form.⁸

And he goes a step further, inserting the category of “chance” before that of action; as with every social construct, the state also

consists exclusively and solely of the *chance* that action occurred, occurs or will occur whose meaningful content manifestly arises from its mutual orientation. This must be constantly born in mind if one is to avoid an “essentialist” interpretation of these concepts. A “state” for example ceases to “exist” sociologically with the disappearance of the *chance* that particular forms of meaningfully oriented social action might occur.⁹

Weber deconstructs the state, breaking it down into its constituent elements as processes resulting from particular actions. This amounts to a decoding of the state as a complex whose basic element is the chance that an action occurs, moving decisively beyond the conception still predominant today that the state is a construct which is material, monolithic and substantive. This not only opens the way to a differentiated, dynamic and processual conception of the state¹⁰ but throws open the question of whether it is at all possible to talk of *the* state, since this is, as a complex of actions, a polycentric construct. If we consider the “astonishing innocence” with which today legal theory and political science talks of “*the* state as a supposedly monolithic actor,” leading to calls for “simple procedures of differentiation,”¹¹ then Max Weber’s approach offers just such a procedure. The idea that “it is high time” that we consider the state “from a perspective that was probably quite remote for Max Weber: the perspective of the disenchantment of the state”¹² is

⁸ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 1.9b.

⁹ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 3.2.

¹⁰ According to which a state order cannot be static but is constantly modified or revolutionised by given new action orientations. Whether one talks of the modification of the “ancient” or the “modern” construct depends on the degree and extent of the changes – Weber, “On Some Categories of Interpretive Sociology,” op. cit. pp. 286–7, trans. revised (WL 449).

¹¹ Joachim Jens Hesse, “Aufgaben einer Staatslehre heute,” in *Jahrbuch zur Staats- und Verwaltungswissenschaft* 1 (1987) pp. 55–87 (61). See now Mark Bevir, R.A.W. Rhodes, *The State as Cultural Practice*, Oxford University Press, Oxford 2010 pp. 81ff.

¹² Helmut Willke, “Entzauberung des Staates. Grundlinien einer systemtheoretischen Argumentation,” in *Jahrbuch zur Staats- und Verwaltungswissenschaft* 1 (1987) pp. 285–308 (287).

merely comical, if unintentionally so: for it was precisely Max Weber who initiated such a disenchantment.

Metaphorically speaking, Max Weber dissects the conditions of possibility of the state using his action-oriented instrumentarium. The state is not founded upon a given order, but rather on the fact that men orient their action to the idea that the state order exists and should have validity. On this point, it is possible to connect two separate dimensions of his theory of the state: that relating to the theory of action and that relating to the sociology of rule. In the same way that a state order is shaken if the validation of legitimacy is lost, the existence of the state is at stake where action is no longer oriented to the idea that the order is to be considered a valid one. Of course, even Weber is not entirely consistent in the use of this very rigid approach, since his writings seldom turn to the action-oriented perspective and sometimes even relapse into a thoroughly “essentialist” perspective. The programmatic elaboration in the first chapter of *Economy and Society* and in the 1913 essay on categories assumes, therefore, more the character of a “regulative idea” for the sociology of the state.

Moreover, Weber’s theses are not as original and revolutionary as he likes to make out. They are closely related to the positions developed in Friedrich Gottl’s *Herrschaft des Wortes*, a somewhat arbitrary and wilful investigation of the “world of action,” dealing with economics as “a science of human actions” and interpreting “relevant constructions” such as the state as a complex of actions.¹³ While these would “in our thinking” amalgamate into “one simple construct,” one needs only to “look more closely” for all state affairs to appear as “action,” “decomposing into a series of acts.”¹⁴ Like Weber, Gottl lays the blame for the “materialisation” of the state at the door of legal thinking: “as long as we fail to liberate ourselves from legal thought the world of action is quite distorted ... Seen from the legal point of view the entire world of action is cataleptic.”¹⁵ And he is also quite aware of how difficult it is to break the “power of legal thinking,” since “every word is in its own way a little lawyer.”¹⁶

Max Weber’s action-based conception of the state bears the unmistakable stamp of Friedrich Gottl’s *Herrschaft des Wortes* – a book whose extensive passages are more or less unreadable, the work as a whole being written in a flowery, brilliantly ironic style. Hitherto this influence has not been explored, nor even been noticed. It is quite clear that Weber read the book very carefully. In a letter to Gottl, Weber praised, not without faint irony,

¹³ Friedrich Gottl, *Die Herrschaft des Wortes. Untersuchungen zur Kritik des nationalökonomischen Denkens*, Gustav Fischer, Jena 1901 pp. 110ff., 37, 112.

¹⁴ *Ibid.*, p. 112f.

¹⁵ *Ibid.*, p. 117.

¹⁶ *Ibid.*, p. 117.

Gottl's "extraordinarily refined" language, enriched as it was with "*feelingful* expressions." But he did complain of the effort it took to read the book:

I have had to read your *Herrschaft des Wortes* four times before I could arrive at the end without forgetting where I had started, and to grasp its very significant ideas. After my first reading I was simply "incensed" and had the quite erroneous impression that behind a *language* that was quite obscure *to me* there had to be concealed *your own* half-formed *thoughts*.¹⁷

Max Weber adopted some of these "significant ideas" and put them to good use in his sociology of state, where they assumed a great deal more clarity. In this way he not only invented a new conception of the state but took up points from contemporary writing and built them into his conception of a science of *Verstehen* directed to human action.

In his struggle against the "chronic use" of collective concepts Weber could find support not only in Gottl but also in Jellinek, who had simply declared that the conception of the state as "a natural construction existing alongside or above man" was "muddled thinking." He noted that "The existence of the noun should not mislead us into seeing in it real objective powers,"¹⁸ recapitulating a variant of Humboldt's thesis that language determines thought. He categorically rejected the widespread conception of the state as something material and substantive, instead considering human *actions* to be "the ultimate demonstrable factials of state life."¹⁹ His marked influence on Max Weber had therefore both action-related and anti-essentialist aspects. For both political theorists these are connected to each other.

In the early twentieth century the idea that the state was an action-complex was already accepted in the social sciences, being advanced both by Othmar Spann²⁰ and Arthur F. Bentley, who in his now long-forgotten pioneering work of political science conceived the state "in the form of

¹⁷ Letter of Max Weber to Friedrich Gottl, 8 April 1906, in his *Briefe 1906–1908*, MWG II/5 p. 70. It should also be noted that this book is one of the few texts referred to at the beginning of the "Basic Sociological Concepts." Weber was both intellectually and personally impressed by Gottl, who wished to complete his Habilitation under Weber's supervision; Weber considered that *Die Herrschaft des Wortes* was "the most profound attempt to do justice to the special character of 'everyday' thinking." (MWG II/5 p. 293).

¹⁸ Jellinek, *Allgemeine Staatslehre*, p. 175.

¹⁹ *Ibid.*, p. 174.

²⁰ Othmar Spann, *Kurzgefaßtes System der Gesellschaftslehre*, Quelle & Meyer, Leipzig 1914. He considers action to be an elementary sociological category (p. 20), and develops a typology of action (pp. 98ff.). This did not however have any influence at all on Weber, whose 1913 essay on categories was published while Spann's book – not an especially inspiring chapter of German sociology – was still in the press.

purposive action, valued in terms of purposive action."²¹ The origins of this idea do not however lie in the early twentieth century but go right back to Greek antiquity. As Ulrich Häfelin commented, Greek political theorists do not talk of an abstract state, "but always about visible relationships between acting persons"; they had therefore no way of assuming that "a specific state personality stood behind individual citizens."²² If there already existed in antiquity an action-oriented conception of the state which corresponded to a non-essentialist understanding, then Weber simply latched on to a tradition as old as it was honourable. But one does not have to go as far back as antiquity to see that Weber's theoretical efforts rested on outlines and formulations that already existed, as the positions taken by Gottl, Jellinek and Bentley demonstrate. Weber assembled these various ideas within the framework of his *verstehende* science of action, creating a conception directed to a hermeneutic of the state and which can be read as an attempt to found a theory of the state upon a theory of human action. But this attempt remained sketchy and was nowhere systematically elaborated.

The intertwining of theories of the state and of action can be read out of the structure of the "Basic Sociological Concepts." If this is read from back to front a very interesting order becomes apparent. The concept of the state is built upon the that of the institution (*Anstalt*), the concept of institution on that of an organisation (*Verband*), the concept of organisation on that of "social relationship,"²³ and this in turn on the concept of "social action," so that we could say that the concept of the state is genetically built up from the category of action. Hence the conceptual genealogy of the "Basic Sociological Concepts" can from this perspective be read as a genealogy of the state, where the individual steps from "action" to "state" mark the stages at each of which new elements of rulership are included.

Since the state is also developed out of the concept of social relationship there are clear affinities on the one hand with Georg Simmel, who traced back "macroscopic" units such as the state to "micro-molecular processes" of human "forms of relationship";²⁴ and also on the other hand with Georg Jellinek, who

²¹ Arthur F. Bentley, *The Process of Government*, University of Chicago Press, Chicago 1908 p. 62. He developed this perspective through an exegesis of Ihering's *Law as a Means to an End (Der Zweck im Recht)*, a text that was very well received by contemporary American political science. Since Max Weber had, at the suggestion of Jellinek, read widely in the literature of American political science, it is quite probable that he was familiar with Bentley's work.

²² Ulrich Häfelin, *Die Rechtspersönlichkeit des Staates*, J. C. B. Mohr (Paul Siebeck), Tübingen 1959 p. 6.

²³ See the thought-provoking graphic representation in Stefan Breuer, "Max Webers Staatssoziologie," *Kölner Zeitschrift für Soziologie und Sozialpsychologie* Jg. 45 (1993) p. 213.

²⁴ Georg Simmel, *Soziologie. Untersuchungen über die Formen der Vergesellschaftung*, Suhrkamp Verlag, Frankfurt a.M. 1992 pp. 33–4.

identified “social relationships among men” as the “ultimate objective element of the state.”²⁵ With that he formulated something that remains only implicit in Weber: that the state is formed of “social relationships.” For both thinkers the concept of “social relationship” is underpinned by that of “social action” as its most basic conceptual unity, so that there is a seamless chain of categories leading from action to state. If Jellinek goes further, creating a stepladder leading from organisation (*Verband*) to state in which the intensity of rule increases from private to public organisation, reaching its highest degree with the state,²⁶ this only goes to show that without the contribution of Jellinek the Weberian theory of the state is barely conceivable.

In Weber’s remarks on the state as a “complex of joint action,” the question does remain open regarding the *kind* of actions that compose the state, or rather what type of actions constitute the state. This question arises above all on account of the fact that the state is characterised by structures of rule and compulsion, and this cannot be without consequences for action within such structures. What sort of action is involved in respect of the state? And what is the relationship between this action-related conception, and an understanding of the state as a relation of *rulership* and an institutional enterprise with a monopoly of legitimate force?

That Max Weber’s conception can give rise to misunderstandings is shown by the position of an early critic, who charges that it involves a “purely psychological solution” to the “problem of the existence of the state,” and that there were “serious reservations” in respect of “dissolution” of the state into action, since only a small part of these, for instance administrative action or that of citizens when voting, properly belonged to the state.²⁷ There is of course a surprisingly naïve conception of action underlying this criticism, but it is on the other hand aimed at the question with which any discussion of Weber’s conception has to deal. Even as late as the 1970s the authors of an introductory textbook found it necessary to note that Weber was not referring to the actual activity of administration, otherwise the state would cease to exist once the office had closed for the day.²⁸ But even they could not say to which action Weber was referring.

The best and most decisive place to begin clarification of this question is with Weber’s discussion of social action (*Gesellschaftshandeln*)²⁹ in the

²⁵ Jellinek, *Allgemeine Staatslehre*, p. 174.

²⁶ *Ibid.*, p. 179.

²⁷ Leopold Franke, “Das Daseinsproblem des Staates,” *Internationale Zeitschrift für Theorie des Rechts* Jg. 7 (1932/33) pp. 265–281 (270, 272).

²⁸ Veit-Michael Bader et al., *Einführung in die Gesellschaftstheorie. Gesellschaft, Wirtschaft und Staat bei Marx und Weber*, Campus, Frankfurt a.M., New York 1976 p. 423.

²⁹ Strictly this term should, in 1913, be translated as “societal action,” since in 1920 Weber switches to *soziales Handeln*, and the distinction needs to be upheld. But for the initial purposes, here it is simplest to ignore this complication arising from the changes in terminology Weber made when revising the 1913 essay as the basis for Ch. 1 of *Economy and Society*. (Trans.)

1913 essay on categories. This type of action is oriented to expectations formed on the basis of the purposively rational statutes of *orders*,³⁰ whereby the “social actors” rely on all agreements being properly maintained,³¹ and that in the event of the order being violated, the use of physical coercion will be threatened.³² Since this type of action is linked to both moments – to “order” and to “physical coercion” – which are in turn two elementary criteria of the state, then the action that constitutes the state can only be “social action” (*Gesellschaftshandeln*). The category of “agreement” plays an important role here. If social action oriented to an agreement is defined as the action of “organs” and action related to them,³³ then in every “complex of a specific joint action” about which Weber talks, this concerns the action of organs of the state and action related to them. Furthermore, from the discussion of social action, it emerges that the decisive order to which the actor orients himself is the *legal order*. Hans Kelsen drew attention to this connection between the conception of action and the legal order in his polemical critique of Weber, admittedly in an especially forced reading of Weber. To begin with, Kelsen accuses Weber of “misleading terminology” and “inadmissible conceptual displacement,” for it is not actions but their “*meaningful content*” that constitutes the state.³⁴ Kelsen eventually concludes that Weber’s approach is no more than a disguised form of legal science. His thesis, that Weber defines the state as “the realisation of the law” – since “only the legal order is given as the substantive meaning of such actions”³⁵ – is however untenable, there being in Weber’s writings not the slightest justification for conceiving the purpose of the state in terms of the realisation of law – the dominant view in German state theory.

Besides the category of agreement (*Vereinbarung*), the concept of order (*Ordnung*) plays an important role in the exposition of “communal action” (*Gemeinschaftshandeln*) and “social action” (*Gesellschaftshandeln*). But these concepts are neither clearly defined here nor anywhere else.³⁶ Really we should speak here of *orders* rather than *order*, since in Weber’s view there is

³⁰ Weber, “On Some Categories of Interpretive Sociology,” op. cit. p. 282 (WL 442).

³¹ *Ibid.*, p. 286 (WL 447).

³² *Ibid.* (WL 448).

³³ *Ibid.*

³⁴ Hans Kelsen, *Der soziologische und der juristische Staatsbegriff. Kritische Untersuchung des Verhältnisses von Staat und Recht* (1922), 2nd edition, J. C. B. Mohr (Paul Siebeck), Tübingen 1928 pp. 158f.

³⁵ *Ibid.*

³⁶ For Weber’s concept of order, see Andreas Anter, *Die Macht der Ordnung. Aspekte einer Grundkategorie des Politischen*, 2nd ed., J. C. B. Mohr (Paul Siebeck), Tübingen 2007 pp. 89ff.; Barbara Thériault, “Ordres légitimes et légitimité des ordres chez Max Weber”, in Michel Coutu, Guy Rocher (eds), *La légitimité de l’État et du droit*, Presses Université Laval, Québec 2006 pp. 175–186; Werner Gephart, *Gesellschaftstheorie und Recht*, Suhrkamp, Frankfurt a.M. 1993 pp. 480ff.

within the modern state not one homogenous and comprehensive order but rather a plurality of orders. Hence action is not oriented to *one* order but exists within a force field constituted by several competing order. This circumstance is reflected both in Weber's reflections on the relationship of "personality and life orders"³⁷ (where it is no coincidence that he selects the plural) as well as in his observations on the "cosmos of *political* action."³⁸ If one accepts Max Weber's conception that actions are the most elementary units of the state, then as Niklas Luhmann says, there follows the unavoidable conclusion that concrete persons are never entirely absorbed into one social system but rather are constantly embroiled by virtue of their own actions in particular social systems.³⁹ Strictly speaking, therefore, there is not the state as one complex of actions but rather a whole range of such complexes. If Max Weber does mostly refer to the state order in the singular, this is a pragmatic simplification – of which we can and do make use in all good faith, so long as the fact that it is a simplification is kept in mind.

It is only on the basis of his arguments regarding social action that it is possible to render more precise the specific action that is critical for the state: it is social action structured in terms of rule, linked to state organs and oriented to the legal order. The state cannot therefore subsist upon mere action. The state order is in no respect contingent, but it exerts coercive pressure in the selection of particular action orientations, for it is by definition a *ruling* order with a monopoly of physical force at its disposal and, like every other form of rule, seeks to sustain its order. But that is only one side of Weber's conception. The other side, almost more strongly emphasised, is marked by his understanding of legitimacy: that every state ceases to exist once action is no longer oriented to the idea that the order should be valid and that no form of state rule can prevail through pure coercion. If you like, this is the dialectical moment of his action-related conception of the state, which provides the structure of his fragmentary and kaleidoscopic theory of the state with a secure foundation in a theory of action.

2 The concept of chance

If the state consists "exclusively and solely" in the "*chance*" that a specific action is performed, indeed, ceases to exist once this chance "disappears,"⁴⁰ then "chance" becomes the condition of possibility of the state. The concept of chance plays a central role in Weber's writing. It is used in the definition

³⁷ Wilhelm Hennis, *Max Weber's Central Question*, 2nd edition, Threshold Press, Newbury 2000 pp. 53ff.

³⁸ Weber, *Religiöse Gemeinschaften*. MWG I/22-2 p. 384 (WuG 355).

³⁹ Niklas Luhmann, "Ends, Domination, and System," in his *The Differentiation of Society*, Columbia University Press, New York 1982 pp. 20–46, 41.

⁴⁰ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 3.2.

of power and rulership,⁴¹ the validation of an order⁴² and constitution,⁴³ legitimacy,⁴⁴ and class situation.⁴⁵ It is a constant presence in both the “Basic Sociological Concepts” and the individual sociologies. But its essential significance in the construction of concepts and what is, in truth, his inflationary lexicon stands in striking contrast to the fact that he never defines the term, and even uses it in quite varied senses. While it is one of Weber’s elementary concepts, and is worth investigating because of its ambiguity, it has not so far been subjected to a systematic analysis.⁴⁶ Ralf Dahrendorf can “only note with surprise little attention the concept has drawn in the Weber literature; moreover, how naïve and unreflective Weber himself was in the use of a concept that provides the key to his method as well as to the nature of his thinking.”⁴⁷ His comments following this passage are the most illuminating that have so far been made on this issue, but Dahrendorf is not quite right here, because attention certainly has been given to this concept, if only in passing. The list of authors involved reads like a *Who’s Who* of the legal and social sciences, including Hermann Kantorowicz,⁴⁸ Hans Kelsen,⁴⁹ Adolf Menzel,⁵⁰ Hans Freyer,⁵¹ Carl Schmitt,⁵² Talcott Parsons,⁵³ Othmar Spann⁵⁴ and Georg Lukács.⁵⁵

⁴¹ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 16.

⁴² Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 6.

⁴³ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 13.

⁴⁴ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 1.3.

⁴⁵ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 4 § 1.

⁴⁶ The only attempt so far is an insignificant seminar paper which is simply a series of quotations, and which was published in a student journal (Hartmut Schellhoss, “Der Begriff der ‘Chance’ bei Max Weber,” *Studien und Berichte aus dem Soziologischen Seminar der Universität Tübingen* I (1963) pp. 57–63. The sole interesting aspect of this paper is the history of its own “reception.” It is included, citing a journal that never existed, in Constans Seyfarth and Gerd Schmidt’s *Max Weber Bibliographie. Eine Dokumentation der Sekundärliteratur*, Stuttgart 1977. This false reference has since regularly reappeared in the footnotes and bibliographies of Weber philology. It is therefore safe to assume that it has never been read.

⁴⁷ Ralf Dahrendorf, “Max Weber’s Concept of ‘Chance,’” in his *Life Chances. Approaches to Social and Political Theory*, University of Chicago Press, Chicago 1979, pp. 62–74 (62).

⁴⁸ Hermann Kantorowicz, “Staatsauffassungen” (1925) in his *Rechtswissenschaft und Soziologie. Ausgewählte Schriften zur Wissenschaftslehre*, ed. Thomas Würtenberger, C. F. Müller, Karlsruhe 1962 p. 75.

⁴⁹ Kelsen, *Der soziologische und der juristische Staatsbegriff*, op. cit. p. 159.

⁵⁰ Adolf Menzel, *Beiträge zur Geschichte der Staatslehre*, Hölder, Vienna/Leipzig 1929 p. 574.

⁵¹ Hans Freyer, *Soziologie als Wirklichkeitswissenschaft*, Teubner, Leipzig/Berlin 1930 p. 177.

⁵² Carl Schmitt, *Legality and Legitimacy* (1932), ed. Jeffrey Seitzer, Duke University Press, Durham NC 2004 p. 136.

⁵³ Talcott Parsons, *The Structure of Social Action* (1937), Free Press, New York 1967 pp. 629ff.

⁵⁴ Othmar Spann, *Gesellschaftslehre*, 4th edition, Akademische Druck- und Verlagsanstalt, Graz 1969 pp. 47f.

⁵⁵ Georg Lukács, *The Destruction of Reason*, Humanities Press, Atlantic Highlands NJ 1981 p. 613.

There are a few scattered comments in the more recent literature,⁵⁶ but so far no detailed examination of it has been undertaken.

When Weber defines the state as the chance of specific action he does not say what he means by "chance," but he does say quite clearly that he uses it so that he might avoid an essentialist conception of the state. From this context it is plain that the concept has a methodological status, and that it is linked to the category of action. Secondly, it has an epistemological function, since "state" is only ever the chance of a state. Thirdly, it has an empirical and quantitative dimension, since a chance can be "very great or vanishingly small."⁵⁷ From these three points we can begin to open up the significance of this concept for Weber's theory of the state. Since the constitution of the state as a structure of action is no chance event, then "chance" cannot here mean something accidental or coincidental, rather something that has to do with the conception of probability. To see if this is true, and so that we might define the concept more precisely, we need (and bearing in mind the three aspects noted above) to examine how these various facets fit into Weber's writings – following which we can then consider the consequences of what we have found for the relationship of "state" and "chance."

The concept of chance is part of the methodological instrumentarium of Max Weber's hermeneutic science, rendering quite transparent the fundamental premises of his approach to scientific inquiry. This is true both in respect of causality and the formation of hypotheses, and also for the relationship of explanation (*Erklärung*) and understanding (*Verstehen*). For Weber, interpretations of social actions made by sociology are consequently only "usable hypotheses" if the "chance" exists that "concatenations of motivations in terms of (subjective) meaning are present."⁵⁸ And a correct causal explanation then exists if there is "proof of the existence of a *chance* (howsoever demonstrable) that action *tends in actuality* to follow a meaningfully adequate course with a given frequency, or something like it."⁵⁹ The concept of chance is an important and consistent expression of Weber's view that the kind of causality employed in the natural sciences is inapplicable to a *verstehende* sociology, which can only deal in empirical degrees of

⁵⁶ Johannes Winckelmann, "Chance" in *Historisches Wörterbuch der Philosophie*, Bd. I, ed. Joachim Ritter, Basel/Stuttgart 1971 cols. 979f.; Gerhard Hufnagel, *Kritik als Beruf. Der kritische Gehalt im Werk Max Webers*, Propyläen, Frankfurt a.M. 1971 pp. 182f.; Johannes Weiß, *Max Webers Grundlegung der Soziologie*, UTB, Munich 1975 pp. 88f.; Kurt Lenk, *Staatsgewalt und Gesellschaftstheorie*, Fink, Munich 1980 p. 162.

⁵⁷ Weber *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 3.2.

⁵⁸ Weber, "On Some Categories of Interpretive Sociology," op. cit. p. 279, trans. revised (WL 437).

⁵⁹ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 1.7.

probability. Fundamental concepts are also defined in terms of this category. Communal action (*Gemeinschaftshandeln*) is thus oriented

to the *expectations* of others behaving in a certain way and, as a consequence of that, [according to] the (*subjectively*) estimated chances of one's action achieving its objective. In that connection, an extremely understandable and important basis for the explanation of action is the *objective* existence of those chances – that is to say: the greater or lesser probability (which can be formulated in a judgement of objective possibility) of this expectation being justified.⁶⁰

Here “chance” is used in the sense of “probability.” Consequently many authors have simply equated the concept with “probability”: Parsons,⁶¹ Dahrendorf,⁶² Weiß⁶³ and Kantorowicz,⁶⁴ for instance. Carl Schmitt on the other hand just does not attempt any such interpretation, recommending that such words are “better left unchanged,” so that the “mark of their intellectual origin remains visible.”⁶⁵ In so doing, he recognises the originality of the concept but skilfully avoids the problem of analysing an ambiguous and undefined concept.

Once one attempts to shed some light on all this the feeling shortly follows that this could turn out to be a bad idea. Although Weber's pedagogical nominalism can get very irritating, one does wish that there was here a clear-cut definition, of the form “chance will mean” There are echoes of such a wish in Dahrendorf, who considers the “salad of chances” that Weber has created to be “mixed” and “confusing,” complaining that despite Weber's love of the word he never sought to define it conceptually, nor even use the concept of chance in a uniform and consistent manner.⁶⁶

⁶⁰ Weber, “On Some Categories of Interpretive Sociology,” op. cit. pp. 281–2 (WL 441).

⁶¹ In *The Structure of Social Action* Parsons translated “chance” with “probability” (p. 629). This translation had a lasting impact upon the Anglo-Saxon understanding of Weber, reducing the broad semantic spectrum of the concept to mere “probability.” Perhaps Parsons chose not to use the English word “chance” to avoid the associations that it has with the accidental, coincidental, or with fate. These are indeed incommensurable with Weber's concept, but the English term *also* means “probability” or “possibility,” and so exactly what Weber meant.

⁶² Dahrendorf, “Max Weber's Concept of ‘Chance’,” op. cit. p. 67.

⁶³ For Weiß, chance is “identical with probability” (*Max Webers Grundlegung*, op. cit. p. 90).

⁶⁴ Hermann Kantorowicz presents this idea in the form of an equation: “chance” = “probability” (“*Staatsauffassungen*” (1925) op. cit. p. 75).

⁶⁵ Schmitt, *Legality and Legitimacy*, op. cit. p. 136.

⁶⁶ Dahrendorf, “Max Weber's Concept of ‘Chance’,” op. cit. p. 72.

Like most other commentators, Dahrendorf understood chance to mean “structurally anchored probabilities of the occurrence of certain events.”⁶⁷

For Weber the probability of sequences of action postulated in the concept of chance is not merely an observed and thus calculable probability, but it is a probability which is invariably anchored in given structural conditions. Thus, chance means probability on the grounds of casual relations, or structurally determined probability.⁶⁸

Since Dahrendorf proceeds to repeat and reformulate these ideas quite redundantly over several pages it is evident that, despite his eloquence, he too is stumped by the concept, although he expresses his puzzlement in a refreshingly Anglo-Saxon manner.

He resolves this lengthy discussion by supposing that the concept implies a liberal and market-oriented world-view:

Max Weber liked the concept of “chance,” because he knew that there is freedom, and this not only in statistical theory, but as an “uncertainty relation” in the real world ... But Weber also liked the concept of “chance” because he believed that human societies are above all about opening spaces, for “chances of acquisition,” “exchange chances,” “supply chances,” “chances of domination,” “preferential chances,” “future chances,” for life chances.⁶⁹

Weber might or might not have actually thought or known this, but it makes absolutely no difference to his use of the concept. Dahrendorf interprets the concept as a *value*, something that this concept is most definitely *not*. And in this way Hennis’s casual question – one that he leaves open and does not answer – whether Weber’s concept of chance is a value, or a “merely heuristic” category,⁷⁰ can be clearly answered: the concept is merely a methodological, epistemological and empirical category.

All the same, many authors think that they can see a world view lurking behind the concept. While Ralf Dahrendorf sings the praises of Weber as a market liberal, Georg Lukács intones a hymn of hate to Weber as a capitalist neo-Kantian, whose categories of chance turn out to be nothing other than “the abstractly formulated psychology of the calculating individual agent of capitalism.”⁷¹ For materialists beating the drum of objectivity, it is perfectly plain that Weber and his category of chance dissolves “objective

⁶⁷ *Ibid.*, p. 67.

⁶⁸ *Ibid.*, p. 65.

⁶⁹ *Ibid.*, p. 62.

⁷⁰ Hennis, *Max Weber's Central Question*, op. cit. p. 189.

⁷¹ Lukács, *The Destruction of Reason*, op. cit. p. 613.

social reality as a whole" into subjectivism,⁷² transforming "the objective forms ... of social life into a tangled web of 'expectations', and its regular principles into more or less probable 'chances' of the fulfilment of such expectations."⁷³

That Weber's method was not only a target for Marxists, but also for conservatives, is shown by the hair-raising polemics of Othmar Spann. He argued that Weber had "to fail," since he "on the one hand remained entangled in Marx's historical materialism," while being on the other "entrapped by the inductive procedures of the natural sciences" and "forced into an atomistic, individualistic position"; in this he failed to escape from "an amateur muddling of empiricism and the logic of Windelband and Rickert."⁷⁴ In this version Max Weber must have been a scientific boy-wonder: a materialist-individualist, empiricist-neo-Kantian natural scientific theoretician capable of uniting in himself the greatest possible contradictions. Hans Freyer's own comments demonstrate in addition that the imaginative application of labels has no limits: the concept of chance has, according to him, "a positivistic, phenomenalist aspect" which not only has "clear naturalistic influences," but in which additionally "methodological individualism switches into substantive individualism."⁷⁵ Characteristic of all of these classifications is that the sheer imagination with which they are set forth is matched by a complete failure to analyse the concept. An inexhaustible arsenal of polemical slogans is plundered to demonstrate Weber's lack of merit as a scholarly and political antagonist, but these slogans have little bearing on his own conceptions.

The sheer variety of such labels is not without some justification, since Max Weber pursues three different, but not competing, intentions in his use of the concept of chance: a methodological action-theoretical frame, an epistemological intent and an empirical-quantitative intent. Johannes Weiß has quite rightly remarked that the "primary and quite explicit motive of Weber" consists "in avoiding any hypostasization of social constructs into higher-order entities" so that he might "develop sociology as an empirical science."⁷⁶ Kurt Lenk also sees in Weber "a critical turn against all essentialist constructions which impute to the state a supra-individual reality divorced from human action, treating it as a fetish;" by connecting the state to the category of chance it is "built upon a probabilistic value."⁷⁷ Above all, Gerhard Hufnagel is very concerned to emphasise the "critical content" of the conception of chance, not only enabling Max Weber to keep the "freedom of a

⁷² Ibid.

⁷³ Ibid., p. 613.

⁷⁴ Othmar Spann, *Gesellschaftslehre*, op. cit. pp. 47–8.

⁷⁵ Freyer, *Soziologie als Wirklichkeitswissenschaft*, op. cit. p. 177.

⁷⁶ Weiß, *Max Webers Grundlegung*, op. cit. p. 88.

⁷⁷ Lenk, *Staatsgewalt*, op. cit. p. 162.

critical distanciation" from the "power of the state" but also "the chance of a critical relativisation of an absolute claim to the power of disposition on the part of the state"⁷⁸ – "a critical turn away from the metaphysical concretisation of ruling powers," even "the space for critical self-restraint in respect of the power of ruling institutions and holders of power."⁷⁹

We can see here too that there are clearly no limits to the imagination in evaluating the conception of chance. There is of course no doubt that it involves a critical and, if you like, an anti-etatist impulse; but making Weber out to be a great critic of the power and scope of the state leaves out of account the fact that he also admitted his unconditional adherence to reason of state, and to the German national state with its powers over life and death.⁸⁰ In view of that it seems both curious and absurd to treat him as a proponent of a "critical distanciation" with regard to the power of the state, of a "critical relativisation" of state claims, and a "critical self-restraint" with respect to state institutions. Such untenable judgments follow from a failure to link Weber's use of the conception of chance to his view of the state, and from a failure to keep in mind that Weber is primarily interested in the construction of an action-oriented, anti-essentialist and empirically founded theory of the state.

This last aspect of his conception of chance has an empirical payoff. If the state consists of a chance, and this chance is quantifiable, then it is plain that there must be different degrees of the state, which can moreover be measured empirically, for instance by a scale from existence to non-existence. Such a gradualistic conception of the state, a necessary corollary of Weber's approach, not only corresponds to the graded character of the monopoly of force but also to Weber's understanding of the graded "validation" of orders. Hence an order depends on the chance that action "can be oriented by an actors' *conception* of the existence of a *legitimate order*" such that "there exists no absolute alternative between the validation and the non-validation of a particular order. There are instead fluid transitions from one to the other."⁸¹ What is decisive is the degree to which action is oriented to an order. Unlike Hamlet, "to be or not to be" is not Weber's question. He is interested in the degree of being or non-being.

Hans Kelsen long ago pointed out (in criticism), the implications of the concept of chance: "Since this chance can have different degrees, the sociological existence of the state must as a consequence be capable of gradual differentiation."⁸² But since for Kelsen the idea that there could be "degrees

⁷⁸ Hufnagel, *Kritik als Beruf*, op. cit. p. 182.

⁷⁹ *Ibid.*, p. 184.

⁸⁰ See Ch. 4 for a discussion of Max Weber's values in respect of reason of state and the national state.

⁸¹ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 §§ 5, 5.3.

⁸² Hans Kelsen, *Allgemeine Staatslehre*, Springer, Berlin 1925 p. 20.

of 'statehood'⁸³ was plainly absurd, he adamantly maintained "the logical invalidity of the entire construction" without, however, being able to provide any reason for this assessment. By contrast, Adolf Menzel rightly emphasises that the systematic analysis of the state must necessarily work with the concept of degree, and using historical examples, he shows that differing degrees of statehood do indeed exist.⁸⁴ But his very preliminary attempt to show how Weber's conception might be applied to the analysis of the state was never emulated by others. At the end of the 1920s, discussions on this quite revolutionary idea, whose originality and importance was quite clear to Menzel, came to an abrupt halt and have not been resumed since.

Nonetheless, historical study of the genesis of the modern state demands and requires a gradualist approach. The state did not appear out of a clear blue sky but developed itself, as with the monopoly of force, step-by-step, in a complex and sequential process. This gradualistic idea is also of use in the analysis of the developed states of today, since there can be differing degrees of validation of state order: the validation of legitimacy, with which it stands or falls. Weber notes quite rightly that there is no "absolute alternative between the validation and the non-validation of a particular order," but it is also clear that the existence of a *state* order is already prey to a gradual loss of validation. It is basically subject to a binary code: it can only be valid, or not. While there may be theoretical inconsistencies concealed within the conception, it does have great heuristic value when considering the marginal situations of state existence. Historical examples show how rapidly processes that decide on existence or non-existence can develop: as in Teheran in 1979 or East Berlin in 1989. Here there really were "fluid transitions" between validation and non-validation, and these decided within a very short period whether a "particular 'state' 'exists' or 'no longer exists.'"⁸⁵

3 Knowledge of the state

Weber's position that "state" is only the chance of state is lent additional emphasis in a casual remark in the chapter on basic Sociological Concepts. For him, "That ... a 'state' *exists*, or did exist, means exclusively and only that: *we* (the *observers*) think a *chance* exists, or did exist ... and no more."⁸⁶

⁸³ Ibid., p. 21.

⁸⁴ Menzel, *Beiträge zur Geschichte der Staatslehre*, op. cit. pp. 574–5.

⁸⁵ Weber, *Economy and Society*, Part One Ch. 1 § 3.2. The collapse of the German Democratic Republic in 1989 is an especially vivid example of Weber's line of argument. In this "state" people did actually cease to orient their action to the idea that the state should exist, and within the year its "real existence" likewise ended.

⁸⁶ Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 3.4.

Here it is the same with the state as with art: it is all in the eye of the beholder. This epistemological emphasis in his conception arises from a markedly neo-Kantian perspective, according to which the state is only the idea of "state," and even chance is only the idea of "chance." In view of what is certainly a casual, but nonetheless important, remark, it has to be asked quite what the relation in Weber's writings between state theory and epistemological theory might be. We also need to pursue this question given the fact that some connections between the two domains have already become apparent, for example in his conception of the state, of the ideal type and of his action-oriented treatment of the state.

More than any other contemporary writer on the state, Weber's theory of the state was placed in the context of a body of work that also contained an elaborated conception of scientific method. The general epistemological positions developed in his programmatic essays allow us to draw conclusions about the way in which he understood the state. In his view, for every object of investigation there had to be a clear cognitive question; and so we need to consider what this question was in respect of the state. In the same way that there is "no absolutely 'objective' scientific analysis" of social phenomena,⁸⁷ so for Weber an "objective" consideration of the state is not a possibility. Since all knowledge of reality is tied to "subjective" presuppositions, and so is always "knowledge from a *specific point of view*,"⁸⁸ knowledge of the state can likewise only be subjective, the perspective of the observer being of decisive importance. This conclusion shows that Weber neither could nor would seek any "objective" knowledge of the state. As he understood matters, the scholar is "concerned only with those components of reality" to which he attributes "cultural significance"⁸⁹; it is therefore clear that the fragments of his theory of the state represent those aspects of state reality to which he ascribes such cultural significance.

Weber only rarely draws a direct connection between the theory of the state and epistemology, but when he does so it is all the more emphatic. Where in the "Objectivity" essay he describes the "question of the logical structure of the *concept of the state*" as the "most complex and interesting case", he immediately notes that detailed discussion "must be here left to one side." But he does pause to sketch the scope of the question:

if we ask to what in empirical reality the thought "state" corresponds, we encounter an infinity of diffuse and discrete active and passive human actions, relations regulated factually and legally, sometimes unique,

⁸⁷ Weber, "The 'Objectivity' of Knowledge in Social Science and Social Policy," in Sam Whimster (ed.), *The Essential Weber*, Routledge, London 2004 p. 374.

⁸⁸ *Ibid.*, p. 381.

⁸⁹ *Ibid.*, p. 382.

sometimes recurrent in character, all held together by an idea, a belief in actually or normatively prevailing norms and relations of rule of man by man. This belief is partly consciously held as a developed idea, partly dimly perceived, partly passively accepted and reflected in the most varied forms in the heads of individuals who, if they really did clearly **think** this idea through, would have no need of the “general theory of the state” that they sought to elaborate.⁹⁰

These two impressive sentences of Weber contain the substratum of his theory of the state: he talks of state consciousness “in the heads of individuals,” and it is therefore an expression of his “individualistic” approach, an approach which constantly returns to the level of the individual. Consciousness of the state can only be a consciousness of an individual, and the “understanding” of the state can only be the understanding of an individual. With this he bids a clear farewell to the interpretative monopoly of a general theory of the state, placing emphasis instead on the “hermeneutics of everyday life,” to borrow a phrase from Bakhtin.⁹¹ This is not any kind of obscurantist argument, for Weber immediately goes on:

The scientific concept of the state, however formulated, is naturally only a synthesis that we employ for specific cognitive ends. But it is on the other hand also abstracted from the imprecise syntheses that could be found in the heads of historical humans. The concrete form assumed by the historical “state” in such contemporary syntheses can however only be rendered explicit through orientation to ideal typical concepts. And there is not the slightest doubt that the manner in which these syntheses were made by contemporaries, however logically incomplete, the “ideas” that *they* formed of the state – the German “organic” state metaphysic contrasted to the American “business” view for example – were of eminent practical significance.⁹²

With that Weber sketches the outlines of a theory of the state founded upon the history of ideas, which in his view would be condemned to futility if it did not take account of those ideas of the state that have often exerted great influence on state action. Of course, he did not undertake this research programme, since he took almost no account of the history of ideas and the positions it adopted; in addition to which, the history of theories of the state was almost entirely discounted in his fragmentary writings on state theory. Furthermore,

⁹⁰ Ibid., p. 394.

⁹¹ Mikhail M. Bakhtin, *The Dialogic Imagination*, ed. Caryl Emerson, Michael Holquist, University of Texas Press 1981.

⁹² Weber, “Objectivity,” op. cit. p. 394.

he qualifies the outcomes of individual understanding when he suggests that the syntheses in their heads are “unclear” and “logically incomplete.” But what is here decisive is that he *does* ascribe a central importance to ideas, and so also to consciousness of the state and to theories of the state. Where he refers to “ideas” of the state, referring to theories of the state and in particular to German “state metaphysics,” these theories of the state appear to be some kind of congealed form of state consciousness that seeks to upgrade itself into clear and “logically complete” syntheses, not always however with success.

Max Weber’s epistemological reflections on the state can be precisely located in his contemporary academic context. They can be found practically word-for-word in Georg Jellinek, who argued that the state was a “synthesis” in the consciousness of men and who, in addition, emphasised the subjectivity of knowledge of the state:

From the enormous number of human social actions one part is separated out and, on the basis of specific phenomena in need of synthesis, a unity is formed in the consciousness both of those who taken state actions and of those who study and judge such actions.

From this he concludes that scientific knowledge of the state can only be “subjective”; individual sense impressions are made by an individual consciousness and worked up into a synthesis of “the state” so that this cannot exist independently of human consciousness.⁹³ Max Weber quite plainly borrowed this neo-Kantian perspective from Georg Jellinek. And since for both men the state is a synthesis in the consciousness of the observer, the state can only be the idea of the state for both of them too.

The reaction of a philosophically unmusical early twentieth century state theory was as polemical as it was uncomprehending. Edgar Loening was aghast at Jellinek’s approach,⁹⁴ and Adolf Menzel categorically rejected Max Weber’s view “according to which the state is only a *synthesis* of action *in thought*,” since this rendered the state dependent upon the varied ideas of individual people, and “this was an inadequate conception of the nature of the state.”⁹⁵ Likewise for Hermann Heller, for whom any questioning of

⁹³ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 137.

⁹⁴ “And so the state is only an idea?” (Edgar Loening, “Der Staat,” in *Handwörterbuch der Staatswissenschaft* Bd. 7 Gustav Fischer, Jena 1911 p. 701). Jellinek counted as an authority, but on this point even his followers deserted him.

⁹⁵ Adolf Menzel, “Begriff und Wesen des Staates,” in *Handbuch der Politik*, Bd.1, W. Rothschild, Berlin/Leipzig 1912 p. 42. This criticism of Menzel is of interest in the reception of Weber’s work, since it constitutes the very first critique of Weber’s position on the state, even if it is only in the form of a comment. It does however demonstrate yet again that this reception was from the beginning marked by quite basic misunderstandings since here, of all things, a legalistic conception is ascribed to Weber which is, of course, the conception from which he had always sought to distance himself.

“reality” was incomprehensible, Max Weber “cannot meet the demands of a theory of the state” since he conceives the state to be only “a subjective synthesis in thought,” and not “an objectively real structure.”⁹⁶ Heller’s plea, to resume one’s faith in “objective” reality, is scorned by Max Weber’s “anarchistic subjectivism.”⁹⁷ Any such attempt to abolish (once more) epistemology from the theory of the state and reassert the primacy of an unproblematic reality would of course involve not only a retreat from Weber but also from Kant.

Max Weber refrained from saying anything about the relationship between being and consciousness. But it is possible to determine what his position on the controversy over this conceptual couple might be by considering his major protagonists. For Hegel, the state was an epistemological problem of the first order, emphasising the significance of “intuitions concerning the state”;⁹⁸ but Marx simply scoffed at this idea, writing that “Hegel who had such great respect for consciousness of the state uncritically took this for its real existence.”⁹⁹ Weber was never in the business of putting someone standing on their head back on their feet, but he is certainly closer to Hegel than to Marx in this matter. His view of the relationship of the existence of the state to consciousness of the state can be unravelled with the help of a well-known formulation from the sociology of religion:

It is interests (material and ideal), and not ideas, which have directly governed the action of human beings. But the “worldviews” that have been created by “ideas” have very often acted as switchpoints, setting the course along which the dynamic of interests would impel action.¹⁰⁰

If this classical statement is related to the question of ideas of the state, one must conclude that Weber thought that the relationship between ideas of the state and the state as an existent entity was one of interdependence.

At the same time, reading these sentences with the state in mind can re-emphasise the significance of conceptions of the state, and one does not have to be a neo-Kantian to share Weber’s perspective. As Theodor Litt says, the state is “largely dependent on the light in which its assembled population see it,” since the “ideas” they form of the state “are very influential

⁹⁶ Hermann Heller, *Staatslehre*, ed. Gerhart Niemeyer, Sijthoff, Leiden 1934 p. 62.

⁹⁷ *Ibid.*

⁹⁸ Hegel, *Elements of the Philosophy of Right*, 8th ed. Cambridge University Press, Cambridge 2003 p. 307 (§ 272, addition).

⁹⁹ Marx, *Critique of Hegel’s Philosophy of State*, Cambridge University Press, Cambridge 1970 p. 000 [Werke Bd. I 263].

¹⁰⁰ Weber, “Introduction to the Economic Ethics of World Religions,” in Whimster, *The Essential Weber*, op. cit. p. 69. [trans. revised]

in shaping their action in respect of this state."¹⁰¹ Michael Stolleis also conceives the state as a "real acting institution" that depends, however, on our idea of it; it even exists only "by virtue of this idea."¹⁰² We also encounter this perspective at a system-theoretical level of abstraction in Niklas Luhmann, who defined the state as "the formula for the self-description of the political system"¹⁰³; this is owed primarily to Luhmann's theory of self-referencing systems, but it can also be read as a radicalisation of Max Weber. Luhmann does in fact refer to Weber, although only to differentiate his own position, when he emphasises that "the reality of the state does not exist, as it did for Max Weber, in the consciousness of the individual who guides the meaning of his action in terms of the state. Instead a political system describes itself as a state."¹⁰⁴ Such a position is of course only plausible within a system-theoretical framework and departs from just that dimension to which Weber always returns: that of the action of individuals.

Given that Weber did have an elaborated methodological position, it is initially quite surprising how sparse his epistemological reflection on the state remains; but it is, on the other hand, refreshing that he does not weigh down his treatment of the state with methodological deliberation. This restraint comes from what might be called his healthy dislike for the "overestimation of the significance of methodological studies": as he clearly states, "purely epistemological or methodological considerations have as yet never played a crucial role in these respects" [in the solution of *material* problems].¹⁰⁵ He expressed himself even more plainly in the "lecture on categories" during his last semester: "Method is the most sterile thing imaginable. Nothing has ever been created with method *alone*."¹⁰⁶ It would have been good if twentieth century social scientists had taken this to heart, rather than ploughing on through a jungle of epistemology and methodology. Many of the great controversies in the social sciences only too often sprang from purely epistemological issues, as the various phases of the debate on positivism demonstrated.

¹⁰¹ Theodor Litt, *Die Freiheit des Menschen und der Staat*, Gebrüder Weiss Verlag, Berlin 1953 pp. 5–6.

¹⁰² Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland*, Bd. 4, C.H. Beck, München 2012 p. 22.

¹⁰³ Niklas Luhmann, "State and Politics: Towards a Semantics of a Self-Description of Political Systems," in his *Political Theory in the Welfare State*, trans. John Bednarz, de Gruyter, Berlin, New York 1990 pp. 117–154, 123.

¹⁰⁴ *Ibid.*

¹⁰⁵ Weber, "A Critique of Eduard Meyer," in his *Collected Methodological Writings*, op. cit. p. 140, trans. revised (WL 217).

¹⁰⁶ Cited by Wilhelm Hennis from Weber's papers – see *Max Weber's Science of Man*, transl. Keith Tribe, Threshold Press, Newbury 1999 p. 64 fn. 58. In this essay Hennis identified and convincingly demonstrates "quite how disdainfully Weber always treated the discussion of methodological questions" (p. 105).

The over-estimation of methodology of which Weber complained should certainly be viewed as a reaction against the positivism of the nineteenth century, which spurned epistemological issues with either elegance or ignorance. The prevailing neo-Kantian credo, that the choice of method also determined the cognition of the object, is reflected in Jellinek's legendary "two-sided" theory, according to which there are two separate cognitive objects "state" and so also two distinct concepts of the state: the sociological and the legal. Weber also sharply distinguished sociological from legal knowledge, but did not go so far as to create two distinct concepts of the state. He stuck pragmatically and consistently to *one* concept of the state. In so doing he superseded Jellinek's two-sided theory, on which a whole generation of theorists slaved away.¹⁰⁷ He avoided elevating one particular perspective upon the state as the sole tenable one but practised a form of scientific pluralism, acknowledging the equal claims of differing perspectives, outlining their varied scope and limits and so, in this way, doing justice to the heterogeneity of the object in question.

¹⁰⁷ Today it would be pushing at an open door if one insisted that Jellinek's two-sided theory was untenable. It is clear that legal science cannot have a concept of the state that differs from that used in the social sciences. Ulrich Scheuner said all that needed to be said on the matter in the early 1960s – "Das Wesen des Staates und der Begriff des Politischen in der neueren Staatslehre," in Konrad Hesse et al. (eds), *Staatsverfassung und Kirchenordnung*, J. C. B. Mohr (Paul Siebeck), Tübingen 1962 pp. 225–260 (248). See further Oliver Lepsius, "Die Zwei-Seiten-Lehre des Staates," in Andreas Anter (ed.), *Die normative Kraft des Faktischen. Das Staatsverständnis Georg Jellineks*, Nomos, Baden-Baden 2004, pp. 63–88; Jens Kersten, *Georg Jellinek und die klassische Staatslehre*, J. C. B. Mohr (Paul Siebeck), Tübingen 2000 pp. 145ff.; Andreas Anter, "Georg Jellineks wissenschaftliche Politik," *Politische Vierteljahresschrift* vol. 39 (1998), pp. 503–526 (515ff.).

4

Theory of the State and Value Judgements

Of course, one can also talk here about “value”; wherever not! Gum is nothing compared to the pliability of this word ... “Value,” that is the word of words, our saviour in a thousand dilemmas, the darling of all sonorous speeches.
(Friedrich Gottl, *Die Herrschaft des Wortes*)

Each sees what is in his own heart.
(Goethe, *Faust Part I*)

Max Weber’s *Logos* essay, in which he once more programmatically laid out the basic elements of his doctrine regarding value judgements, ends with a virtuoso glorification of the state. He writes here of the “prestige” of the state and its “power over life, death and liberty,” the role of the state as the largest “economic entrepreneur,” as the most powerful “protection” the citizen can buy, of its exemplary achievements thanks to its modern rational organisation. He considers that the conclusion is almost inevitable “that [the state] must also – and particularly with respect to valuations in the domain of ‘politics’ – be the ultimate ‘value’, and that all social actions must in the last resort be measured in terms of the interests connected with its [continued] existence.”¹ He had already characterised the state in the essay on objectivity as a “convenient covering term for utterly entangled evaluative ideas”² and emphasised the way in which any conception of the state was bound up with values, including his own. Since he here directly relates his conception of values to his view of the

¹ Weber, “The Meaning of ‘Value Freedom’ in the Sociological and Economic Sciences,” in his *Collected Methodological Writings*, ed. Hans Henrik Bruun, Sam Whimster, Routledge, London 2012 p. 333 (WL 539).

² Weber, “The ‘Objectivity’ of Knowledge in Social Science and Social Policy” (1904), in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 p. 401.

state, we should systematically examine their connection in his writing, tracing their genesis and so revealing the value aspect of his theory of the state. But before we turn to this, we need to clarify some features of his doctrine of value.

Weber's doctrine of value is frequently vulgarised into as a simple "theory of value freedom" which seeks to abolish value judgements from the sciences.³ But Weber believed that every science, and so any theory of the state, was instead necessarily *bound up* with values. Any action involves "an *endorsement* of particular values,"⁴ all scientific work is founded upon "standards of value" which necessarily colour "scientific argument."⁵ This recognition that all science is bound up with values leads him to what might be called an ethico-scientific maxim: that it was important to reveal those standard of value against which reality was judged and "from which a value-judgement is derived."⁶ Quite at variance then with what many modern writers still believe, there is for Weber "no absolutely 'objective' scientific analysis of cultural life,"⁷ and so, by extension, no "objective" analysis of the state. Scientific knowledge is, as he emphasised, instead always "*tied* to subjective presuppositions."⁸ In his view, science has to take account of inter-subjectivity – something for which it has to *strive*⁹; therefore, "objectivity" has to be understood as a kind of regulating idea.

Even Max Weber complained that the words "value judgement" were linked to "endless misunderstanding" and entirely "sterile" controversy,¹⁰ and this dispute had simply repeated itself every time that the "dispute

³ Dirk Kaesler has listed some of these trivialising and untenable versions of Weber's "postulate" in his *Max Weber. An Introduction to His Life and Work* Polity Press, Cambridge 1988 p. 245.

⁴ Weber, "The 'Objectivity' of Knowledge," op. cit. p. 362.

⁵ Ibid.

⁶ Ibid. p. 366.

⁷ Ibid. p. 374.

⁸ Ibid. p. 382. Weber summed up his position poetically: "Each sees what is in his own heart" (ibid. p. 400) – without noting that this was a quote from Goethe's *Faust Part I* (l. 79). Wilhelm Hennis made this the epigraph for his book *Max Weber's Central Question*, something which irritated Friedrich Tenbruck enormously. He believed that in so doing Hennis "had scored a monumental own goal," committed a "grotesque falsification" and believed he could identify this as a "striking mistake," since Weber wished "to clearly warn the sciences" that they should "rely upon that which they bore in their hearts" (Tenbruck, "Abschied von der 'Wissenschaftslehre'?" in Johannes Weiß (ed.), *Max Weber heute*, Suhrkamp, Frankfurt a.M. 1989 p. 110). Tenbruck completely misunderstood the meaning which Weber had in mind when using the quotation.

⁹ Weber, "The 'Objectivity' of Knowledge," op. cit. p. 365.

¹⁰ Weber, "The Meaning of 'Value Freedom'," op. cit. p. 311.

over value judgement" was started up again.¹¹ Since the ethico-scientific dimension of his conception was usually ignored, and his actual arguments regarding value judgements were distorted, sometimes grotesquely, Weber's position was mostly represented in discussion of the issue by the complete reverse of what he had argued. The presence of the words "objectivity" and "value freedom" in his two central essays prompted an immediate reflex in those who believed they had detected "positivism" here at work. Max Weber was not entirely free from blame here. The "endless misunderstanding" of which he complained, and which has echoed down to the present day, derives in part from his unfortunate choice of titles.¹² Ultimately, this means the abandonment of a position commonly held by Weber specialists, that one can strictly demarcate Weber's "value-free scientific" positions from his "evaluative and political" ones.¹³ And if we did adhere to the untenable position¹⁴ that Weber's writings could be divided into two, the political evaluative and the scientifically value-free, then his doctrine of the state would fall into two parts as well. However, it can be shown that his treatment of the state presupposes an indissoluble link between the two.

To sketch in the intellectual background: Max Weber's epistemology is very closely related to that of his friend and colleague Heinrich Rickert, who

¹¹ See on this Gert Albert, "Der Werturteilsstreit," in Georg Kneer, Stephan Moebius (eds), *Soziologische Kontroversen*, Suhrkamp, Frankfurt a.M. 2010 pp. 14–45; Hans Henrik Bruun, *Science, Values and Politics in Max Weber's Methodology*, 2nd ed. Ashgate, Aldershot 2007 pp. 57ff.; Heino Heinrich Nau (ed.), *Der Werturteilsstreit. Die Äußerungen zur Werturteilsdiskussion im Ausschuß des Vereins für Sozialpolitik*, Metropolis, Marburg 1996; Hans Albert, "Theorie und Praxis. Max Weber und das Problem der Wertfreiheit und der Rationalität," in Hans Albert, Ernst Topitsch (eds), *Werturteilsstreit*, WBG, Darmstadt 1979 pp. 200ff.

¹² As Wilhelm Hennis acutely observed, "misunderstanding" and "the labelling of Weber as a 'positivist' ... begin even with some of the unhappy titles chosen for Weber's writings" (*Max Weber's Science of Man*, Threshold Press, Newbury 2000 p. 146). For Weber's methodology see Laurence McFalls (ed.), *Max Weber's "Objectivity" Reconsidered*, University of Toronto Press, Toronto 2007; Stephen Turner, "The Continued Relevance of Weber's Philosophy of Social Science," *Max Weber Studies* 7 (2007) pp. 37–62; Bruun, *Science, Values and Politics in Max Weber's Methodology*, op. cit.; Sven Eliaeson, *Max Weber's Methodologies. Interpretation and Critique*, Polity Press, Cambridge 2002; Fritz Ringer, *Max Weber's Methodology. The Unification of the Cultural and Social Sciences*, 2nd ed. Harvard University Press 2000; Friedrich H. Tenbruck, "Die Wissenschaftslehre Max Webers," in his *Das Werk Max Webers*, ed. Harald Homann, J. C. B. Mohr (Paul Siebeck), Tübingen 1999 pp. 219–241; Gerhard Wagner, Heinz Zipprian (eds), *Max Webers Wissenschaftslehre. Interpretation und Kritik*, Suhrkamp, Frankfurt/M. 1994.

¹³ See for instance Reinhard Bendix, Guenther Roth, *Scholarship and Partisanship. Essays on Max Weber*, University of California Press, Berkeley 1971 pp. 55f.

¹⁴ Wilhelm Hennis showed some time ago that such a distinction obscured more than it illuminated (*Max Weber's Central Question*, Threshold Press, Newbury 2000 p. 198).

emphasised in his discussion of the “objectivity of knowledge”¹⁵ that all knowledge depended upon the standard of value adopted by the scientist, and that it was up to the scientist to reveal the relation of his “problematic” to values.¹⁶ It was an open question for Rickert whether “absolutely value free perception was possible,”¹⁷ since scientific interest was always bound up with values.¹⁸ Hence “objectivity” was for him a “goal” that could never be completely achieved, but which should be pursued as an ideal.¹⁹ Weber not only drew on exactly this epistemological and ethical position but also related the idea of a “problematic,” one of his central concepts, to the problem of value. As he wrote to Else Jaffé, “Where there is dispute over *values* we can suppose there to be a quite heterogeneous problematic.”²⁰ Weber does refer quite generally to the Rickert connection but tends to downplay it when he notes the “especial” importance of Rickert at the beginning of the “Objectivity” essay.²¹ The manner in which Weber draws upon him becomes apparent in one very important respect here. In the same way that Rickert counted the “state” as one of the primary “value concepts” – a value to which the historically-oriented scholar should orient his problematic²² – Max Weber also placed the state in the domain of values that we shall in the following investigate.

1 The “perspective of reason of state”

Weber’s view that scientific knowledge was embedded in values can already be traced in his earlier writings. In his Freiburg Inaugural lecture, he

¹⁵ Heinrich Rickert, *Der Gegenstand der Erkenntnis. Einführung in die Transzendentalphilosophie* [1892], 4th and 5th edition, J. C. B. Mohr (Paul Siebeck), Tübingen 1921 p. 122. Weber adopted this formulation in the title of his essay on objectivity.

¹⁶ *Ibid.* p. 111.

¹⁷ *Ibid.* pp. 121ff.

¹⁸ Rickert, *Die Probleme der Geschichtsphilosophie. Eine Einführung* [1904], 3rd ed. Heidelberg 1924 p. 56.

¹⁹ *Ibid.* p. 59.

²⁰ Weber, Letter to Else Jaffé, 13 September 1907, in his *Briefe 1906–1908*, MWG II/5 p. 403.

²¹ Weber, “The ‘Objectivity’ of Knowledge,” *op. cit.* p. 359 fn. 1. For a view of the influence of Rickert on Weber see Peter-Ulrich Merz-Benz, *Max Weber und Heinrich Rickert. Die erkenntniskritischen Grundlagen der verstehenden Soziologie*, 2nd ed. Springer, Wiesbaden 2014, espec. pp. 70ff. and 281ff.; Sven Eliaeson, *Max Weber’s Methodologies. Interpretation and Critique*, Polity Press, Cambridge 2002 pp. 22ff.; Hans Henrik Bruun, “Weber On Rickert: From Value Relation to Ideal Type,” *Max Weber Studies* 1 (2001) pp. 138–160; Fritz Ringer, *Max Weber’s Methodology. The Unification of the Cultural and Social Sciences*, 2nd ed. Harvard University Press 2000 pp. 36ff.; Guy Oakes, *Weber and Rickert. Concept Formation in the Cultural Sciences*, MIT Press, Cambridge (Mass.) 1988, espec. pp. 18ff. and 91ff.; Hennis, *Max Weber’s Central Question*, *op. cit.* pp. 163–164; Wolfgang Schluchter, *Die Entstehung des modernen Rationalismus*, Suhrkamp, Frankfurt a.M. 1998 pp. 73ff.

²² Rickert, *Die Probleme der Geschichtsphilosophie*, *op. cit.* p. 61, 71, 80.

pronounced it to be an “illusion” that “we are able to *refrain entirely* from making conscious value judgements.”²³ While he here treats “reason of state” as the ultimate criterion for economic policy,²⁴ in his later writings he seeks to distance himself from the firm linking of a science to a particular standard of value.²⁵ Does this modification also involve a modification of the treatment of *value*? And what is the role of “reason of state” in his thinking in respect of state and values?

Any investigation of the relation of the theory of state and of values has to begin with the young Weber, since these elements of his thought have their own developmental path. When dealing with Weber, we must bear in mind that any understanding of his work has to be a genetic understanding. We begin with his work on the East Elbian section of the survey commissioned and carried through in 1891–1892 by the Verein für Socialpolitik on the conditions of rural labour. These studies, together with the related writing and speeches, play a central role in the early work and, in addition, embody his first thoughts on the state and on values.²⁶ In his evaluation of the survey he confessed that he viewed the agrarian and socio-economic situation of East Elbia from “the standpoint of the state’s interest.”²⁷ When in March 1893 Weber summarised the results of his work before the General Meeting of the Verein für Socialpolitik this “standpoint” was well to the fore. He noted that he saw the question of rural labour “quite exclusively from that standpoint of reason of state,”²⁸ and that he was not concerned about the living standard of rural workers, but solely about the “interest of the state.”

The state appears here in two dimensions: on the one hand, as a *standard* for the assessment of the rural labour question and, on the other, as the *instrument* of its solution.²⁹ Hence Weber does not rely upon the power of

²³ Weber, “The Nation State and Economic Policy” (1895), in his *Political Writings*, ed. Peter Lassman, Ronald Speirs, 6th ed. Cambridge University Press, Cambridge 2008 pp. 1–28 (19).

²⁴ Weber, “The Nation State,” op. cit. p. 17.

²⁵ Weber, “The ‘Objectivity’ of Knowledge,” op. cit. p. 361.

²⁶ For many years the work of the young Weber was very much neglected, but it has more recently attracted a greater amount of attention; see Hennis, *Max Weber's Science of Man*, op. cit. pp. 139ff.; Cornelius Torp, *Max Weber und die ostelbischen Junker*, J. C. B. Mohr (Paul Siebeck), Tübingen 1998 pp. 37ff.; the contributions by Dieter Krüger and Eberhard Demm in Wolfgang Mommsen, Jürgen Osterhammel (eds) *Max Weber and his Contemporaries*, 2nd ed. Routledge, London 2010; the contributions of Lawrence Scaff, Keith Tribe and Martin Riesebrodt to Keith Tribe (ed.) *Reading Weber*, Routledge, London 1989; groundbreaking: Mommsen, *Max Weber and German Politics, 1890–1920*, University of Chicago Press, Chicago 1990 pp. 21ff., 35ff.

²⁷ Weber, *Die Lage der Landarbeiter im ostelbischen Deutschland 1892*, MWG I/3 p. 927.

²⁸ Weber, “Die ländliche Agrarverfassung” (1893), in his *Landarbeiterfrage, Nationalstaat und Volkswirtschaftspolitik*, MWG I/4 pp. 165–198 (180).

²⁹ Among other things, Weber demanded in his presentation the closure of the eastern German frontier to migrant Polish workers, and a state policy for settling German peasant farmers in the region.

markets to correct failures in agrarian policy and economic development, nor to confront the powerful interests of large landowners: he relies on the power of the state to do this. And in making his demands, he was perfectly aligned with the line taken by the Verein für Socialpolitik. Despite all internal disputes, the Verein supported and promoted state intervention in economy and society in order to solve the social question.³⁰ At the same time Weber opposed contemporary liberal doctrine, seeking to overcome traditional liberal prejudices against state social policy.³¹ He did consider himself a liberal, and he spoke in the Verein debate of “those liberals who shared his convictions,”³² but distanced himself from them when he advocated the “intervention of the state in the so-called social question” and saw it as an “undeniable fact” that the “liberalism of the 1870s had criminally neglected the duties of the state.”³³

The state plays a crucial role in the social and political self-understanding of the young Weber. Both his socio-political engagement and his (ambivalent) relation to liberalism were critically marked by his conception of the state. He thought that the “social question” required answers that had to come from the *state*, that demands were made of the state that it neither could nor should evade. The standpoint that he adopted in his March 1893 presentation illuminates not only the self-understanding of the novice social researcher whose perspective is that of the state’s interest and reason of state but also the standard of value underlying his social scientific engagement. He does not yet here use the concept of value, but since in his later writings this is used as a synonym for “viewpoint,”³⁴ he is in fact already practising the ethico-scientific maxim of his doctrine of value: revealing the standard against which the world is to be measured and identifying the evaluative standpoint underpinning scholarly work. And so value

³⁰ See Dieter Lindenlaub, *Richtungskämpfe im Verein für Sozialpolitik. Wissenschaft und Sozialpolitik im Kaiserreich vornehmlich vom Beginn des “Neuen Kurses” bis zum Ausbruch des Ersten Weltkrieges (1890–1914)*, Steiner, Wiesbaden 1967. See also Irmela Gorges, *Sozialforschung in Deutschland 1872–1914. Gesellschaftliche Einflüsse auf Themen- und Methodenwahl des Vereins für Socialpolitik*, Hain, Königstein im Taunus 1980; Marie-Louise von Plessen, *Die Wirksamkeit des Vereins für Socialpolitik von 1872–1890*, Duncker & Humblot Berlin 1975.

³¹ Rita Aldenhoff has convincingly demonstrated that this was a clear motive of his engagement, not only in the Verein, but in the Evangelisch-sozialen Kongreß as well. See Aldenhoff, “Max Weber and the Evangelical-Social Congress,” in: Mommsen, Osterhammel (eds), *Max Weber and his Contemporaries*, op. cit. pp. 193–202.

³² *Schriften des Vereins für Socialpolitik* Bd. LVIII, Duncker & Humblot, Leipzig 1893 p. 128.

³³ Weber, Letter to Hermann Baumgarten, 30 April 1888, in his *Jugendbriefe*, ed. Marianne Weber, J. C. B. Mohr (Paul Siebeck), Tübingen 1936 p. 299.

³⁴ “The essence of value is based on its being a viewpoint.” Martin Heidegger, *Off the beaten track*, ed. Julian Young, Kenneth Haynes, Cambridge University Press, Cambridge 2002 p. 170.

orientation and the relation to the state here for the first time enter into a direct relation.

The standpoint of reason of state brings Weber close to Machiavelli, "with whom the history of the idea of reason of state in the modern West begins."³⁵ His contemporaries dubbed him the "German Machiavelli"³⁶; a "Machiavellian view of the State" has been attributed to him³⁷ – he embodies a "Machiavellism of the steel age,"³⁸ and he has even been accused of "vulgar Machiavellism."³⁹ Perhaps it is of little significance that he read *The Prince* at the tender age of 12, and precociously, foggily, wrote about his reading.⁴⁰ More important is the question of whether the conception of the state that we find in *Il Principe* influenced his own doctrine of the state. There are clear parallels, since he shares not only Machiavelli's militant state ideal but also his positive evaluation of the state.⁴¹ The Florentine writer makes "the maintenance of the state the supreme value," something which is for him so incontrovertible that he neither discusses it nor gives a reason for holding to it.⁴² The difference between Weber and Machiavelli is that the former considers the "standpoint of reason of state" to be a value, while for the latter it is simply a stance that he unquestioningly adopts.

From Weber's perspective both reason of state and state interests are synonymous, since he later construes "reason of state" as "the vital interests of the prevailing order."⁴³ But reason of state and state interests are both formal and variable entities which need substantial definition. Of what does the interest of the state that he invokes consist? He does not just stop at a pithy expression; he goes on to say that the interest of the state involves "the

³⁵ Friedrich Meinecke, *Machiavellism. The Doctrine of Raison d'État and Its Place in Modern History*, Yale University Press, New Haven 1957 p. 29.

³⁶ Albert Dietrich, "Geisteswissenschaftliche Erscheinungen in der politischen Literatur," *Die Dioskuren* I (1922) p. 397. He also described him as a "fashionable hero" of "effeminate circles" (p. 398).

³⁷ Bryan S. Turner, "Nietzsche, Weber and the Devaluation of Politics," *Sociological Review* Vol. 30 (1982) p. 374.

³⁸ Jacob P. Mayer, *Max Weber and German Politics. A Study in Political Sociology*, 2nd ed. Faber and Faber, London 1956 p. 109.

³⁹ Gerhard Hufnagel, *Kritik als Beruf. Der kritische Gehalt im Werk Max Webers*, Propyläen, Frankfurt a.M. 1971 p. 177.

⁴⁰ Weber, Letter to his mother, 21 August 1876, *Jugendbriefe*, op. cit. p. 3: "I am reading Machiavelli's *Principe* at the moment, Dr. Brendicke having lent it to me. He wants to lend me the *Antimachiavell* afterwards."

⁴¹ Of course, strictly speaking we cannot talk of the "state" in Machiavelli's time; hence Machiavelli cannot be said to have a consistent concept of the state. See Herfried Münkler, *Machiavelli. Die Begründung des politischen Denkens der Neuzeit aus der Krise der Republik Florenz*, S. Fischer, Frankfurt a.M. 2004 p. 282.

⁴² Münkler, *Machiavelli*, op. cit. p. 284.

⁴³ Weber, "The Profession and Vocation of Politics" (1919), in his *Political Writings*, op. cit. pp. 309–369 (330).

question of the underlying solidity of social organisation" upon which the state can support itself in seeking to resolve its social and political tasks.⁴⁴ Does the interest of the state also apply to institutions? Is there, behind the perspective of reason of state, the actual perspective of institutions? He does in fact treat the political and social order of East Elbia as an institutional order, but on closer inspection it turns out that even this is subordinated to the imperatives of reason of state, since this order "should serve the state" – and for Weber that means the "military and political eminence of the state."⁴⁵ His diagnosis of the decline of the old East Elbian landowners demonstrates that behind the institutional perspective there lies the ultimate standpoint of reason of state. The old order is no longer capable or resolving "the most important political tasks of the state" and so become "of no value to the state."⁴⁶ That is the most critical point. Since he evaluates institutions in terms of the standard of reason of state, they become quite literally valueless if they no longer serve the state's interests.

Weber's presentation to the March 1893 General Meeting of the Verein für Socialpolitik is the first document embodying his instrumental, etatist and – as he would himself admit – "technical" conception of institutions, a conception that can be detected right through to the later writings. Hence the conception of "institutions" as such plays no significant role in his writing. He is no theorist of institutions.⁴⁷ But he may be reconstructed into one.⁴⁸ All the same, his socio-political interests and engagement clearly relates to what,

⁴⁴ *Schriften des Vereins für Socialpolitik* Bd. LVIII, Leipzig 1893 p. 74.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.* p. 75.

⁴⁷ That is unintentionally demonstrated in the various attempts of Ernst Vollrath to make Weber into a theorist of institutions ("Institutionenwandel als Rationalisierungsprozeß bei Max Weber," in Hans-Hermann Hartwich (ed.) *Macht und Ohnmacht politischer Institutionen*, Westdeutscher Verlag, Opladen 1989, pp. 88ff.); and also Heinrich Bußhoff, "Institutionenwandel als Rationalisierungsprozeß bei Max Weber," in Hartwich, *ibid.* pp. 103ff. In fact, there is very little about institutions here. Neither Vollrath nor Bußhoff make any attempt to read Weber from an institutional perspective; all they do is push around some well-known quotes regarding rationalisation and bureaucratisation.

⁴⁸ Cf. Weber belongs to the "classical sources of the new institutionalist paradigm," because he "offers a rich storehouse of theoretical contributions that can be fruitfully used in the new institutionalist research program" (Victor Nee, "Sources of the New Institutionalism," in: Mary C. Brinton, Victor Nee (eds), *The New Institutionalism in Sociology*, Stanford University Press, Stanford 2002 pp. 1–16, 5f.). – See also Gary G. Hamilton, Robert Feenstra, "The Organization of Economies," *ibid.* pp. 153–180 (164ff.); James G. March, Johan P. Olsen, *Rediscovering Institutions*, Free Press, New York 1989 p. 160; Paul J. DiMaggio, Walter W. Powell, "The Iron Cage Revisited. Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review* 48 (1983) pp. 147–160.

today, would be treated as the institutional dimension of social policy. His interest in working class parties and associations derives to a great extent from the fact that, as a social scientist with an interest in social policy, he is aware of the importance of institutions – their decisive influence in shaping human behaviour as well as the influence on the structure and function of the state as a macro-institution. As a self-conscious “member of the bourgeois classes,”⁴⁹ he advocated the recognition of, and respect for, social democracy and trade unions, since he understood them to be institutions that represented the justifiable interests of the working class. The representation of interests can only be effected through institutions, and institutions must be strong if they are to do this successfully. But ultimately it is always the top-down perspective that is decisive for Weber: the perspective of reason of state, oriented to the issue of the extent to which institutions serve the state interest.

The debate that followed Weber's presentation to the 1893 General Meeting shows what those who had listened to him thought of the value standpoint that he adopted. Karl Kaerger, who drew conclusions from the survey quite different to those of Weber, defended himself against an accusation from Max Quarck that the survey “was worth little given the variety of conclusions drawn from it.” Kaerger contended that it was “quite understandable that the same material could prompt different impressions in different people,” and that it was “naturally a matter of standpoint” if he and Weber arrived at “quite different results.”⁵⁰

Max Weber's later doctrine of value judgement does of course draw strongly upon neo-Kantian influences, but it also developed from discussions in the Verein für Socialpolitik, an experience which marked his understanding of science and knowledge. At the same time the speakers who commented on his presentation are his first interpreters, and they were especially interested in the “standpoint of reason of state.” For instance, Bruno Schoenlank commented that it might be asked what kind of philosophy was represented by someone who advanced this standpoint.⁵¹ For the Social Democrat Schoenlank, reason of state meant “improving the condition of the working classes,”⁵² whereas in *this* case Weber adopted a position that was “above” the issue of class and which identified with the state as a higher-level instance. If he emphasises that the “interest of the state” could deviate from “*the interest of all ranks of society*,”⁵³ his presentation is no longer about class but only

⁴⁹ Weber, “The Nation State,” op. cit. p. 23.

⁵⁰ *Schriften des Vereins für Socialpolitik* Bd. LVIII, Leipzig 1893 p. 95.

⁵¹ *Ibid.* p. 112.

⁵² *Ibid.* p. 113. In March 1893 Weber confessed that he was not interested in the condition of the workers, although he did later move closer to Schoenlank's demand. See Weber, “Deutschlands künftige Staatsform” (1919), in his *Zur Neuordnung Deutschlands*, MWG I/16 pp. 98–146 (115f.).

⁵³ *Schriften des Vereins für Socialpolitik* Bd. LVIII, Leipzig 1893 p. 74.

the state. And when he counts among the “important political tasks of the state” the “preservation of German culture” and of “German nationality,”⁵⁴ then the state appears to be a higher order that looks after the interests of the whole. The state is no longer, as for Frederick Engels, the “total personification of national capital” but rather a total personification of national patriotism. Max Weber’s definition of the “political tasks of the state” implies that behind the interests of the state there lie the interests of the *nation*.

One year later he further emphasised that he understood himself to be a representative neither of the *Junker* nor of the worker but instead an advocate for the state, since “the interest of the state towers above that of any rank in society, no matter how numerous.”⁵⁵ He here used for the first time a metaphor that would become one of his favourite expressions, always reserved for use in regard to state and nation. While here it is *state* interests that “tower” above everything, in 1918 it is the “interests and tasks of the nation” that, for him, “tower above all other feelings.”⁵⁶ There is no underlying shift of emphasis at work here but rather a more exact specification, since of course he understood the interests of the state to serve the nation. The priorities are therefore clearly divided: it is the *nation* that is the prime value standard. As he confessed in 1916, he had always dealt with political questions “from the national point of view.”⁵⁷ Since it was already clear, in his March 1893 presentation to the Verein für Socialpolitik, that the “interest of the state” served that of the nation, the standpoint of reason of state is underpinned by that of the nation. This ultimate value is consequently oriented both to his socio-political engagement and to his thinking on the state.

2 The nation as value

The importance of Weber’s early studies on agrarian policy to his later development cannot be overemphasised. They did not only take him from law to economics⁵⁸ but raised particular “problematics” already

⁵⁴ Ibid. p. 75.

⁵⁵ Weber, “Zum Preßstreit über den Evangelisch-sozialen Kongreß” (1894), in his *Landarbeiterfrage, Nationalstaat und Volkswirtschaftspolitik*, MWG I/4, op. cit. pp. 467–479 (476). The Evangelisch-soziale Kongreß conducted a survey of rural labour, similar to that of the Verein für Socialpolitik one year later that Weber directed. In this article Weber took stock of the bitter polemics that his suggestions for reform had prompted among the East Elbian *Junker*.

⁵⁶ Weber, “Deutschlands künftige Staatsform,” op. cit. p. 99.

⁵⁷ Weber, “Deutschland unter den europäischen Weltmächten” (1916), in his *Zur Politik im Weltkrieg*, MWG I/15, pp. 161–194 (161).

⁵⁸ Weber’s appointment to the Freiburg chair of economics and financial science was owed very much to the profile he had established with the Verein survey of East Elbian conditions.

apparent in the presentation to the General Meeting in 1893. He concluded here that "it was only because of this publication" that he had found a methodology that enabled him to "pose questions correctly."⁵⁹ It was these questions that he dealt with in greater detail in his Freiburg Inaugural Address, where he placed the results of his survey in the larger context of an analysis of the contemporary German state. The notorious inaugural lecture is quite certainly "the most significant documentation" of the young Weber's political thought,⁶⁰ but it is also his first confrontation with the question of value judgements, in this case in regard to the "ultimate values" of reason of state and nation. Here he adopted "the standpoint of the nation" and expressly confessed that he adhered to "nationalistic value judgements."⁶¹ This is not just a personal matter; it involves all German economics: "The economic policy of a German state, and, equally, the criterion of value used by a German economic theorist, can therefore only be a German policy or criterion." And since it is the business of economics to serve the interests of the nation, "the ultimate criterion for economic policy, as for all others, is in our view '*reason of state*.'"⁶²

The Freiburg Address has always been read as a nationalist pamphlet, and not without cause. But it is far more than that: it is also a critical reflection of his own thinking about the way in which his science was bound up with values, as was especially his conception of the state. Here for the first time "reason of state" and "nation," hitherto identified as his standpoints, are now elevated to the status of his "ultimate values." Mommsen writes that "it appears paradoxical" that in the Freiburg Address, "saturated as it was with politics and value judgements," Weber "also laid the foundations of the theory of objectivity and pure science that he was later to champion so heatedly."⁶³ But this merely demonstrates that Mommsen has misunderstood Weber's thinking on value judgements in the classical manner, as "theory of value freedom." Weber is far more concerned to reveal the way in which knowledge and science are *bound up with* values, and it is this to which he is alluding in his inaugural lecture; there is nothing "paradoxical" about it. Quite the opposite: his epistemological position, which is later elaborated, is inconceivable without the position that he adopts here. It is no accident that central passages in his major methodological essays turn upon the two ultimate standards of value presented in the Freiburg Address: "reason of state" and "nation."

⁵⁹ *Schriften des Vereins für Socialpolitik* Bd. LVIII, Leipzig 1893 p. 130.

⁶⁰ Mommsen, *Max Weber and German Politics*, op. cit. p. 36.

⁶¹ Weber, "The Nation State," op. cit. pp. 13f.

⁶² *Ibid.* pp. 15, 17.

⁶³ Mommsen, *Max Weber and German Politics*, op. cit. p. 37.

Hence his treatment of value judgements has, not least, to be also seen as an argument over his own values adopted as a young scholar. As Wilhelm Hennis writes,

The genuinely impressive feature of the Inaugural Address is the presentation of an evaluative problem which cannot be settled by science, but which could be *clarified* by science. In respect of Weber's treatment of value judgements between 1895 and the essay on objectivity of 1904, in which he comes back to exactly this example, there is no discernable break of any kind, I would go as far as to say that there is no substantive development.⁶⁴

This lack of any break cannot be overemphasised; but it is doubtful if we can say that there is no development, since this is in fact unquestionable. Wolfgang Schluchter has rightly emphasised that, if one compares the essay on value freedom and the inaugural lecture, the process of maturation to which Weber himself referred is quite evident.⁶⁵

Given the fact that elements of Weber's conception of value judgements are apparent in the Freiburg Inaugural Address, we can dismiss as entirely without foundation the claim by Rainer Prewo that there is no sign at all of his later position on value in the earlier writings, and that the Address is instead the high point of a "precritical" phase that transitions into a new "critical" phase in 1903.⁶⁶ This distinction of "precritical" from "critical" works properly belongs to a Flaubertian *Dictionary of Clichés* in Weber philology. There is no basis at all for the view that Weber went through a Copernican turn, or a Damascene moment; the foundations of his positions are laid in his early writings and constantly elaborated in the course of his life. No less absurd is Prewo's contrast of the young Weber who, in his survey of rural labour, still employed a "normative-substantive concept of the state," whereas his later writings define the state in a purely formal manner and reject the possibility of any substantive definition.⁶⁷ This untenable contrast comes from a misunderstanding of the ideal-typical nature of the concept of the state – which abstracts from Weber's own "substantive" (nationalist) ideas, which themselves do not change. To treat the formal definition of the state as superseding Weber's thinking in terms of the national state testifies to a lack of knowledge of both methodological and national

⁶⁴ Hennis, *Max Weber's Science of Man*, op. cit. p. 146.

⁶⁵ Wolfgang Schluchter, *Rationalism, Religion, and Domination: A Weberian Perspective*, transl. Neil Solomon, University of California Press, Berkeley, Oxford 1989, p. 477 fn. 22. Schluchter is right: The Weber of 1913/1917 is a different person to that of 1895.

⁶⁶ Rainer Prewo, *Max Webers Wissenschaftsprogramm. Versuch einer methodischen Neuerschließung*, Suhrkamp, Frankfurt a.M. 1979 p. 65.

⁶⁷ *Ibid.*

positions of Weber. When in 1893 he put the nation at the centre of his thinking, he established a position, which as Wolfgang Mommsen rightly notes, marked his political position for life.⁶⁸ Mommsen quite properly considers the nation as “central to his value system”; it is for him an ultimate value to which “all political goals were consequently subordinated.”⁶⁹

Despite there being not the slightest doubt of Weber's value position here, Wilhelm Hennis has denied with quite astonishing vehemence the idea that for Weber the nation is an “ultimate value.” He considers Mommsen's stance “untenable,” a “thorough stocktaking” being needed since Mommsen “overlooks ... quite what the ‘viewpoint of Reason of State’ might really involve.”⁷⁰ Hennis maintains that Weber's interest was not related to “nationalist or even nationalistic positions,” and that “the ‘ideal of the nation state’ as such does not occupy the centre of his thoughts”; “it is rather an explication of this ideal.”⁷¹ It seems that in pursuing his efforts at a thorough “revision,”⁷² Hennis has not realised that the “explication” of this “ideal” points to nothing other than the nation as value. When he describes the assumption that Weber's highest ideal is the nation as belonging among “recent preoccupations that are very hard to understand,”⁷³ the difficulty is rather his own. One cannot avoid the conclusion that he treats Weber's unmistakable statements regarding the nation as value as an “impossible fact,” since “that which *must* not, *can* not be.”⁷⁴ Hennis provides in support no argument or proof. It is no accident that he finds no answer to his question regarding Weber's “ultimate value,” simply leaving the issue aside.⁷⁵ In this way dogmatic assertion takes the place of critical investigation: “The nation never was for Weber a ‘supreme value.’ He was too little a scholastic to be able to work with such a category.”⁷⁶ But even this argument remains unconvincing, since Max Weber worked with this “category” often enough. But he was not on this account any more of a scholastic.

Nor is Bernard Willms' claim tenable, that the nation “was not a value for Weber” but instead an “objective necessity.”⁷⁷ Weber stated quite clearly and unmistakably that he considered the nation to be a *value* concept.⁷⁸ Willms

⁶⁸ Mommsen, *Max Weber and German Politics*, op. cit. p. 27.

⁶⁹ *Ibid.* p. 48.

⁷⁰ Hennis, *Max Weber's Central Question*, op. cit. p. 74.

⁷¹ *Ibid.* pp. 75–76.

⁷² *Ibid.* p. 74.

⁷³ *Ibid.* p. 38.

⁷⁴ Christian Morgenstern, *The Gallows Songs. Christian Morgenstern's “Galgenlieder.” A Selection*, transl. Max Knight, University of California Press, Berkeley 1963 p. 35.

⁷⁵ Hennis, *Max Weber's Central Question*, op. cit. p. 198.

⁷⁶ *Ibid.* p. 198 fn. 64.

⁷⁷ Bernard Willms, *Die deutsche Nation*, Hohenheim, Köln-Lövenich 1982 p. 122.

⁷⁸ Weber, *Gemeinschaften*, MWG I/22-1 p. 241 (WuG 528).

is more interested in attributing to Weber *his own* dogmatic position, to the effect that the nation is not a “value” but a theoretical necessity, in the sense of rigorous and methodical thinking. Willms does not in any case put any store in “values” since their “normative force is questionable.”⁷⁹ But rigorous and methodical thinking is no substitute for reading Weber. His claims testify to a lack of familiarity with Weber’s thinking about nation and value, but they do unintentionally demonstrate how remote Weber is from the value-free nationalism that Willms seeks to promote. For Weber, the nation cannot be an “objective necessity,” because it is a *value*, that is, the outcome of a subjective evaluation whose claim to validity is contestable.

The concept of the nation

But what does Weber think the nation is? Although it is central to his thinking he was not prepared to define it, commenting that the concept of the nation belonged to the value sphere.⁸⁰ He reaches this conclusion in the chapter on “The Nation” drafted between 1911 and 1913,⁸¹ a chapter whose incomplete form is perhaps no accident. The phenomenon seemed to him too complex, since on the one hand the members of a nation had diverse views of it, while on the other different nations would each have their own particular form of national feeling.⁸² Nonetheless, he did make clear that the nation is not the same thing as citizenship, nor a community based upon language or blood.⁸³

Weber is not alone in having difficulty with the development of a concept of nation. Even Georg Jellinek had to admit that the definition of the concept of nation was one of the “most difficult scholarly tasks,” since it was not possible to provide one particular fixed characteristic that would fit all nations.⁸⁴ All that he was sure of was that the nation was not a community based upon race, language or state, concluding from this that it was “impossible to give one certain and objective criterion for a nation,” not even a “combination of several elements.”⁸⁵ Max Weber’s position was thus the same as Jellinek’s and reflected the prevailing opinion of the time. Indeed, a quick survey of contemporary discussion shows a surprising degree of consensus regarding the impossibility of unambiguously defining the nation. For Heinrich von Treitschke, it was “clear that the idea of nationality is

⁷⁹ Willms, *Die deutsche Nation*, op. cit. p. 120. He is of the view that “for Germans nothing is needed as much as a new nationalism,” and he seeks to rouse them from their “forgetfulness of nationhood.”

⁸⁰ Weber, *Gemeinschaften*, MWG I/22-1 p. 241 (WuG 528).

⁸¹ *Ibid.* pp. 240ff. (WuG 527ff.).

⁸² *Ibid.* p. 245 (WuG 529).

⁸³ *Ibid.* p. 241 (WuG 528).

⁸⁴ Georg Jellinek, *Allgemeine Staatslehre*, 3rd ed., WBG, Darmstadt 1960 pp. 117f.

⁸⁵ *Ibid.* p. 119.

more active and itself forms part of the current history."⁸⁶ Roberto Michels thought the nation to be "a changing, complex compound. It is not only that making value judgements regarding the nation is difficult; even establishing basic facts is a problem."⁸⁷ Othmar Spann, approaching the issue from the perspective of conceptual history, merely noted that the situation was "rather bleak," concluding from this that sociology must finally establish a clear position regarding the "scientific foundation of national consciousness."⁸⁸ Max Weber's shoulder-shrugging is therefore quite in line with contemporary discussion. Unanimous complaint about problems of conceptualisation was closely related to the contemporary significance ascribed to the issue, reflected in a flood of publications. This also led to the topic being put on the agenda for the second meeting of the German Sociological Society, held in Berlin in 1912; here Max Weber's contributions to the debate engaged in great detail with some of the presentations.⁸⁹

Little has changed since then, neither the current significance nor the bleak lack of clarity in the concept. Recent work on nationalism might have filled library shelves, but in its search for definition it has advanced not one step beyond the efforts of Max Weber and his contemporaries. All that is clear is that nothing is clear. All that most writers have to say is that "the nation cannot be unambiguously defined, that is, it cannot be reduced to specific unambiguous categories"⁹⁰ – or that it is a complex and heterogeneous phenomenon emerging in different forms and with different contents;⁹¹ that it is therefore "extraordinarily difficult" to give a "universally-valid scholarly definition of the nation,"⁹² and that no definition "has become generally accepted."⁹³

⁸⁶ Heinrich von Treitschke, *Politics*, transl. Blanche Dugdale, Torben de Bille, Macmillan, New York 1916, vol. 1 p. 273.

⁸⁷ Robert Michels, "Zur historischen Analyse des Patriotismus," *Archiv für Sozialwissenschaft und Sozialpolitik* Jg. 36 (1913) p. 444. This essay was well-regarded at the time and was based on his lecture to the Second Meeting of the German Sociological Society.

⁸⁸ Othmar Spann, *Kurzgefasstes System der Gesellschaftslehre*, Leipzig 1914 pp. 195, 200. Of course, his own efforts at "clarification" were of little help; and he also concludes that there are different forms of national consciousness (p. 209), that "nation" is a value concept (p. 224), and one which stubbornly resists definition (p. 195).

⁸⁹ Weber, GASS pp. 484ff., 487f.

⁹⁰ Tilman Mayer, *Prinzip Nation: Dimensionen der nationalen Frage, dargestellt am Beispiel Deutschlands*, Leske+Budrich, Opladen 1986 p. 21.

⁹¹ Heinrich August Winkler, "Der Nationalismus und seine Funktionen," in his *Liberalismus und Antiliberalismus. Studien zur politischen Sozialgeschichte des 19. und 20. Jahrhunderts*, Vandenhoeck & Ruprecht, Göttingen 1979 pp. 52ff.

⁹² Peter Alter, *Nationalismus*, Suhrkamp, Frankfurt a.M. 1985 p. 23.

⁹³ Alter, *Nationalismus*, op. cit. p. 16. Difficulty with the definition of "nation" is also in evidence in Eric J. Hobsbawm, *Nations and Nationalism since 1780*, 2nd ed. Cambridge University Press, Cambridge 1992; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, revised ed., Verso, London, New York 2006 pp. 5ff.; Ernest Gellner, *Nations and Nationalism: New Perspectives on the Past*, 2nd ed. Blackwell, Oxford 2006 pp. 5ff., 53ff.

While Weber does not in his fragment on “The Nation” provide a satisfactory concept of the nation, his comments on what the nation is *not* are nonetheless very revealing. By stating that it is quite obvious that the nation is not founded upon “consanguinity,”⁹⁴ the affinity with Jellinek’s denial that the nation is a “racial community”⁹⁵ is clear. Both thinkers set their face against a *völkisch* conception of the nation and share the neo-Kantian perspective that the nation is always the idea of the nation. For Jellinek, the nation is something “subjective, that is, it signifies a particular consciousness;”⁹⁶ for Weber, it exists if it is present in the subjective consciousness of the people – here there is a parallel to his neo-Kantian conception of the state. This perspective became universally accepted in the literature of the 1920s, expressed most radically in Robert Musil’s comment that the nation is simply “a fantasy” (*Einbildung*).⁹⁷ During this period, the “subjectivist conception” that treats the nation as a “conscious community” dominated conceptualisation of the nation.⁹⁸ That remains true for modern literature, in which the nation is described as an “imagined political community”⁹⁹ whose existence depends upon the “consciousness” of a people of either being, or wishing to be, a nation.¹⁰⁰

It is not only Weber’s epistemological position that leads him into an anti-substantivist conception of the nation – which in the present context means *antivölkisch*; this is also related to the fact that he cannot abide by “racial mysticism.”¹⁰¹ Here he joins with older liberal ideas according to which membership of the state is linked not to racial criteria but to citizenship. Gustav Rümelin, for example, maintained that the nation, which was for him a subjective concept, related to a sense of belonging on the part of the people within a state;¹⁰² while Robert von Mohl conceived the nation as “the totality of those participating in the state.”¹⁰³ Mommsen is therefore right in regarding Max Weber’s position here as “a far-reaching approach to the western European idea of the nation state that includes every citizen who

⁹⁴ Weber, *Gemeinschaften*, MWG I/22-1 p. 242 (WL 528).

⁹⁵ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 118.

⁹⁶ *Ibid.* p. 119.

⁹⁷ Robert Musil, “‘Nation’ as Ideal and as Reality” (1921), in his *Precision and Soul. Essays and Addresses*, ed. Burton Pike, David S. Luft, University of Chicago Press, Chicago 1990, pp. 101–115 (112). – “*Einbildung*” means something that is imagined but which is false. Musil also states here that the nation is a “value.”

⁹⁸ Heinz O. Ziegler, *Die moderne Nation. Ein Beitrag zur politischen Soziologie*, J. C. B. Mohr (Paul Siebeck), Tübingen 1931 p. 47.

⁹⁹ Anderson, *Imagined Communities*, op. cit. p. 6.

¹⁰⁰ Alter, *Nationalismus*, op. cit. p. 23.

¹⁰¹ Weber, “Diskussionsrede auf dem Zweiten Deutschen Soziologentag in Berlin 1912,” GASS p. 487.

¹⁰² Gustav Rümelin, *Reden und Aufsätze*, J. C. B. Mohr (Paul Siebeck), Freiburg, Tübingen 1875 pp. 102ff.

¹⁰³ Robert von Mohl, *Encyklopädie der Staatswissenschaften*, Laupp, Tübingen 1859, p. 119.

subjectively acknowledges his relationship to the State without reference to his ancestry."¹⁰⁴

State and nation

Max Weber's uneasiness with the "obviously very ambiguous word," and hence more or less indefinable concept of the nation, was particularly clear in his contributions to debate during the second meeting of the German Sociological Society. He sought to define the nation as a "political community" whose "adequate expression was a particular state, and which would therefore tend to create its own particular state."¹⁰⁵ This cautious and conditional formulation is marked by his typical "yes – but" style of argument, seeking to take into account the many aspects of the phenomenon. And so while he says that the nation has a tendency to develop into a state, he goes on to note that a *state* can be the "decisive factor" in the formation of a nation¹⁰⁶ – a typical Weberian manoeuvre in which after every affirmation there follows an explicit detachment from any causal relationship. Nonetheless, it is clear, and is here relevant, that the concept of nation is tied to that of the state. Since the "meaning of the 'nation'" is "not absolutely unambiguous," it can be determined only in terms of its objective – the "independent state."¹⁰⁷ But this definition leads us through a terminological circle. Asking after the nature of the state as value, we are referred to the "nation," and asking after the concept of the nation leads us back to the "state."

This interdependence was quite typical of all contemporary writing about the state.¹⁰⁸ Hugo Preuß thought that the "national idea was the driving force in state formation," and also considered the idea of the state to be a material "factor in the creation of nationality."¹⁰⁹ Heinrich von Treitschke remarked both on the "tendency of every State" to become a nation and "the impulse of every vigorous nationality to construct a State of its own."¹¹⁰ According to Alfred Kirchhoff, the "normal course of development of a nation" is toward the

¹⁰⁴ Mommsen, *Max Weber and German Politics*, op. cit. p. 51.

¹⁰⁵ Weber, "Diskussionsrede auf dem Zweiten Deutschen Soziologentag," op. cit. p. 484.

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.* p. 487.

¹⁰⁸ Jellinek, *Allgemeine Staatslehre*, op. cit. pp. 117ff.; Alfred Kirchhoff, *Zur Verständigung über die Begriffe Nation und Nationalität*, Halle 1905 pp. 30ff.; Spann, *Kurzgefasstes System*, op. cit. pp. 195ff.; Paul Joachimsen, *Vom deutschen Volk zum deutschen Staat. Eine Geschichte des deutschen Nationalbewußtseins*, Teubner, Leipzig 1916; Treitschke, *Politics*, op. cit., vol. 1, pp. 272ff.

¹⁰⁹ Hugo Preuß, "Nationalitäts- und Staatsgedanke" (1887), in his *Staat, Recht und Freiheit*, J. C. B. Mohr (Paul Siebeck), Tübingen 1926 p. 531.

¹¹⁰ Treitschke, *Politics*, vol. 1, op. cit. pp. 272.

formation of a state, which in turn can create nations.¹¹¹ Even Leopold von Ranke ascribed to nations “a tendency to become states,” which he then in turn treated as “modifications” of “national existence.”¹¹² Max Weber thought exactly the same way. In particular, he did not think of the nation as a static entity but more like a teleological concept, which when translated into Weberian went roughly as follows: “*Nation* will denote: the chance that a politically conscious community becomes an independent state form.” But he did not include “nation” in the catalogue of basic sociological concepts even though it meant so much to him. It never gained a place in the Weberian Olympus of categories, since it remained for him a largely indefinable sociological entity.

In any case, the nation is for Weber a *statal* entity. State and nation are in effect Siamese twins in all his writings, so strictly speaking the concept “nation state” is a tautology. Indeed, in his pre-war draft treatment of “Ethnic Communities” he concluded that “today ‘national state’ has become conceptually identical with ‘state’ on the basis of linguistic unity.”¹¹³ The importance of the nation to the state was unquestionable for both Max Weber and practically all of his contemporaries: political theorists, sociologists and historians.¹¹⁴ The same is true for the conceptual and historical synthesis of both phenomena: the national state, which in the course of the nineteenth century not only became a leading political concept¹¹⁵ but also became the “sole legitimating ordering principle in the world of the state.”¹¹⁶ In Germany, as in the rest of Europe, it was from the early nineteenth century treated as the goal of every political community.

Consequently it was taken for granted, both by Max Weber and the majority of his contemporaries, that the state be thought in terms of the nation and vice versa.¹¹⁷ This orientation in political thought emerged, like the idea of the nation itself, only at the beginning of a century which would toward

¹¹¹ Kirchhoff, *Zur Verständigung*, op. cit. pp. 56, 31.

¹¹² Leopold von Ranke, *Politisches Gespräch* (1836), Westermann, Braunschweig 1949 p. 34.

¹¹³ Weber, *Gemeinschaften*, MWG I/22-1 p. 186 (WuG 242).

¹¹⁴ Preuß, “Nations- und Staatsgedanke,” op. cit.; Jelinek, *Allgemeine Staatslehre* op. cit. pp. 117ff.; Kirchhoff, *Zur Verständigung*, op. cit. pp. 30ff.; Spann, *Kurzgefaßtes System*, op. cit. pp. 195ff.; Joachimsen, *Vom deutschen Volk zum deutschen Staat*, op. cit.

¹¹⁵ As in Hugo Preuß, *Der deutsche Nationalstaat*, Societäts-Druckerei, Frankfurt a.M. 1924. On the nation-state see also Pierre Manent, *A World beyond Politics? A Defense of the Nation-State*, Princeton University Press, Princeton 2006; T.V. Paul, G. John Ikenberry, John A. Hall (eds), *The Nation-State in Question*, Princeton University Press, Princeton 2003; Hobsbawm, *Nations and Nationalism*, op. cit.; Michael Mann (ed.) *The Rise and Decline of the Nation State*, Oxford University Press, Oxford 1990; Alter, *Nationalismus*, op. cit. pp. 96ff.; Theodor Schieder, *Der Nationalstaat in Europa als historisches Phänomen*, Westdeutscher Verlag, Köln, Opladen 1964.

¹¹⁶ Alter, *Nationalismus*, op. cit. p. 97.

¹¹⁷ See on this the excellent essay by James J. Sheehan, “The Problem of the Nation in German History,” in Otto Büsch, James J. Sheehan (eds) *Die Rolle der Nation in der deutschen Geschichte und Gegenwart*, Kolloquium-Verlag, Berlin 1985 pp. 3ff., and espec. pp. 9ff.

its end see the national state at the peak of its sovereignty and power. Max Weber was directly confronted with this phase, in which the state held sway over violence and war, life and death. It was within this historical situation that he developed his positions, concepts and values.

The World War brought about a caesura in Weber's thinking on nation and state. Deviating from his earlier position, in 1916 he defined the nation "for the sake of simplicity" as a "linguistic and literary community,"¹¹⁸ and he registered for the first time that there was a value conflict between state and nation, which hitherto had co-existed harmoniously in his writings. He noted that the World War had led to a change of values: "The war has enormously enlarged the aura of the *state*. '*State, not nation*' is the watchword."¹¹⁹ But that is a solution that he cannot accept. Indeed, if we review his own hierarchy of values, where the nation occupies the leading position, then it becomes clear that he must reject this change of values. He accordingly sees himself forced to defend his "ultimate value." He had already, one year before, rejected the idea that "the cultural significance of 'nationality' had now been displaced, or could be displaced, by the 'idea of the state'."¹²⁰

The pre-war conceptual equivalence of state and nation was now subjected to critical revision: the state "did not necessarily have to be a national state," since it could "serve the cultural interests of many nationalities."¹²¹ Here he adopts entire Jellinek's argument that the state "is not a necessary element of the nation ... since not all nations enjoy the unity of a state and several nations ... can live in one state."¹²² Weber's change of course also leads him to a quite new understanding of the nation, which he now considers to be a "linguistic and literary community."¹²³ But this new definition does not get him out of the old conceptual difficulties but simply plunges him into new ones: language and culture are themselves hard to define, and they are in turn influenced by the nation as Wilhelm von Humboldt had sought to show, and in seeking to define the relationship of language and nation became entangled in insoluble problems.¹²⁴

¹¹⁸ Weber, "Deutschland unter den europäischen Weltmächten" (1916), in his *Zur Politik im Weltkrieg*, MWG I/15, pp. 161–194 (181).

¹¹⁹ *Ibid.*

¹²⁰ Weber, "Bismarcks Außenpolitik und die Gegenwart" (1915), MWG I/15, pp. 71–92 (128).

¹²¹ *Ibid.*

¹²² Jellinek, *Allgemeine Staatslehre*, op. cit. p. 119.

¹²³ Weber, "An der Schwelle des dritten Kriegsjahres" (1916), MWG I/15 pp. 656–689 (670).

¹²⁴ In his writings on the philosophy of language, Wilhelm von Humboldt conceives the relation of language and nation as a reciprocal one: on the one hand the nation, which he considered to be "part of mankind," characterised by "a particular way of thinking, feeling and behaving," was supposedly initially constituted through *language*, while language itself was an expression of "particular forms of thinking and feeling" in the *nation*. Humboldt, "Ueber die Verschiedenheiten des menschlichen Sprachbaues" (1827/29), in *Werke in fünf Bänden*, Bd. III, ed. Andreas Flitner, Klaus Giel, WBG, Darmstadt 1963 pp. 144–367 (234, 226).

State or nation, that is the question for Weber when he sets out to draw didactic “lessons” from the war: it is “entirely correct” that “the state is ultimate and supreme,” but only in the sense that the state is the “supreme organisation of power on earth” possessing “power of life and death.” Nonetheless, he vehemently rejects the idea that the nation as value is to be displaced by the state as value – something that he clearly could see happening in the contemporary press. It was a “mistake” to talk of “the state, and not of the nation.”¹²⁵ He wishes to shield the national perspective even where it appears to conflict with that of the state, and his writings from around 1916 are striking evidence that the nation is and remains his decisive “ultimate value.” The conflict between the values of nation and state lasts for only a short period; after the war it is no longer a problem for him, and he does not raise it again. His definition of the nation as a linguistic and cultural community remains an isolated instance; after the war he resumes his former connection of the nation to the concept of the state. After the war, state *or* nation is no longer an issue for him.

Weber occupies here a complex position in the development of the history of ideas, in the course of which the state as value has been displaced by that of the nation. The “political ideal” of the nation first emerged as a political factor in the wake of the French Revolution and, in Weber’s time, had dominated politics for hardly more than one hundred years, as Walther Rathenau remarked.¹²⁶ The “idea of the state” and “reason of state,” the dominant co-ordinates of political thought in the age of absolutism, were in the early nineteenth century displaced by the idea of the nation. Heinz O. Ziegler showed this in an early study that still repays reading: that the idea of the nation was not simply an idea that was “promoted” as a value to a higher status but was one that “competed with that of the state and finally won out.”¹²⁷

The fact that Weber’s national values are closely related to his valuation of democracy is itself an expression of the contemporary relation of the nation to modern democracy. In nineteenth century political thinking the idea of the nation is indissolubly intertwined with the idea of democracy. Ziegler, the first sociological analyst of the modern nation whose work has today been forgotten, identified “a unified political view” according to which “national self-determination and the free democratic organisation of the state were regarded as the natural and corresponding consequences of one and the same political principle.” The “nation” would lead to “democracy,” “as ‘democracy’ necessarily and naturally would be the outcome of the ‘national state’.”¹²⁸

¹²⁵ Weber, “An der Schwelle des dritten Kriegsjahres,” op. cit. p. 670.

¹²⁶ Walther Rathenau, *Zur Kritik der Zeit*, S. Fischer, Berlin 1912 p. 122.

¹²⁷ Ziegler, *Die moderne Nation*, op. cit. p. 139.

¹²⁸ *Ibid.* p. 3.

The identification of national and democratic values that we find reflected in the political thought of Max Weber is especially characteristic of nineteenth-century liberals, who could only imagine democracy within a nation-state and the nation-state only as a democracy. "For them, the nation-state was a synonym for the democratic constitutional state."¹²⁹ And for them the nation was "a central political value, the source of their own legitimacy as a movement, the ultimate goal of their political endeavours."¹³⁰ This interconnection of liberal, national and democratic ideas can also be found in early twentieth century liberals. When Friedrich Naumann notes that the "idea of nationality" has been "at its strongest always and everywhere a liberal, a democratic idea,"¹³¹ he simply expresses in ideal-typical form the self-understanding of liberalism in the time of Max Weber.

Is the identity of democratic and national values that we encounter in Weber and his liberal contemporaries today obsolete? Among the post-war Western European states, where identification with the idea of nation faded, where indeed there was a prevailing rejection of the significance of nationhood in favour of the idea of Europe, a conception of democracy anchored in the nation seemed part of a past world. But the euphoria of Europe has since dissipated. National sentiment has seen a renaissance in the European states, and the "nation" is now more than ever a component of politics and an object of academic interest. Once written off as defunct, the "nation" has acquired a high political profile in the established western democracies and in their more recent eastern counterparts, while there is a renewed connection of democratic to national values.

While it was possible to conclude during the 1970s that the national idea had waned,¹³² by the 1990s at the latest it was impossible to deny that it was once more gaining importance. The "irresistibility of the desire to form homogeneous nation-states"¹³³ was especially evident in those (Eastern European) states that had not yet completed the move to nation-states. It seems that the nation-state is a necessary stage in the development of state bodies.¹³⁴ Even the diminution of political, military and economic sovereignty presupposes, historically and politically, the previous *establishment* of national sovereignty. The nation-state still fulfils "important tasks in social and political life," as for example "the preservation of domestic and social

¹²⁹ Alter, *Nationalismus*, op. cit. p. 97.

¹³⁰ Sheehan, "The Problem of the Nation in German History," op. cit. p. 10.

¹³¹ Friedrich Naumann, "Das Auferstehen der liberalen Idee" (1906), in his *Werke*, ed. Theodor Schieder, Bd. IV, Westdeutscher Verlag, Köln, Opladen 1964 p. 278.

¹³² Ulrich Scheuner, "Nationalstaatsprinzip und Staatenordnung seit dem Beginn des 19. Jahrhunderts," in Theodor Schieder (ed.), *Staatsgründungen und Nationalitätsprinzip*, Oldenbourg, München, Wien 1974, pp. 9–37 (35).

¹³³ Hobsbawm, *Nations and Nationalism*, op. cit. p. 187.

¹³⁴ Alter, *Nationalismus*, op. cit. p. 127.

peace and the rule of law.”¹³⁵ As Peter Alter states, “those who defend the principle of the nation-state openly demonstrate that, so far, no substitute has been found for a world order organised in terms of the nation-state.”¹³⁶ Max Weber’s guiding co-ordinates, the nation and the nation-state, will certainly remain for the foreseeable future defining factors in political action and political thinking.

Despite the number of ways in which Weber defines the relationship of state and nation, in his “Basic Sociological Concepts” he does not define the state in terms of the nation. This has to be because the nation, itself a barely definable concept, cannot be mobilised as a component of his definitions, nor is it capable of being the basis for an ideal-typical concept of the state. A lasting definition of the state cannot orient itself to national components.¹³⁷ Not least because of this, Weber’s definition of the state retained its force for much of the twentieth century. His exclusion of the “nation” from the concept of the state is moreover characteristic of his conception of values. Since for him the nation is a value concept, and values are the outcome of subjective evaluations, the nature of the nation as a subjective value renders it unsuitable for an ideal-typical concept of the state.

Weber’s conception of the nation and of the state cannot be separated from his conception of values. These three elements need to be systematically and synoptically related to each other. Given the arguments presented above, Mommsen’s view that for Weber the nation as a value concept “remained outside of the realm of scientific criticism”¹³⁸ is in need of revision. Weber does in fact seek to open up “nation” as a value concept and make it accessible to scholarly criticism. His doctrine of value judgements must also be seen as an argument involving his own values, where the nation is incontestably the prime value. In his writings, state and nation flow into each other in different ways, and his political thinking is centred on the nation as upon nothing else. He is a declared patriot and anything but a cosmopolitan: “Weber’s thought was resistant, like that of any real political thinker, to any form of cosmopolitanism.”¹³⁹ That leads him to evaluate the state with which he was contemporary in strictly national terms. He judges state institutions and state action principally with respect to how useful they might be to the nation. Hegel wrote that the “political disposition, i.e. patriotism in general ... is merely a consequence of the institutions within the state”; and he understood patriotism to be “that disposition which, in the normal

¹³⁵ Ibid.

¹³⁶ Ibid, pp. 125f.

¹³⁷ Scheuner, “Nationalstaatsprinzip,” op. cit. p. 239.

¹³⁸ Mommsen, *Max Weber and German Politics*, op. cit. p. 62.

¹³⁹ Hennis, *Max Weber’s Central Question*, op. cit. p. 198. He disputes that the nation is Weber’s “highest value,” but not that, for Weber, the nation is *the* life order (ibid. p. 78).

conditions and circumstances of life, habitually knows that the community is the substantial basis and end."¹⁴⁰ And in this sense Weber is a patriot.

3 The *Machtstaat*

When Max Weber refers in his political writings to the contemporary German nation-state he usually talks in terms of the *Machtstaat*, the power-state.¹⁴¹ He had good reason. Not only was the Wilhelminian state a "late" nation-state, it was also a *Machtstaat* obsessed with armaments. Consequently in Weber's political writings the nation-state and the *Machtstaat* often appear as two sides of the same coin. The *Machtstaat* is, along with "state," "nation," "reason of state" and "nation-state," one of the central elements of his political thinking. In his remarks on "Nationality and Cultural Prestige" he notes that "when we use the concept 'nation' we find ourselves again and again referred to political 'power'," and he views the national idea as a "specific form of pathos" which is associated with the idea of "an organisation based upon political power."¹⁴² What he describes here, using categories drawn from his sociology of rulership, is also reflected in his political writings, most clearly of course in the Freiburg Inaugural, in which he embraces the principle of power with exactly that specific form of pathos: "... the ultimate and decisive interests which economic policy must serve are the interests of national power, whenever these interests are in question."¹⁴³

Weber's understanding of nation and state is inseparable from his understanding of power. He sees power as a universal element of political, social and economic life, and he considers the "inevitable eternal struggle of man with man" to be a "fundamental fact."¹⁴⁴ Likewise, relations between nations are seen in this light, expressed in the emphatic demand for a powerful and aggressive German *Weltpolitik* and which is most clearly articulated in the 1895 Inaugural Address, where he defines *Weltpolitik* as a future task for the German *Reich*.¹⁴⁵ Three years later he concluded that it was "only power" that was decisive for the political and economic standing of a nation.¹⁴⁶ The closeness of his "political" and "academic" positions is

¹⁴⁰ Hegel, *Elements of the Philosophy of Right*, ed. Allen W. Wood, 8th ed., Cambridge University Press, Cambridge 2003, pp. 288f.

¹⁴¹ For example, Weber, "Between Two Laws" (1916), in his *Political Writings*, op. cit. pp. 75–79; "Deutschland unter den europäischen Weltmächten" (1916), op. cit. pp. 163, 190ff.

¹⁴² Weber, *Gemeinschaften*, MWG I/22-1 p. 190 (WuG 244).

¹⁴³ Weber, "The Nation State," op. cit. p. 16.

¹⁴⁴ Weber, "Diskussionsbeitrag in der Debatte über das allgemeine Programm des Nationalsozialen Vereins" (1896), in MWG I/4, pp. 419–622 (619) (PS 29).

¹⁴⁵ Weber, "The Nation State," op. cit. p. 26.

¹⁴⁶ Weber, "Stellungnahme zu der von der Allgemeinen Zeitung im Dezember 1897 veranstalteten Flottenumfrage" (1898), in MWG I/4, pp. 671–673 (671) (PS 30).

especially clear in the way that the idea of the “prestige of power,” which he identifies as the motor of imperialism in historical analysis¹⁴⁷ is also of decisive importance for his own imperialist posture. His conception that imperial *Weltpolitik* serves as a means of social and political integration and that it can enhance the purchasing power and living standards of the working class is very close to what was later called “social imperialism”¹⁴⁸: the strategy of resolving domestic political tensions through expansionary foreign policy. There are therefore different elements in Weber’s attitude to nation and state, and in combination they exemplify the position taken by contemporary imperialists.

His conception of the nation and also his view of the *Machtstaat* is marked by the contemporary intellectual situation of liberalism, which underwent significant changes during the period following Unification. Originally liberalism was associated with the limitation of the state to a minimum, as expressed in the title of Humboldt’s well-known essay.¹⁴⁹ But this idea was turned on its head by later nineteenth century liberals. The earlier demand for the limitation of the state was reversed by a liberal bourgeoisie who had economic need of the state as the most powerful lever available for their own development, as was observed by Rudolf Hilferding, an acute analyst of this process.¹⁵⁰ Given the increasing competition between nation states, liberals considered that state action was necessary not only to secure domestic markets but to open up foreign markets through military action. This development “also revolutionised the entire world view of the bourgeoisie.” In place of the idea of humanity there emerged the ideal of the size and power of the state.¹⁵¹ Late nineteenth century liberals were *etatist* and imperialistic. No longer did they write individualism and freedom on their banner, but *Machtstaat*, *Realpolitik* and *Weltpolitik*.¹⁵² To this extent Max Weber is simply a typical representative of contemporary “liberal imperialism.” Earlier on in the nineteenth century, liberals had been oriented to the ideal of the

¹⁴⁷ Weber, *Gemeinschaften*, MWG I/22-1 p. 222ff. (WuG 520ff.).

¹⁴⁸ See Hans-Ulrich Wehler (ed.), *Imperialismus*, 2nd ed. Kiepenheuer & Witsch, Köln 1972 pp. 11ff.

¹⁴⁹ Wilhelm von Humboldt, “Ideen zu einem Versuch, die Gränzen der Wirksamkeit des Staates zu bestimmen” (1792), in his *Werke in fünf Bänden*, Bd. I, WBG, Darmstadt 1960 pp. 56–233.

¹⁵⁰ Rudolf Hilferding, *Finance Capital* (1910), Routledge and Kegan Paul, London 1981 p. 333.

¹⁵¹ *Ibid.* p. 335. Hilferding’s study has become a classic treatment of the development of peaceful free trade into imperialistic capitalism and anticipates the core of Max Weber’s rudimentary theory of imperialism (WuG 521ff.), which was written shortly after the publication of Hilferding’s book.

¹⁵² See Wolfgang J. Mommsen, “Wandlungen der liberalen Idee im Zeitalter des Imperialismus,” in Karl Holl, Günter List (eds), *Liberalismus und imperialistischer Staat*, Vandenhoeck & Ruprecht, Göttingen 1975 pp. 109–149 (115f.).

nation state; while they failed with their political ambitions in 1848, it was Bismarck's power politics that led to the creation in 1871 of the German nation-state which they sought.¹⁵³ Bismarck's success itself played a part in the transformation of liberal views on the state and power. "In this way," remarked Hugo Preuß, "there came about a great revaluation of political and national values."¹⁵⁴ Max Weber, as both a liberal and a bourgeois thinker, has to be seen in the context of these post-Unification developments.¹⁵⁵

Weber's thinking about the *Machtstaat* was formed by his analysis of both the Wilhelminian state and the prevailing conception of the state as such, the latter being captured by the historian Paul Joachimsen in 1916:

The aim of Prussian policy is the *Machtstaat*: the welfare of its subjects is taken into consideration only to the extent that they serve the concept of power. This undergoes progressive development as it becomes increasingly plain that there is a relationship between the welfare of subjects and the power of the state.¹⁵⁶

The majority of Wilhelminian political theorists served in this way the *Machtstaat* and concept of power, and the principal servant of the *Machtstaat* is certainly Heinrich von Treitschke. His famous definition – that the nature of the state is firstly power, secondly power, and again thirdly power¹⁵⁷ – conveys the manner in which contemporary German political theorists were fixated upon power. In his lectures on "Politics" in particular, Treitschke sketched a view of power as "the vital principle of the State," and so thought political theory to be a man's job:

"It does not matter," says the State, "what you think, so long as you obey."
It is for this reason that gentle characters find it so hard to understand its

¹⁵³ See Preuß, *Der deutsche Nationalstaat*, op. cit. p. 59; see also Mommsen, "Wandlungen," op. cit. pp. 115f.

¹⁵⁴ Preuß, *Der deutsche Nationalstaat*, op. cit. p. 64. See for further comment on this transformation of values in the nineteenth century Gangolf Hübinger, "Hochindustrialisierung und die Kulturwerte des deutschen Liberalismus," in Dieter Langewiesche (ed.), *Liberalismus im 19. Jahrhundert*, Vandenhoeck & Ruprecht, Göttingen 1988 pp. 193ff.

¹⁵⁵ Wilhelm Hennis's claim that Weber was *not* a liberal (*Max Weber's Central Question*, op. cit. p. 192) supposes a very limited conception of what liberalism is, leaving out of account the shift in liberal ideas during the early years of Unification. He is however quite right in stating that Weber's "scale of values was one quite different to that of the Enlightenment" (p. 179), but then so was the "scale of values" shared by contemporary liberals "one quite different to that of the Enlightenment."

¹⁵⁶ Joachimsen, *Vom deutschen Volk zum deutschen Staat*, op. cit. p. 95.

¹⁵⁷ Heinrich von Treitschke, "Bundestaat und Einheitsstaat" (1864), in his *Historische und Politische Aufsätze*, Bd. 2, 6th ed., Hirzel, Leipzig 1903 p. 152

nature. It may be said roughly that the normal woman first obtains an insight into justice and government through men's eyes.¹⁵⁸

Treitschke's influence upon Weber cannot be easily summarised, but it is certainly wrong to set up the equation Weber = power-state thinking = Treitschke, in the way that Sontheimer and Mommsen have done.¹⁵⁹ Weber did study with Treitschke for two semesters in Berlin and was quite fascinated by his personality, but even as a student he was critical of his teacher's misuse of value judgments, using his lectures for propaganda and agitation,¹⁶⁰ and failing to admit his own value standpoint.¹⁶¹ This sceptical attitude was related to his reservations about power politics, thinking it empty and without meaning if pursued purely "for its own sake, without any substantive purpose."¹⁶²

There is a counterpart to Weber's ambivalent view of Treitschke in his statements on Bismarck's power politics. On the one hand, he admired Bismarck as a political "genius"¹⁶³ who served the German nation state;¹⁶⁴ on the other, he criticised his authoritarian politics, among the consequences of which was a completely powerless parliament,¹⁶⁵ and he despised the Bismarck cult of his contemporaries who glorified brutality and violence.¹⁶⁶ His ambivalence matched exactly that of Friedrich Nietzsche regarding Bismarck's "Machiavellianism" and "*Realpolitik*."¹⁶⁷ During the 1860s Nietzsche still found much to admire in Bismarck's "courage and ruthless consistency"¹⁶⁸ and read his speeches "as if I was drinking strong wine."¹⁶⁹ But following Unification he became a bitter foe to the increase

¹⁵⁸ Treitschke, *Politics*, vol. 1, op. cit. pp. 23f. This attitude also corresponds to his virile conception of historical science: "The features of history are virile, unsuited to sentimental or feminine natures." (pp. 20f.)

¹⁵⁹ Kurt Sontheimer, "Zum Begriff der Macht als Grundkategorie der politischen Wissenschaft," in Dieter Oberndörfer (ed.), *Wissenschaftliche Politik*, Rombach, Freiburg 1966 pp. 197–209 (203); Mommsen, *Max Weber*, op. cit. p. 49.

¹⁶⁰ Weber, Letter to Hermann Baumgarten, 8 November 1884, in his *Jugendbriefe*, op. cit. p. 145. Weber's uncle, Hermann Baumgarten, was a devoted enemy of Treitschke, and his nephew's criticism would certainly have pleased him.

¹⁶¹ Weber, Letter to Hermann Baumgarten, 14 July 1885, in his *Jugendbriefe*, op. cit. pp. 174f.

¹⁶² Weber, "The Profession and Vocation of Politics," op. cit. p. 354.

¹⁶³ Weber, "Parliament and Government in Germany under a New Political Order" [1918] in his *Political Writings*, op. cit. pp. 130–271 (138).

¹⁶⁴ Weber, "Bismarcks Außenpolitik und die Gegenwart," op. cit. p. 91.

¹⁶⁵ Weber, "Parliament and Government," op. cit. p. 145.

¹⁶⁶ *Ibid.* p. 135.

¹⁶⁷ Friedrich Nietzsche, *The Gay Science* (1882), ed. Bernard Williams, 6th ed. Cambridge University Press, Cambridge 2007, p. 247.

¹⁶⁸ Nietzsche, Letter to Franziska and Elisabeth Nietzsche, late June 1866, *Werke in drei Bänden*, ed. Karl Schlechta, Bd. III, Hanser, Munich 1982 p. 964.

¹⁶⁹ Nietzsche, Letter to Carl von Gersdorff, 16 February 1868, *ibid.* p. 992.

of nationalism. Nietzsche now considers that the “constitutive power of the so-called nation-state” only ratchets up the “menace” and the glorification of the state as modern “idolatry.”¹⁷⁰ “Artificial nationalism” is not only an ideological instrument of the state, but also “dangerous.”¹⁷¹ He is a polemical but also very insightful opponent of nationalism and its lackeys, among whom he includes historians who he mocks as “political buffoons,” and whose Imperial German historiography he finds disgusting.¹⁷² Friedrich Nietzsche took an interest in political life for a relatively short period¹⁷³ and never developed his political ideas in his writing, but Max Weber was a constant and critical companion to the national *Machtstaat* of his time. Both Weber and Nietzsche share the anthropological perspective of an “eternal struggle of man against man” which leads to struggles between nations.

Weber’s perspective on the inevitability of power struggles between nations is quite typical of his time. As Mommsen has quite rightly stated, “Weber, with his extraordinary emphasis on the element of power in his concept of nation, was an exponent of Wilhelmine nationalism, a nationalism increasingly oriented to the element potency of the state’s political power.”¹⁷⁴ Mommsen argues that power becomes an increasingly important part of Weber’s understanding of the nation, until it becomes an all-dominating component of his concept.¹⁷⁵ But this view is untenable: the emphasis upon power is all too evident in the early writings, especially in the Freiburg Inaugural; later it was if anything watered down, as the attempt to define the nation in terms of language and culture shows. The young Weber was quite open about the way he judged political questions: it was “reason of state,” and the interest of the state, behind which there was the interests of the nation; he retained his allegiance to this “ultimate value” in later years. We have also seen that he confronted the German state in a positive spirit, but is this a *value* to which he oriented himself?

As with his thinking about the nation, it was during the war that his ideas about the *Machtstaat* were clarified and came to occupy a central role in his political writings. It was in 1916 that this reached its high point, as with his thinking about the “nation.” Seeking to characterise the *Machtstaat* he sought to construct a comparative historical contrast with its opposite, a state that was not oriented to power. The difference between the two, which he elevated into a kind of *leading distinction* for world history, was only that

¹⁷⁰ Nietzsche, *Untimely Meditations*, ed. Daniel Breazeale, 5th ed. Cambridge University Press, Cambridge 2003, p. 149.

¹⁷¹ Nietzsche, *Human, All Too Human* (1878), transl. R. J. Hollingdale, Penguin, London 1994, p. 228.

¹⁷² Nietzsche, “Ecce homo,” in his *Werke in drei Bänden*, Bd. II, op. cit. p. 1147.

¹⁷³ See Curt Paul Janz, *Friedrich Nietzsche Biographie*, Bd. I, Hanser, Munich 1978 pp. 214ff.

¹⁷⁴ Mommsen, *Max Weber and German Politics*, op. cit. p. 53.

¹⁷⁵ *Ibid.* p. 52.

“a people organised as a *Machtstaat* faced quite different tasks” than those of smaller peoples without a *Machtstaat*, but which nonetheless remained important “before the forum of history.”¹⁷⁶ He laid express emphasis upon the equal importance of both formations:

In the historical existence of peoples both great power nations and the apparently smaller nations both have a lasting mission. A great *Machtstaat* of 70 million people can certainly do many things that a Swiss canton or a state like Denmark cannot do. But there are also many instances when it can do less than these smaller states – in the domain of culture, as well as in quite characteristic political values.¹⁷⁷

So here, where he is dealing with *values*, his conclusion is anything but an expression of his partisanship for the *Machtstaat*. Among “political values” he counts the “true democracy” that is possible in small states, whereas bureaucracy dominates mass and the *Machtstaat*.¹⁷⁸ In one passage he is almost wistful regarding the prospects for the “realisation of values” on the part of small states and peoples whose state is not a *Machtstaat*:

Not only is it possible to realise simple civic virtues and genuine democracy, which have never been realised in any great *Machtstaat*, but much more intimate and eternal values can flourish in a commonwealth that has decided against the exercise of power.¹⁷⁹

This is a clear statement that Weber does not count the *Machtstaat* among his political values. When considering the *Machtstaat* he talks of “duty,”¹⁸⁰ “responsibility before history”¹⁸¹ or the “demands of the day.”¹⁸² Put philosophically, he sees the *Machtstaat* in terms of “necessity” and the small state as “freedom.” The necessity involved in a *Machtstaat* is viewed almost fatalistically, regarding the demands that are placed on a people organised in a *Machtstaat* as “inescapable.”¹⁸³

This theme of inescapability running through his writings like a *leitmotiv* marks the description and interpretation of the structure and internal

¹⁷⁶ Weber, “Between Two Laws,” op. cit. p. 75.

¹⁷⁷ Weber, “Deutschland unter den europäischen Weltmächten,” op. cit. pp. 190f. Discussing this differentiation, Weber made much use of Jacob Burckhardt’s treatment of the difference between “large” and “small” states (see his *Weltgeschichtliche Betrachtungen* (1905), dtv, Munich 1978 p. 24.

¹⁷⁸ Weber, “Deutschland unter den europäischen Weltmächten,” op. cit. p. 191.

¹⁷⁹ Weber, “Between Two Laws,” op. cit. p. 76. (trans. revised).

¹⁸⁰ Ibid.

¹⁸¹ Weber, “Deutschland unter den europäischen Weltmächten,” op. cit. p. 192.

¹⁸² Weber, “Between Two Laws,” op. cit. p. 78.

¹⁸³ Ibid. p. 76.

dynamics of the *Machtstaat*, its "power-political fate." In 1916 he concluded that the "ultimately decisive cause for the war" was that Germany was a *Machtstaat*.¹⁸⁴ In his perspective there is mingled the fate of inescapability and a clear politico-historical diagnosis of the factors that led to the outbreak of the First World War. Added to this, there was a perspective that now became a determining factor in his conception of the nation: this war was about who would shape the culture of future and the preservation of German culture; Germany had the "accursed duty and obligation to history" to protect itself from Russian despotism and the conventions of English-speaking society.¹⁸⁵

Not only Max Weber, but large sections of the German intelligentsia were certain that the war was being fought for the protection of German culture, and that it had to be fought. This was not simply a matter for war-lovers. Moderates like Friedrich Meinecke maintained that "today our state, our power politics, our war [serves] the supreme good of our national culture."¹⁸⁶ In Weber's view, Germany had the duty of being a *Machtstaat*, and to preserve its culture "it had to come to this war."¹⁸⁷ Behind these words there is a rigorous understanding of "duty" and "responsibility" and, on the other hand, the assumption of a "lawfulness" that leaves no alternative to state action: "for everything that shares in the goods of the *Machtstaat* is inextricably enmeshed in the law of the "power pragma" that governs all political history."¹⁸⁸ He does expressly respect pacifist positions but does not wish to accept them as relevant to the particular situation faced by the German state, since this state has no prospect of voluntarily pursuing a "pacifist politics"; this is an avenue open only to the non-*Machtstaat*.¹⁸⁹

If it is true that war "reveals the true nature of the state,"¹⁹⁰ then it is no accident that it was precisely during the war that Weber became so involved

¹⁸⁴ Weber, "Deutschland unter den europäischen Weltmächten," op. cit. pp. 192, 190.

¹⁸⁵ Weber, "Between Two Laws," op. cit. p. 76.

¹⁸⁶ Friedrich Meinecke, "Politik und Kultur" (1916), in his *Politische Reden und Schriften*, ed. Georg Kotowski, 2nd ed. Toeche-Mittler, Darmstadt 1966 p. 81.

¹⁸⁷ Weber, "Deutschland unter den europäischen Weltmächten," op. cit. p. 192.

¹⁸⁸ Weber, "Between Two Laws," op. cit. p. 78.

¹⁸⁹ Ibid. p. 77. Little has changed in the fact that the demands placed upon powerful states of some military and political weight differ from those of other states. During the First Gulf War for instance the demand was made that Germany, newly reunited, sovereign and with enhanced power should participate in military operations, a demand raised not by the Germans themselves but by their allies.

¹⁹⁰ Erich Kaufmann, *Das Wesen des Völkerrechts und die clausula rebus sic stantibus. Rechtsphilosophische Studien zum Rechts-, Staats- und Verfassungsbegriffe*, J. C. B. Mohr (Paul Siebeck), Tübingen 1911 p. 146.

in the study of the German state and its structure of power.¹⁹¹ His conclusions involve anything but a glorification of the state, and are balanced, sober and value-free. He endorses the *Machtstaat* because of his insight into the real existing situation of the Wilhelminian state. Weber's pathos is the pathos of sobriety. His support for the *Machtstaat* is underwritten by "lawfulness," "duty" and "inevitability," and not by values. So the prevailing view that Weber conceives the *Machtstaat* in terms of values is in need of revision. Nowhere in his writing does the *Machtstaat* appear as an ultimate value. This category is reserved exclusively for the nation.

For Weber, the World War not only provides the impulse for reflection on the nation and the *Machtstaat*, but upon values related to this state, something which is evident in the closing passages of the *Logos* essay. He writes here of the enormous increase in the prestige of the state during the war, and it can be clearly seen that this prestige has its effect upon Weber:

And [if we move to] the sphere of *valuation*, it may well make sense for someone [on the one hand-] to advocate the view that the power of the state should be increased to the fullest extent in the interest of its usefulness as a means of compulsion [to be employed] against opposition while denying [- on the other hand -] that [the state] has any *intrinsic* value at all, and qualifying it as a purely technical instrument for the realization of quite different values.¹⁹²

In this central passage on the question of the relationship of "state" to "value judgement" he illuminates the contradiction that, while the state may have power over life and death, it nonetheless has no powers over people's souls – since it is not capable of compelling the "voluntary devotion of the individual to the cause that the state represents." And he sees a second contradiction: that while the state is viewed as the "ultimate 'value' against which interest in its own existence all social action must ultimately be judged," it is for him nonetheless downgraded to a mere "technical device."¹⁹³

Weber adopts a tone of sober objectivity, seeking to keep a "cool head when confronted with the dominant ideals,"¹⁹⁴ and his critique of the state is just

¹⁹¹ The correspondence between Georg Lukács and Paul Ernst shows the relationship between power and the state during the World War very clearly. Lukács wrote on 14 April 1915 to Ernst that the state was "power" to which one "must not give in" (Lukács, *Briefwechsel 1902–1917*, ed. Éva Karádi and Eva Fekete, Metzler, Stuttgart 1982 p. 349). Two weeks later Ernst wrote back that "the war has also influenced me. I believe that the state is more than just a power, that part of our being finds fulfilment in it. In this war there is quite obviously a reduction of the ego to the nation. And here a harmony is established, and so I feel the state to be something holy." (*ibid.*, pp. 350ff.)

¹⁹² Weber, "The Meaning of 'Value Freedom'," *op. cit.* pp. 333–334.

¹⁹³ *Loc. cit.*

¹⁹⁴ *Ibid.* p. 334.

as much one of his own values. Not only does he reflect the contradictions of the time, but of his own thinking with regard to the state. He draws from his own premise, that every conception of the state is value-laden, the following conclusion:

For instance, if somebody took the power interests of the state as his ultimate goal, then both an absolutist and a radical-democratic constitution might, depending on the given situation, appear to him as the (realtively) most appropriate means; and, if he changed his evaluation of these purposive instruments of the state, as means, it would be quite ridiculous to regard this as a change in the "ultimate" position itself.¹⁹⁵

Here again, in this careful and distanced statement, we can see a reflection of his own development, since in this period he does in fact undertake a shift in the evaluation of the state "apparatus," changing from a confessed monarchist to a democrat. This change seems to have been a consistent expression of his values. His support for the democratic state form does *not* however involve any change in his value standards, since nation and reason of state remain his determining perspectives. It was not least because of *these* perspectives that he opted for democracy.

The closing passages of the *Logos* essay can be read as a means by which Weber came to terms with his own understanding of the state. But what should we make of it? Hans Albert reads here a turn against earlier positions, "a kind of self-criticism directed at the Freiburg address."¹⁹⁶ Gerhard Hufnagel is also convinced that here Weber adjusts his position on the state as "ultimate value," that Weber now carefully yet critically expresses the view that one should now establish a critical distance to the value-world of state order.¹⁹⁷ Both arguments are untenable since they overlook the consequences that follow from Weber's reflections on the "state" and "value judgements." In no respect does he here turn away from earlier values; he instead cleaves more closely to them, and makes them the object of theoretical reflection. His doctrine of value judgements becomes to some extent the catalyst of his thinking about the state.

The ultimate value of the nation and the "perspective of reason of state" retained its dominance of Weber's political thinking in later life. Of course, he did in 1918 demand a "clear renunciation of imperialist dreams," a national "pacifism" and "comprehensive demilitarisation,"¹⁹⁸ but these demands presupposed that the victorious enemy powers are also occupying powers.¹⁹⁹ Military defeat led him to the view that, for the time being, it was

¹⁹⁵ *Ibid.* p. 318.

¹⁹⁶ Albert, "Theorie und Praxis," op. cit. p. 203.

¹⁹⁷ Hufnagel, *Kritik als Beruf*, op. cit. p. 171.

¹⁹⁸ Weber, "Deutschlands künftige Staatsform," op. cit. p. 109.

¹⁹⁹ Weber, "Das neue Deutschland" (1918), in his *Zur Neuordnung Deutschlands*, MWG I/16 pp. 379–383 (379).

all over for Germany as a world power, but this did not imply surrendering the national attitude.²⁰⁰ In the same year he proposed “to establish a German irredenta” against the military takeover of Danzig by the Poles, and voted for “nationalism with revolutionary instruments of force.”²⁰¹ He demanded at a meeting of Heidelberg students that “the first Polish official who dares to enter Danzig” should be “hit by a bullet.”²⁰² This is something quite different to any kind of “critically broken circumspection”!

4 The state and ethics

For Max Weber, both the “perspective of reason of state” and the consequences of the *Machtstaat* are closely related to the question of the relation of state and ethics. He had been preoccupied by this question even as a 21-year-old, prompted by his reading of the American preacher William E. Channing, who had in the early nineteenth century espoused a consistent ethic of fraternity.²⁰³

²⁰⁰ Faced with defeat, he looked to the future in both a historical and patriotic spirit: “As with 1648 and 1807, we once again *start from scratch*. It is not ourselves, but the next generation, who will see the beginning of renewal.” Letter to Otto Crusius, 24 November 1918, in his *Briefe 1918–1920*, MWG II/10 p. 319.

²⁰¹ Weber, Letter to Kurt Goldstein, 13 November 1918, *ibid.* p. 302.

²⁰² Cited in Marianne Weber, *Max Weber. A Biography*, 5th ed. Transaction Books, New Brunswick 2009 p. 631. It is also significant that Carl Schmitt – who had direct contact with Weber at this time, being a member of his research seminar in the winter of 1919–1920 – reported that Weber was “a revanchist, the most radical of all revanchists with regard to Versailles that I have ever come across” (Letter to Heinz Friedrich, 21 August 1976; reported by Piet Tommissen, “Bausteine zu einer wissenschaftlichen Biographie,” in Helmut Quaritsch (ed.), *Complexio Oppositorum*, Duncker & Humblot, Berlin 1988 p. 79).

²⁰³ The influence of William E. Channing has been neglected for a long time. Some Weber scholars have simply copied out what Marianne Weber writes in her biography (op. cit. pp. 86ff.), for example, Jacob P. Mayer, *Max Weber and German Politics*, op. cit. p. 25; Johannes Weiß, *Max Webers Grundlegung der Soziologie. Eine Einführung*, Munich 1975 pp. 109ff.; Hans Norbert Fügen, *Max Weber*, Rowohlt, Reinbek bei Hamburg 1985 pp. 38f. See more detailed Guenther Roth, *Max Webers deutsch-englische Familiengeschichte*, J. C. B. Mohr (Paul Siebeck), Tübingen 2001 pp. 271ff.; Malcolm H. Mackinnon, “Max Weber’s Disenchantment: Lineages of Kant and Channing,” *Journal of Classical Sociology* 10 (2001) pp. 329–351; Wilhelm Hennis, “Freiheit durch Assoziation: Zwischen Tocqueville und Weber: William Ellery Channing” (1995), in his *Max Weber und Thukydides*, J. C. B. Mohr (Paul Siebeck), Tübingen 2003 pp. 153–155. – Channing was a preacher interested in many things, who wrote about the most diverse matters with a sometimes touching naivety: on Napoleon (*The Works of William E. Channing*, Vol. I, Boston 1849 pp. 69ff.); on literature (*ibid.* pp. 243ff.); education (*ibid.* pp. 369ff.); the annexation of Texas (Vol. II pp. 181ff.); Catholicism (*ibid.* pp. 263ff.); war (Vol. III pp. 29ff.; Vol. IV pp. 237ff.; Vol. V pp. 107ff.). It would above all be worthwhile considering the degree to which his *Christianity a Rational Religion* (Vol. IV pp. 31ff.) had an influence on Weber’s studies of Protestantism.

The young Weber treated such ideas with scepticism. He did not only think Channing's pacifism "simply untenable," given the way he "treated the military and bands of murderers as the same thing"; he also thought it dangerous, since it "could allow a rift to open up between the (supposed) decrees of *Christianity* and the consequences and presumptions bound up with the social order of *states*."²⁰⁴ Channing's idea that religious ethics and state order were incommensurable irritated Weber, and he refused to accept a renunciation of violence, since in the last instance this represented a denial of the state.

Hence when Weber here directly relates the state with violence, we can see already in his youth the outlines of his later standpoint: that every state was built upon violence. The way in which the early letters contain traces of important categories evident in his later work has been noted before,²⁰⁵ although the importance of his reading of Channing for his later ideas about the state has never been remarked upon. He adopts positions here in his youth that will remain decisive for his conception of the relation of state and ethics, and which in the course of his later work would be steadily elaborated.

And so even as a young man Weber placed himself on the side of reason of state and "statal order," clearly marking himself off from a pacifist and religious ethics. Ten years after he had read Channing, he devoted his attention to the confrontation of state and ethics when, in his article on the bourse for the *Handwörterbuch*, he concluded that the "interest of the state" had to direct itself to "the maintenance and extension of the international power of the German bourse," where it was possible that "state interests could directly collide with an ethical point of view." He was of the view that "there was for the state no 'principled' solution of economic questions based on any kind of 'ethical' point of view, for the political power interests of the state and of the national community were themselves locked in conflict over political and economic rule with other communities."²⁰⁶ It is certainly no accident that at the same time he was so obviously dismissive of an ethical standpoint he clearly adopted reason of state and the nation as his central criteria. It was plain to Weber that where any conflict arose between ethics and reason of state, two elements that were always in tension, then it was the latter which had to be chosen.

By taking this standpoint he placed himself foursquare in the tradition of nineteenth century thinkers who uncoupled ethical maxims from state politics. Gustav Rümelin for instance thought that the state could

²⁰⁴ Weber, Letter to his mother, 6th December 1885, in his *Jugendbriefe*, op. cit. pp. 191f.

²⁰⁵ Eduard Baumgarten, *Max Weber. Werk und Person*, J. C. B. Mohr, Tübingen 1964 pp. 301ff. See also Weiß, *Max Webers Grundlegung der Soziologie*, op. cit. pp. 106ff.

²⁰⁶ Weber, "Börsenwesen" (1895), in his *Börsenwesen*, MWG 1/5 pp. 558–590 (589).

not be subordinated to morality, since its autonomy was “beyond any commandment”:

A morality that prescribes virtue and ethics to the individual is of no use in directing the state as a whole. Morality and politics are at root entirely different.²⁰⁷

However, neither idealist nor realist approaches are entirely consistent. Even an “idealist” like Jacob Burckhardt, who thought that power was “inherently evil,”²⁰⁸ raised the question of whether there might not be a special dispensation for the state emancipating it from the usual laws of morality, since “the most important material and intellectual assets of the nation” could only develop “if lent the security that comes with power.”²⁰⁹ By contrast, even a “realist” like Rümelin sees the problems in absolving the state of any ethical principle, asking “whether we are not already standing on the rocky road that leads directly to the depths of Machiavelli’s notorious doctrines.”²¹⁰ Not even the hyper-realist Heinrich von Treitschke is a simple admirer of Machiavelli. While he does respect the “brilliant Florentine” who was the first to develop “the great idea that the State is Power,” he does go on to condemn the repulsively “deep immorality” of his theory of the state.²¹¹

Max Weber never poses the “Machiavellian question”²¹² – quite plainly the key political question of the nineteenth century. But he did in his later years become more preoccupied with the relationship of state and ethics, particularly in his lecture “Politics as a Vocation” that leads directly into a discussion of this issue, as well as in one passage in his sociology of religion in which he examined the tensions existing between religious ethics and “the world.”²¹³ He here discusses the ways in which ethical maxims and state order clash, in so doing resuming the issues that had occupied him as a 21-year-old reader of Channing. Using the example of the “antipolitical rejection of the world” of a religious ethic of fraternity abjuring all violence, he demonstrates that each religious ethic comes into conflict with “the cosmos of *political* action” as soon as it distances itself from the state.²¹⁴ Here it

²⁰⁷ Gustav Rümelin, “Ueber das Verhältniß der Politik zur Moral,” in his *Reden und Aufsätze* Bd. I, Laupp, Freiburg, Tübingen 1875 pp. 161, 156.

²⁰⁸ Burckhardt, *Weltgeschichtliche Betrachtungen*, op. cit. p. 25.

²⁰⁹ *Ibid.* p. 175.

²¹⁰ Rümelin, “Ueber das Verhältniß,” op. cit. p. 157.

²¹¹ Treitschke, *Politics*, op. cit. p. 85.

²¹² Rümelin, “Ueber das Verhältniß,” op. cit. p. 157.

²¹³ Weber, “The Profession and Vocation of Politics,” op. cit. pp. 357ff., Weber, *Religiöse Gemeinschaften*, MWG I/22-2 p. 367ff. (WuG 348ff.).

²¹⁴ Weber, *Religiöse Gemeinschaften*, op. cit. p. 388, 386 (WuG 357, 355).

becomes clear, on the one hand, that there are inherent conflicts between an ethical rejection of violence and the potentially necessary forceful action of the state. On the other hand, it also becomes clear that it is only when religious and state orders separate that such collisions between religious ethics and state action arise.

Weber presents the “great transformation” of Christianity in its relations with the state as a historical retrospective: from complete “indifference to the state,” to a positive orientation to authority and “its recognition as a state religion.”²¹⁵ He identifies a “general schemata” whereby a state religion tends to dissolve the tensions between a religious ethic and an either “amoral or immoral” state order through “the elaboration and demarcation” of ethics.²¹⁶ Medieval ethics was still based upon an “assumption of diminishing universality”: that of the “purely personal character” of political power relationships, “to which ethical postulates can be imputed in the say way that they are to any other purely personal relationship.” However, today’s “cosmos of the rational state institution” no longer has anything of this character, since its rational rules are no longer formed according to personal norms, but only according to impersonal ones:

Gradually internal political force transforms itself into “the rule of law.” Politics as a whole on the other hand orients itself to objective reason of state, to pragmatism and the maintenance of the external and internal division of powers as an absolute end in itself.²¹⁷

Here Weber deals with his vital perspective of reason of state historically, treating its objectification and depersonalisation as part of the process of occidental rationalisation. He also deals with ethics from an empirico-historical standpoint, sharing here the approach adopted by Georg Jellinek, who contrasted an “empirical” with a “speculative” ethics and emphasised their historical and relative properties.²¹⁸ Both thinkers are aware of being contemporaries of an era in which there was no longer one single binding morality, but instead a moral pluralism. Gangolf Hübinger has rightly drawn attention to the fact that Weber and Jellinek share ethical problematics; nonetheless, his view that Jellinek is more “statist” than Weber, who in turn is more “person-oriented” in considering the conditions of a political morality,²¹⁹ is somewhat exaggerated. There is in fact little to choose

²¹⁵ Ibid. p. 394ff. (WuG 359f.).

²¹⁶ Ibid. p. 396 (WuG 360).

²¹⁷ Ibid. p. 401 (WuG 361).

²¹⁸ Georg Jellinek, *Die sozioethische Bedeutung von Recht, Unrecht und Strafe*, Hölder, Vienna 1878 p. 15.

²¹⁹ Gangolf Hübinger, “Staatstheorie und Politik als Wissenschaft im Kaiserreich: Georg Jellinek, Otto Hintze, Max Weber,” in Hans Maier et al. (ed.) *Politik, Philosophie, Praxis. Festschrift für Wilhelm Hennis zum 65. Geburtstag*, Klett-Cotta, Stuttgart 1988 pp. 143–161 (160f.).

between either thinker when it comes to their "etatism" and interest in political ethics.

In Max Weber's sociology of religion reason of state takes the role of the great antagonist of ethics, something which is also evident in the early letters. Collision is unavoidable when action is oriented to an ethic that clashes with the interest of the state. Moreover, the "general schemata" that he presents, whereby the tensions between a religious ethic and an "anethical" state order is resolved through the adaptation of ethics to circumstance, does suggest that in the event of any conflict between reason of state and an ethical imperative it will be the former that prevails.

There is a duality in Weber's problematic. While he poses as an advocate for the state in his early writings and seeks the conditions of possibility for the existence of the state, in his writings on the sociology of religion he is interested in the conditions of possibility of ethical action in the "anethical" world of the state. All interpretations that turn upon only one of these problematics must necessarily end up with a distorted view. Only by taking account of *both* is it possible to properly evaluate his conception of the relation of ethics to reason of state.

Weber's idea of the "anethical" nature of the modern state represents yet another link to Nietzsche, who felt the state to be "organised immorality."²²⁰ But he marks himself quite sharply off from Machiavelli, for whom reason of state appeared to represent "an 'ethic' for the continued preservation of the state,"²²¹ whereas for Weber the modern state can in no respect relate to an ethic because of the "anethical" nature of the modern state. This difference between the two great thinkers of reason of state can be attributed not least to the four hundred years that separates them. Taking Weber's historical perspective, the time of Machiavelli was still that of "personalised rule," a form that enables a quite different relation of state and ethics than that which is typical of the era of impersonal rule in the modern institutional state.

Max Weber's thinking on the tensions between ethics and reason of state, as reflected in his reference to "colliding values," led him to the two problematics in his work that appear quite unrelated. The convergence of these two problematics upon one site can be demonstrated: in "Politics as a Vocation," when he asks whether "political action is subject to the 'same' ethic as every other form of activity."²²² He denies that this is so. What is here important is that he speaks, in the same breath, of "the ethical demands placed upon politics,"²²³ so that he in no respect excludes the possibility of ethical action in the modern state. In his own terms, ethical action in the modern state is constitutive of the distinction between the

²²⁰ Nietzsche, "Aus dem Nachlaß der Achtzigerjahre," in his *Werke in drei Bänden*, op. cit. Bd. III p. 635.

²²¹ Münkler, *Machiavelli*, op. cit. p. 284.

²²² Weber, "The Profession and Vocation of Politics," op. cit. p. 357.

²²³ *Ibid.*

ethic of conviction and that of responsibility – a distinction that can also be read as an attempt to resolve the tension between ethics and reason of state.

One significant criterion of the differentiation of the ethic of conviction from the ethic of responsibility is their respective relationships to the state. An ethic of responsibility endorses the consequences of state order, violence being one of these consequences, and it can in some respects be seen as an ethic that conforms to the state. The ethic of conviction on the other hand represents a potential confrontation with the state, and is for the most part an ethic which is indifferent to the state, we could say a “non-conforming” ethic vis-à-vis the state. The conception of an ethic of responsibility resembles in some ways a state ethic, an idea which would have been alien to Weber on account of his diagnosis of the modern state as “anethical.” This idea is also, for example, fundamentally different to Machiavelli’s conception of a state ethic, since Weber did not think that an ethics could be decreed or established by a state. There is a clear parallel here with his understanding of values, which he considers to be the outcome of a subjective resolution on the part of an individual. As Wolfgang Schluchter has written, the general distinction of an ethic of responsibility from one of conviction is part of his “value problematic.”²²⁴ The ethic of responsibility is related to value pluralism and allows values to be dealt with pragmatically and flexibly, whereas a pure ethic of conviction tends to monism and calls for an absolute, unbending stance.²²⁵

There are two further parallels that can be made between the problem of values and that of ethics. In either case there is a problem of collisions, tensions and “irreconcilably opposed maxims”²²⁶ – and both are closely related to the state. The way in which Weber demarcates the two ethics indicates that there is a particular value standpoint underlying each one, for each of which in addition the respective relation to the state is constitutive. It is perfectly obvious which value standpoint Weber *himself* occupies with regard to the two ethics, since he makes clear his unambiguous option for an

²²⁴ Schluchter, *Religion und Lebensführung*, Bd. I, op. cit. p. 270. See also the discussion of Weber’s conception of ethics, *ibid.* pp. 166ff., 195ff., 274ff.; Hans Henrik Bruun, *Science, Values and Politics in Max Weber’s Methodology*, 2nd ed. Ashgate, Aldershot 2007 pp. 250ff.

²²⁵ This contrast is reflected in recent discussion of the conflict between a purely “consequentialist” and a “deontologised” ethic. See the contributions in Hugh LaFollette (ed.), *The Blackwell Guide to Ethical Theory*, Blackwell, Oxford 2000.

²²⁶ Weber, “The Profession and Vocation of Politics,” op. cit. p. 359. Weber’s distinction between the ethics of responsibility and of conviction is not free of contradiction, since he does on the one hand talk of “two fundamentally different, irreconcilably opposed maxims,” but then states that they are “not absolute opposites,” but “complementary” (p. 368). The only way in which this contradiction can be resolved is to assume that they were, for Weber, ideal types, always taking a combined form, and so are not “irreconcilably opposed.”

ethic of responsibility. Moreover, this option also corresponds to his value standpoint with regard to the state. There is indeed in Weber that devaluation of an ethic of conviction which Wolfgang Schluchter perceives.²²⁷ And Mommsen's objection – that Weber treated each ethic as equally valid²²⁸ – is correct only insofar as Weber regarded them as ideal types of ethical action and so did not deny that an ethic of conviction could be *justified*. But there is not the slightest doubt about what he thought of this ethic. Since the ethic of responsibility not only permitted “ethical demands” to be made of the state but also took account of the “consequences and presuppositions” of state order, this is the only ethic capable of defusing the tensions between ethics and reason of state. We can here use Weber to interpret Weber. The distinction that he makes between an ethic of conviction and an ethic of responsibility follows exactly that “general schemata” that he had diagnosed himself, by means of which the tensions between ethical and state demands could be resolved through a “differentiation” of ethics.²²⁹ As he understood matters, in the modern state an ethic of responsibility was the sole possible ethic.

5 The state and the struggle over values

The “struggle” over values about which Weber speaks²³⁰ cannot leave the existence of the state unaffected. What are the consequences for the state of clashes in values? And what role does the state play in this struggle over values? Before answering these questions we need to make an excursion to consider the intellectual context of Weber's time. Around the turn of the century “values” were enjoying a boom. “Revaluation of all values,” “hierarchy of values,” “moral and spiritual values” – all of these were the slogans and watchwords that they have remained up until today. Friedrich Gottl could only scoff ironically at the fashionable use of “value,” a term which had become the “word of words,” “the darling of all sonorous speeches.”²³¹ The precondition for values becoming any kind of modish topic was the dissolution of traditional orders, a dissolution that took with it the idea that there existed a given, binding and lasting value order. From the fact that

²²⁷ Wolfgang Schluchter, “Value-Neutrality and the Ethic of Responsibility,” in Guenther Roth, Wolfgang Schluchter (eds), *Max Weber's Vision of History*, University of California Press, Berkeley 1984 pp. 65–116 (87).

²²⁸ Wolfgang J. Mommsen, “Politik und politische Theorie bei Max Weber,” in Johannes Weiß (ed.) *Max Weber heute*, Suhrkamp, Frankfurt a.M. 1989 p. 536.

²²⁹ Weber, *Religiöse Gemeinschaften*, op. cit. p. 396 (WuG 360).

²³⁰ Weber, “The Meaning of ‘Value Freedom’,” op. cit. p. 314.

²³¹ Friedrich Gottl, *Die Herrschaft des Wortes. Untersuchungen zur Kritik des nationalökonomischen Denkens*, G. Fischer, Jena 1901 p. 87.

"supreme values are devaluing themselves"²³² Nietzsche concluded that "the philosopher has to solve the *problem of values* and that he has to decide on the *rank order of values*."²³³ It was exactly this task which the philosophy of values took up in the early twentieth century, developing evermore elaborate constructions around value hierarchies and value orders. Nietzsche did not initiate the philosophy of values, as is so often thought, but he made talk about values popular.²³⁴

As he was the first to admit, Max Weber wrote and thought in a world upon which Nietzsche had left a clear mark. In scattered contexts he diagnosed the loss of an objective value order, also attributing to this the "disappearance of the old ideas of natural law."²³⁵ But contrary to an accusation frequently made of Weber, he in no respect denied the existence of values, since much of his work turns exactly upon this problem. Of course, he no longer believed in "objective" values. Instead, he directed attention to the *origin* of values: how they were established. For him, this was something set in motion by the individual, since "decisions could only be made on the basis of subjective values."²³⁶ This subjectivity in the establishment of value only became possible through the discovery of "personality" as an autonomous instance. As Hermann Broch remarked, in the era of modernity values could only be conceived in connection with an "evaluative subject actively setting values."²³⁷ This was also Max Weber's position. As Carl Schmitt grimly noted, we find in Weber the "clearest and also in this respect most honest answers" to the question of who sets values.²³⁸

The subjective basis of values has consequences that directly bear on the existential foundations of the state, since, theoretically at least, there are as many values as there are subjects, and so these values might well prove to be irreconcilable. However, the existence of the state presumes that there also

²³² Nietzsche, "Aus dem Nachlaß der Achtzigerjahre," op. cit. p. 557.

²³³ Nietzsche, *On the Genealogy of Morality* (1887), ed. Keith Ansell-Pearson, Cambridge University Press, Cambridge 2006 p. 34.

²³⁴ Heidegger, *Off the Beaten Track*, op. cit. p. 169. Carl Schmitt reinforced this judgement ("Die Tyrannei der Werte," in Carl Schmitt, Eberhard Jüngel, Sepp Schelz, *Die Tyrannei der Werte*, Lutherisches Verlagshaus, Hamburg 1979 p. 30). In treating Nietzsche as the originator of the philosophy of values, Heidegger and Schmitt exaggerate his intellectual contribution and influence.

²³⁵ Weber, *Recht*, MWG I/22-3 p. 611 (WuG 502).

²³⁶ Weber, "Debattenrede auf der Tagung des Vereins für Socialpolitik in Wien 1909," GASS p. 420.

²³⁷ Hermann Broch, *The Sleepwalkers. A Trilogy* (1931/1932), Vintage, New York 1996. Broch provided a detailed account of this "dissolution of values" in a series of historico-philosophical essays embedded with the novel.

²³⁸ Schmitt, "Die Tyrannei der Werte," op. cit. p. 31. It is the subjectivity involved in the setting of values that impelled Schmitt, who thought in "concrete orders," to his later struggle against the "tyranny of values."

exists an underlying consensus in value standpoints. Weber clearly identifies the consequences of the subjective manner in which values are formed, talking of the emergent clashes of values.²³⁹ He considers this to be unavoidable given the loss of a prevailing objective value order. And the fact that clashes of this kind are no mere storms in a teacup is proved by the martial terminology he uses in describing them:

Everywhere and always, it is not a matter of alternative values, but of unbridgeable mortal struggle, a struggle like that between "God" and the "Devil." Between these two there is no quarter, no compromise.²⁴⁰

There is no value relativism here, something of which he has often enough been accused, an accusation that he rejected, but in vain:

Quite certainly the most egregious recurrent misunderstanding of the intentions of this proponent of value clashes involves the interpretation of this standpoint as one of "relativism."²⁴¹

Max Weber emphasised often enough that he regarded "struggle" as a basic element of human activity, and the "struggle over values" seems to be the mother and father of all struggles. He considered any resolution of value clashes through science to be neither honest nor possible. In this he marked himself off very clearly from the prevailing philosophy of value, especially that of Max Scheler, who countered value subjectivism with a "material" (i.e. non-formal) value ethic and went on to develop a hierarchy of values.²⁴² Scheler wanted nothing to do with Weber's conception. He regarded it as a "radical mistake that material values could have only subjective meaning," and that there could be no such thing as objective knowledge of values.²⁴³ The uneasiness with subjective values on the part of non-formal ethical theorists was articulated in large-scale systems such as Nicolai Hartmann's lengthy *Ethics*, in which he dealt in great detail with subjectivism, pluralism and value antinomies.²⁴⁴ Here he argued that, given the fact that all of

²³⁹ Weber, "The Meaning of 'Value Freedom'," op. cit. p. 315.

²⁴⁰ Ibid. pp. 314–315 [trans. revised].

²⁴¹ Ibid. p. 315 [trans. revised].

²⁴² Max Scheler, *Formalism in Ethics and Non-Formal Ethics of Values. A New Attempt Toward the Foundation of an Ethical Personalism* (1913/1916), transl. Manfred S. Frings, Roger L. Funk, 5th ed. Northwestern University Press, Evanston 1973.

²⁴³ Scheler, "Max Webers Ausschaltung der Philosophie" (1921/1923), in his *Gesammelte Werke* Bd. 8, Bern 1960 p. 431. The dislike was mutual. Scheler said that Max Weber had mocked those allied with Scheler as *Tintenfischromantiker*, "octopus romantics" (ibid. p. 436).

²⁴⁴ Nicolai Hartmann, *Ethics*, Routledge, London 2000 pp. 138ff., 290ff., 294ff.

human life is governed by value conflicts, he foresaw a coming "tyranny of values": each value has "the tendency to turn itself into the only tyrant of the ethos of humankind."²⁴⁵

The philosophy of value, particularly Scheler's which was not least aimed at Weber, faced a dilemma. While it does seek to overcome subjectivity and the collision of values by constructing a hierarchical order, it fails to realise that the need for such a hierarchy only arises because of the existence of a clash of values. It is only when such a clash appears that the need for such a hierarchical order is first thought necessary.²⁴⁶ Max Weber clearly rejected any attempt to resolve such clashes through some kind of theoretical refinement. He took the view that science cannot instruct the individual on which values to believe in, nor in what order they should be arranged.

Values are standardised guides to action that also function as a means of selecting alternatives for action. It is, however, doubtful whether they can be made into a perfect system of values, or a perfect hierarchy.²⁴⁷ In Luhmann's view, every value order requires "elastic opportunism" in the absence of which the human being is shackled "to within an inch of incapacity"; whoever adheres to such a value order is "not able to rearrange individual values without endangering the entire order."²⁴⁸ Weber's position is anything but opportunistic. But he does partially modify his value standpoint according to the historical context, as we have seen. He points out himself that they are not free of tension: clashes of value do not only occur between the representatives of different values, but also within "one's own breast."²⁴⁹ The individual never holds just one value, but rather an entire range of values which only very occasionally merge into a coherent whole.

Clear proof of this is provided by a conversation reported by Hans Staudinger in his reminiscences: "Max Weber, what is your guiding supreme

²⁴⁵ Hartmann, *Ethics*, op. cit. p. 574. Carl Schmitt did not only reuse this formula to great effect in the more recent debate over values but he also accentuated Hartmann's scenario: "Purely subjective freedom in the formation of values leads however to a struggle over values and world views, a war of all against all, an eternal *bellum omnium contra omnes* ... It is always values that fan the flames of struggle, and revive enmity." (Schmitt, "Die Tyrannei der Werte," op. cit. pp. 31f.) While he does describe the struggle over values in an apocalyptic manner similar to that of Weber, one will search the latter's writings in vain for any trace of Schmitt's emotional rejection of values.

²⁴⁶ Niklas Luhmann, "Wahrheit und Ideologie," in his *Soziologische Aufklärung. Bd.1: Aufsätze zur Theorie sozialer Systeme*, 8th ed. VS Verlag Wiesbaden 2009 pp. 54–65 (62).

²⁴⁷ See Niklas Luhmann, *Zweckbegriff und Systemrationalität. Über die Funktion von Zwecken in sozialen Systemen*, 6th ed. Suhrkamp, Frankfurt a.M. 1998 pp. 37ff.

²⁴⁸ Ibid. pp. 40f. See also Luhmann, *Social Systems*, Stanford University Press, Stanford 1996, p. 326. Contemporary philosophy is still confronted with the problem of a hierarchy of values.

²⁴⁹ Weber, "Diskussionsrede auf der Tagung des Vereins für Socialpolitik in Wien 1909," GASS p. 420.

value?" He was astonished, and replied that very few people had posed him this candid question. "I have no supreme value," he answered. Then Weber admitted that there were often "dissonances" between his values, for instance, between his "artistic value," his "freedom value," his "fatherland value," such that they could form "no lively melody."²⁵⁰ Using a musical metaphor, Max Weber here demonstrates his understanding of the plurality and heterogeneity of values, from which no harmonious symphony could be composed. Given the extent to which he had investigated not only the problem of value but also his own value standpoints, both his astonishment at the question as well as his denial might seem surprising. But his astonishment must relate more to Staudinger's choice of words. One will seek in vain in Weber's writings for the idea of a "supreme value," for it belongs to the conceptual instrumentarium of the philosophy of value, for which he had no high regard. Whatever one shouts at a cliff face echoes straight back. Since the young Staudinger framed his question in the terminology of the philosophy of value, he would necessarily have got a negative response.

If we consider Max Weber's discussion of the clash of values – here we return to our interest in the consequences of such clashes for the state – we form the impression of a state reality characterised by a "mortal struggle" between values, and between which there can be no compromises. But can a state prevail where people have antagonistic values and perhaps seek to realise these violently? This question has to be answered in the negative. The idea of a state in which such a mortal struggle of values played out would be contradictory to Weber's position that the state depended first of all upon legitimacy, which itself implies in principle a consensus of values, and secondly upon its monopoly of violence, which in turn excluded the possibility of domestic conflict or civil war.

To answer the question regarding the role played by the state in the struggle of values Max Weber makes a very major reservation in the same breath as he states his thesis concerning the "unbridgeable mortal struggle." He emphasised that there were of course compromises, the sort that everyone experience at every turn.²⁵¹ His habit of thinking in contradictions sees a highpoint here, for this statement completely overturns his argument concerning the "unbridgeable mortal struggle." He makes absolutely no effort to moderate or qualify this contradiction. Likewise, his comment on the obviousness of compromise is very suggestive for his view of the relationship between the state and values. The compromises about which he here talks are dealt with elsewhere as a constitutive characteristic of the constitutional

²⁵⁰ From an unpublished passage in Hans Staudinger's *Wirtschaftspolitik im Weimarer Staat. Lebenserinnerungen eines politischen Beamten im Reich und in Preußen*, Bonn 1982, communicated in Hennis, *Max Weber's Central Question*, op. cit. p. 173.

²⁵¹ Weber, "The Meaning of 'Value Freedom'," op. cit. p. 315, trans. revised (WL 507).

parliamentary state, whose activity depends upon “compromise.”²⁵² He sees here the prospect of, even the necessity for, compromise, which he considers to be the normal mode of functioning of the constitutional parliamentary state.²⁵³

Max Weber considered “compromise” – an important element in his thinking about the state – as an institutional and institutionalised principle for avoiding the potentially destructive consequences of value antinomies. Since it is only the democratic constitutional state which is capable of institutionalising compromise more or less successfully, it is also that particular form of the state in which it is possible domesticate the “mortal struggle over values,” defusing them through institutional procedures. His support for democracy has to be viewed and judged against this background. Stefan Breuer has quite properly emphasised the motion of Weber’s “clear option” for this form of the state:

For only the parliamentary constitutional state offers a framework within which contradictory ideal ... interests can be articulated without mutually destroying each other; only the parliamentary constitutional state provides a form in which both the lethal antagonism of principles and the pragmatic equilibrium at the level of “intermediate” goals can co-exist.²⁵⁴

Parliament assumes an essential significance in this regard since it is the site where this struggle over values occurs, and where compromise is forged. There is of course no unique “Archimedean point” at which an absolute consensus over “ultimate values” emerges, but absolute consensus of this kind is not really needed for the state to function, since *ultimate* values are rarely at issue. The process through which parliamentary decisions are formed usually makes possible the creation of the necessary minimum level of value consensus.²⁵⁵ The idea of an absolute value consensus is marked not only by ideological but also totalitarian features. In any case, during the twentieth century efforts aimed at the creation of a universally-shared set of values ended up with Buchenwald and the Gulag.

²⁵² Weber, “Suffrage and Democracy in Germany” (1917), in his *Political Writings*, op. cit. pp. 80–129 (101).

²⁵³ For the meaning of “compromise” in Max Weber’s political thinking see the remarks by Stephen Turner, Regis Factor, “Decisionism and Politics: Weber as Constitutional Theorist” in Scott Lash, Sam Whimster (eds) *Max Weber, Rationality and Modernity*, 2nd ed. Routledge, London 2006 pp. 347f.

²⁵⁴ Stefan Breuer, “Rational Domination. A Category of Max Weber,” in *Law and State* 44 (1991) pp. 92–125 (100).

²⁵⁵ This is the argument of Hans Albert, “Aufklärung und Steuerung – Gesellschaft, Wissenschaft und Politik in der Perspektive des Kritischen Rationalismus,” in Georg Lührs et al. (eds), *Kritischer Rationalismus und Sozialdemokratie*, Dietz, Berlin, Bonn 1975 p. 121.

“Struggle” is for Weber a political principle, and also a constituent element of life in society and the state. The state does not terminate the struggle over values but domesticates it. The monopoly of violence prevents this struggle from becoming a violent one, and provides boundaries which guarantee that this struggle remains limited. Here we can find the key reason for Weber’s tempering of his own formulation of the “mortal struggle” over values. Within a parliamentary constitutional state a “civil war over values” cannot exist, despite histrionic claims to the contrary.²⁵⁶

If we adopt Weber’s understanding of the state and values, then it is not possible to argue that the state sets values or imposes them. Herbert Krüger’s idea that the “existence and activity of the state” boils down to the setting of values²⁵⁷ overlooks the fact that the state can only uphold values that are believed to be valid. Perhaps the state can be a manager of values, but it cannot impose them; it does have a monopoly of violence, but not a monopoly of values. There is consequently no basis in Weber’s work for the claim that the state’s monopoly of violence “at the same time lends it a claim to the monopolistic management of ultimate values.”²⁵⁸ Of course, the capacity of the state to articulate and realise values is of great importance for its stability and legitimacy. This finds confirmation not only in the writings of Rudolf Smend, who saw state rule as the “realisation of values”²⁵⁹ but also in empirical studies of the relationship between conceptions of value and perceptions of legitimacy.²⁶⁰ Belief in legitimacy and in values is closely related, since belief in legitimacy *also* involves the idea that particular values are valid.

Rudolf Smend argued that values are integrating factors; they are what holds the core of the state together. But they are not static, rather they are changeable. The intimacy of the connection between state and values was demonstrated in the 1970s and the 1980s when discussion of “value transformation” played a central role in political and academic

²⁵⁶ Schmitt, “Die Tyrannei der Werte,” *op. cit.* p. 31.

²⁵⁷ Herbert Krüger, *Allgemeine Staatslehre*, Kohlhammer, Stuttgart 1964 p. 675.

²⁵⁸ Volker Heins, *Strategien der Legitimation. Das Legitimationsparadigma in der politischen Theorie*, Münster 1990 p. 36.

²⁵⁹ Rudolf Smend, “Verfassung und Verfassungsrecht” (1928), in his *Staatsrechtliche Abhandlungen und andere Aufsätze*, 2nd ed., Duncker & Humblot, Berlin 1968 pp. 119–276 (160).

²⁶⁰ Cf. Gerhard Schmidtchen, “Jugend und Staat. Übergänge von der Bürger-Aktivität zur Illegalität. Eine empirische Untersuchung zur Sozialpsychologie der Demokratie,” in Ulrich Matz, Gerhard Schmidtchen, *Gewalt und Legitimität*, Westdeutscher Verlag, Opladen 1983 pp. 106ff. Their study concludes that West German citizens have a “fairly clear idea of the values which the state promotes” (p. 126); and that “the capacity of the state in realising values influences identification with the state, and that identification with the state is the stronger, the more positive the judgment of the given constitutional reality” (p. 138).

debates,²⁶¹ which involved to some important extent reflection on the impact of this change upon the state.²⁶² German studies on the relationship of value orientation and the state do however arrive at the (unsurprising) conclusion that the stability of the state depends upon the fulfilment of values,²⁶³ and that political views and values with respect to the state are correlated.²⁶⁴ These results barely go beyond what Max Weber had already formulated theoretically. All the same, they serve to confirm, although quite unintentionally, exactly Weber's position: that any position on the state is one that is bound up with values.

6 Max Weber's ambivalence

Weber's theory of the state is not cast as a whole, free of contradiction and incoherence; it is marked by quite characteristic ambivalence. He supports freedom and individualism, but at the same time acknowledges the "standpoint of reason of state"; he argues soberly for the emergent social state, not for social motives but rather because of a national motivation, the "social unification of the nation"; he actively supports parliamentary democracy, but not on the classical grounds of popular sovereignty for example, but because he considers that democracy provides the conditions for the most effective state form which also serves national interests. Of course, "individualism" is fundamental for Weber, even if some have occasionally disputed the idea.²⁶⁵ But his individualism sometimes tends to conflict with

²⁶¹ Cf. Ronald Inglehart, *The Silent Revolution: Changing Values and Political Styles among Western Publics*, Princeton University Press, Princeton (NJ) 1977. See also Ronald Inglehart, Christian Welzel, *Modernization, Cultural Change, and Democracy*, Cambridge University Press, Cambridge 2005; Max Haller, "Theory and Method in the Comparative Study of Values: Critique and Alternative to Inglehart," *European Sociological Review* 18 (2002) pp. 139–158.

²⁶² Helmut Klages, Willi Herbert, *Wertorientierung und Staatsbezug. Untersuchungen zur politischen Kultur in der Bundesrepublik Deutschland*, Campus, Frankfurt, New York 1983; Klages and Herbert, *Staatsympathie. Eine Pilotstudie zur Dynamik politischer Grundeinstellungen in der Bundesrepublik Deutschland*, Speyer 1981; Helmut Klages, *Überlasteter Staat – verdrossene Bürger? Zu den Dissonanzen in der Wohlfahrtsgesellschaft*, Campus, Frankfurt, New York 1981 espec. pp. 40ff.

²⁶³ Klages, *Wertorientierung und Staatsbezug*, op. cit. p. 86.

²⁶⁴ Helmut Klages and Willi Herbert show in their study that there is a polarisation of the two basic stances of "conformity" and "non-conformity" with regard to the respective values in respect of the state: that "conformity" favours a positive attitude to the state, while "non-conformity" rather diminishes such an attitude (*Wertorientierung und Staatsbezug*, op. cit. pp. 32ff.).

²⁶⁵ Wilhelm Hennis is sceptical about the treatment of Weber as an "individualist" (Hennis, *Max Weber's Central Question*, op. cit. pp. 187ff.). On Weber's "individualism" see also Martin Albrow, *Max Weber's Construction of Social Theory*, Macmillan, Basingstoke 1990 pp. 42ff.; Hans Haverkamp, "'Individualismus' und 'Uniformierung' – Über eine Paradoxie in Max Webers Theorie der gesellschaftlichen Entwicklung," in Weiß, *Max Weber heute*, op. cit. pp. 461ff.

his value of the nation as a collective entity. It is quite remarkable how, confronted with these two values, he resorts to the weapons of nominalism. His capitulation to the concept of the nation has its analogue in his remark that the "expression individualism includes the most heterogeneous things imaginable."²⁶⁶ Since both belong to his central values and both necessarily clash from time to time, he constantly finds himself in a condition of ambivalence.

The relationship between the values espoused by Max Weber is not always free of conflict. Tensions and clashes of value arise between state and nation, reason of state and ethics, personality and life order. Douglas Webster's question, whether "Weber's individualism conflicts with his patriotism, his 'nationalism,' the fascination that the power-state held for him,"²⁶⁷ is purely rhetorical. It is quite obvious that these come into conflict. But the question should be: how does this conflict reveal itself in his writings, and is he capable of resolving it? One key to an answer can be found in his theory of value judgement, which can be read as an attempt to come to terms with these tensions and value clashes. Science cannot, of course, prevent such clashes, but it can provide help in identifying the anatomy of tensions. Weber's theory of value and his theory of the state are in a dialogic, corresponding relationship.

The ambivalence of his thinking about the state must be assessed not only with regard to his writings, but also with respect to its historical and intellectual context. Practically all theories of the state have been marked since the French Revolution by one major dichotomy: either the autonomy of the individual, or the sovereignty of the collective. When therefore Wolfgang Schluchter describes Weber's "contradictory value preferences" – his support for individualism and also for "Germany's national greatness" – as the product of the internal "contradictoriness of the bourgeois standpoint under the conditions of developed modern economic capitalism,"²⁶⁸ this can only be read as a superficial abbreviation. Reducing Weber's ambivalence to this simple alternative, and explaining it in terms of the contradictoriness of a class standpoint, does not get us very far in understanding Weber's ambiguities. The tensions, antinomies and value clashes that we can see here are variously reflected in nearly all the great political thinkers of modernity. And it is no accident that such thinkers are the most interesting and influential among those who have confronted the antinomies of modernity and have, therefore, necessarily adopted ambivalent positions.

²⁶⁶ Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, trans. Talcott Parsons, Allen & Unwin, London 1930 p. 222 fn. 22.

²⁶⁷ Douglas Webster, "Max Weber, Oswald Spengler and a Biographical Surmise," in Mommsen, Osterhammel (eds) *Max Weber and His Contemporaries*, op. cit. pp. 515–527 (525).

²⁶⁸ Schluchter, *Rationalismus der Weltbeherrschung. Studien zu Max Weber*, Suhrkamp, Frankfurt a.M. 1980 pp. 156f.

As Edward Shils remarked, "Weber's ambiguities were more often fruitful than obstructive," because they are "susceptible to reinterpretation, extension and above all correction" and "still of living value for understanding" our present.²⁶⁹ As Wilhelm Hennis aptly says, the world in which Weber found himself was "a world which in every important sense was ours – no trace of postmodernity, but driven and riven by the antinomies of modernity."²⁷⁰ Ralf Dahrendorf has also suggested that the much of the interest to which Weber's gives rise has to do with the "extraordinary ambiguities, not to say the explosive contradictions of his work."²⁷¹ Whether these explosive ambiguities are to be found in Weber's methodological writings is an open question. It is not Weber's methodological positions that are ambivalent, but his arguments regarding the state. They find expression in the value clashes between individual and reason of state, personal freedom and state order. His methodology is, starting with his early writings and right up to his later work, for the greater part an analysis of these contradictory value standpoints. It is this that lends his treatment of the state its specific tension, a tension which proved especially fruitful in his work. It is also a significant part of the challenge that Weber's work represents, today more than ever. The ambiguities with which he saw himself faced still define the reality of today's state, as they did in Weber's time.

²⁶⁹ Edward Shils, "Max Weber and the World since 1920," in Mommsen, Osterhammel (eds) *Max Weber and His Contemporaries*, op. cit. pp. 547–573 (572).

²⁷⁰ Hennis, *Max Weber's Science of Man*, op. cit. p. 141.

²⁷¹ Ralf Dahrendorf, "Max Weber and Modern Social Science," in Mommsen, Osterhammel (eds) *Max Weber and His Contemporaries*, op. cit. pp. 574–580 (576).

5

The Archaeology of the Modern State

Every theory of the state needs a historical foundation, since its reason for existence has to be traced and understood from the manner in which it came into being, its emergence and development. Max Weber's writings do include some scattered remarks on the question of the origins of the state. His concept of the state is recognisably historical: if the state is defined by the criterion of the monopoly of violence, and this monopoly developed first during the early modern period, then for Weber the state is not only a historically located phenomenon but also a historical concept. In his own terms, the rulings groups that existed before the monopolisation of violence could not be states, because as far as he was concerned a "state" is modern, occidental, rational and bureaucratic – an *Anstaltsstaat*. But this clear understanding was entirely contradicted by the casual way in which he referred to the "state" of the ancient Egyptians, Romans, Greeks and Chinese,¹ using the term "state" for the most diverse kinds of structure of rule, which according to his own definition, could not in any way be described as "states." He did resolve to "use the expression 'state' ... in a much more restricted sense,"² but this good intention remained unrealised.

It is therefore very difficult to understand how even those very familiar with Max Weber's writings can claim that Weber never used "the word 'state' as a general term describing rule over a particular group, or for any political group."³ There has even been praise for the "conceptual restraint" he showed "in distancing himself from a generalising use of the term 'state,'" which being "a component of occidental rationalism," he did not project

¹ Cf. Weber, *Herrschaft*, MWG I/22-4 p. 180f. (WuG 559f.), 212f. (WuG 569), 416ff. (WuG 639f.), 431f. (WuG 644f.), 441f. (WuG 648), 588 (WuG 691).

² *Ibid.*, p. 460 (WuG 676).

³ Johannes Winckelmann, *Gesellschaft und Staat in der verstehenden Soziologie Max Webers*, Duncker & Humblot, Berlin 1957 p. 32.

“on to the ruling organisations of other cultures and epochs.”⁴ It is believed that he did not use the term “states” for pre-modern systems of rule, and so in this way avoided an “inappropriate transfer of modern concepts to older historical relations.”⁵ Likewise the conviction has been expressed that he never used the concept “state” as a super-temporal category.⁶ These positions remain representative of received opinion in the literature, but they are untenable. A glance at Weber’s writing will show that there can be no talk of “conceptual restraint,” since his sociologies of the law, of rule and of religion make very free with the word state to describe institutions of rule in the most varied epochs and cultures.⁷

The fact that Weber made very free with the word in his writings makes it necessary that we do to some degree quote Weber against Weber when investigating the historical dimension of his theory of the state. While he did use the term in the most imprecise way, it is nevertheless true that his precise historical *concept* of the state represents a very important step in the clarification of an old problem. The first person to have drawn attention to this problem was Constantin Frantz, who not only pointed to the “general abstraction of the *historical* character of the state which in the usual definitions is not taken into account” but also demanded “that the historical character of the state” should be included as a feature in any definition.⁸ Quite plainly Weber took this demand to heart and was the first to put forward a concept of the state that was historically oriented. In so doing, he diverged from the prevailing idea that the state “is as old as mankind”⁹ or that it

⁴ Carl Schmitt, “Staat als ein konkreter, an eine geschichtliche Epoche gebundener Begriff” [1941], in his *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954*, Duncker & Humblot, Berlin 1958 p. 384.

⁵ Günter Abramowski, *Das Geschichtsbild Max Webers*, Klett, Stuttgart 1966 p. 121.

⁶ Heino Speer, *Herrschaft und Legitimität. Zeitgebundene Aspekte in Max Webers Herrschaftssoziologie*, Duncker & Humblot, Berlin 1978 p. 99. For historical aspects see Stefan Breuer, “Wege zum Staat,” in Andreas Anter, Stefan Breuer (eds), *Max Webers Staatssoziologie*, Nomos, Baden-Baden 2007 pp. 57–77; Patrice Mann, “La genèse de l’État moderne: Max Weber revisité,” *Revue française de sociologie* 41 (2000) pp. 331–344.

⁷ Stefan Breuer was the first to point out how casual Max Weber was in using the word for the political groupings of antiquity, and he emphasised that “there was no trace of an epochal or cultural limitation in his use of the concept of the state” (Breuer, “Max Webers Staatssoziologie,” *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 45 [1993] p. 207). He here advanced the very plausible thesis that Weber only developed a clear conceptualisation of the state in the second draft of his contribution to the *Grundriß* (p. 211). Nonetheless, this still does not explain why Weber continued to use the term loosely in his later writings.

⁸ Constantin Frantz, *Die Naturlehre des Staates als Grundlage aller Staatswissenschaft*, Winter, Leipzig, Heidelberg 1870 pp. 68f.

⁹ Friedrich Keutgen, *Der deutsche Staat des Mittelalters*, Fischer, Jena 1918 p. 3.

arose at the time that humans settled in one place – which was, for example, Jellinek's view¹⁰ – and he referred quite freely to the “older oriental,” “Hellenic,” “Roman” and “medieval” state.¹¹ This reflected the prevailing view in contemporary political theory, in which it was “quite usual to talk of the ‘state’ of the Athenians and the Romans, the medieval ‘state’, and that of the Aztecs.”¹²

However, Max Weber did not consider the historicity of the concept of the state to be an especially significant theoretical problem. It was only Hermann Heller who underscored the fact that “the name and reality of the state is something historically quite unique, and this early modern individuality should not be smuggled back into earlier periods.” He opposed the “retrospective projection of the concept of the state,” since through its “unlimited extension the concept of the state becomes entirely denatured and unusable.”¹³ It was really Heller who first opened up a historical conception of the state. Significant conceptual clarification came from Carl Schmitt in particular, who on this point was in agreement with his sparring partner Heller and who vehemently opposed making the state “a general concept applicable to all periods and people.”¹⁴ But the most decisive contribution to the creation of a historical concept of the state was made by Otto Brunner, who showed in his ground-breaking study *Land und Herrschaft* that the state first developed in early modernity.¹⁵ Ernst Forsthoff accordingly praised him for “putting an end to the cavalier use to which scholarship has long put the word and concept ‘state,’ deep into the present century.”¹⁶ Recognition that it was today “no longer admissible to talk of the Ptolemaic, Ancient Egyptian, Aztec, Greek and Roman state”¹⁷ was owed to Brunner's work, but one also had to be clear that in this Brunner stood on Max Weber's shoulders.

But is it really true, as Böckenförde suggests, that “scholarly consciousness has established the idea that the state is not a general concept, but that it serves to characterise and describe a political form of organisation” which first emerged in early modern Europe?¹⁸ It is said of German scholars that

¹⁰ Georg Jellinek, *Allgemeine Staatslehre* (1900), 3rd ed., Darmstadt 1960 p. 266.

¹¹ *Ibid.*, pp. 288ff., 292ff., 312ff., and 316ff.

¹² Schmitt, “Staat,” *op. cit.* p. 383.

¹³ Hermann Heller, *Staatslehre*, Sijthoff, Leiden 1934 p. 125.

¹⁴ Schmitt, “Staat,” *op. cit.* p. 376.

¹⁵ Otto Brunner, *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter*, 4th ed., R. M. Rohrer, Vienna, Wiesbaden 1959 pp. 111ff.

¹⁶ Ernst Forsthoff, *Der Staat der Industriegesellschaft. Dargestellt am Beispiel der Bundesrepublik Deutschland*, C. H. Beck, Munich 1971 p. 11.

¹⁷ *Ibid.*

¹⁸ Ernst-Wolfgang Böckenförde, “Die Entstehung des Staates als Vorgang der Säkularisation,” in *Säkularisation und Utopie*, Ebracher Studien, Kohlhammer, Stuttgart 1967 p. 75. He likewise emphasised that it was “today no longer possible” to talk of the “state” of the Hellenes or of the Incas (*ibid.*).

they love the purity of concepts above all else, but a glance at the literature of the historical and political sciences will show that the concept of the state continues to be used in an entirely loose – if not naïve – manner, as a universal historical category applicable to each and every form of political rule. This does not however do justice to the epochal turning point that the monopolisation of force represents.

An adjective rescues us from having to choose between conceptual purity and historical imprecision. We can use the word “modern” for the state which monopolises violence and so distinguish it from earlier forms of rule. Max Weber makes use of this expedient, and in so doing connects to what was in his time a relatively new tradition. The concept of the modern state was first coined at the beginning of the nineteenth century; by mid-century it had become accepted usage in social and political writings, but it was not until the end of the century that it entered wide use.¹⁹ This is now a conceptual construction broadly accepted in the literature, making it possible to retain a concept of the state, but at the same time, recognise the need for historical exactness. All the same, it has to borne in mind that the expression “modern state” is in itself a tautology, since if we accept Weber’s position it is only the modern state that is a state.²⁰

1 The emergence of the modern state

Asking when the modern state was born leads us into a seemingly inescapable loop. The result of any empirical investigation of this origin depends upon the concept of state with which you start. Conversely, any concept of the state can only be formed through historical and empirical study of its origin.²¹ Apart from that, the question of the emergence of *the* state is numerically inexact: the state does not emerge in the singular, but in plural. A wide range of heterogeneous ruling structures develop at different times in different territories, into that form of political rule that we today call the state. Since this process is regionally uneven in timing, such that we cannot talk of “a uniform, common origin of all states,” something that Jellinek had

¹⁹ Stephan Skalweit demonstrated this in exemplary fashion in his *Der “moderne Staat.” Ein historischer Begriff und seine Problematik*, Westdeutscher Verlag, Opladen 1975 pp. 14ff. His comments on the concept of “modernity” remain useful even after four decades (*ibid.* pp. 5ff.).

²⁰ Ernst Vollrath has pointed out quite properly that the “term ‘modern state’ is a tautology” (“Institutionenwandel als Rationalisierungsprozeß bei Max Weber,” in Hans-Hermann Hartwich [ed.] *Macht und Ohnmacht politischer Institutionen*, Westdeutscher Verlag, Opladen 1989 p. 89).

²¹ Alexander Passerin d’Entrèves asks: “Is it possible to state precisely when the modern State was born? ... To ask when and how the modern State came into being means nothing unless a definition has first been arrived at as to what is meant by ‘the modern State.’” (*The Notion of the State*, Oxford University Press, Oxford 1967 p. 96.)

emphasised²² one should strictly speaking talk of the emergence of *states*. It is therefore little surprise that the theoretical results of studies of the genesis of the state are generally disappointing.²³

During the eighteenth and the nineteenth centuries the question of the origin of the state became a central question of political thought,²⁴ reflected in the metaphor of Leviathan or of a social contract; but today the question is met with a shrug of the shoulders, at best. Georg Jellinek, the great legal authority of Max Weber's era, admitted that, like the origin of all human institutions, the origin of the state was for us "wrapped in obscurity"²⁵; and modern political theory takes the view that "the natural obscurity of the roots of any state form" admits "only hypotheses to be formed regarding the emergence of the state apparatus."²⁶ Has Max Weber helped shed light on this obscurity?

There are only a few passages in his writings in which he addresses the question of origin, and this is always in passing. At one point in the sociology of rulership he states that there can "be no doubt" "that the seeds of intensive, 'modern' state formation" emerged in the Middle Ages.²⁷ As elsewhere, he did not go as far as to provide exact dates, but even the specification of such a lengthy period as the Middle Ages is of help, since he here (unintentionally) adopts a position with respect to a contemporary controversy in the historical and social sciences. Whether there was a state in the Middle Ages was an issue that preoccupied a whole generation of constitutional and political historians, who never tired of approaching the medieval period with the question: are there already here elements of state activity? The most prominent of these was Georg von Below, who set himself "the task of demonstrating that the medieval state was a state, that the medieval constitution was one that presupposed the existence of a state."²⁸ Not only did von Below believe that he had provided satisfactory proof of this, many of his contemporaries also believed that he had conclusively demonstrated the "true statal nature of the medieval,"²⁹ and that "no one could doubt this."³⁰

²² Jellinek, *Allgemeine Staatslehre*, op. cit. p. 21.

²³ Georges Balandier, *Political Anthropology*, Pantheon, London 1970 p. 152.

²⁴ This is something shared with other sciences that keenly seek the origins of their objects of study: language, culture, family or institutions. The question of "origin" is a dominating scientific paradigm of the eighteenth century, where knowledge of the origin is often thought to represent the point of departure for knowledge of an object as such.

²⁵ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 21.

²⁶ Roman Herzog, *Allgemeine Staatslehre*, Athenäum, Frankfurt a.M. 1971 p. 95.

²⁷ Weber, *Herrschaft*, MWG I/22-4 p. 179 (WuG 559).

²⁸ Georg von Below, *Der deutsche Staat des Mittelalters. Eine Grundlegung der deutschen Verfassungsgeschichte*, Bd. I, 2nd ed., Quelle & Meyer, Leipzig 1925 p. III.

²⁹ Fritz Kern, *Recht und Verfassung im Mittelalter* (1919), Wissenschaftliche Buchgesellschaft, Tübingen 1952 p. 19.

³⁰ Keutgen, *Der deutsche Staat des Mittelalters*, op. cit. p. 2.

This controversy had major ideological implications. If Georg von Below emphasised that a proof of the existence of a German state in the Middle Ages “justified our past,”³¹ then he is seeking to create a history for the ‘delayed’ German state, as was the intention of others who defended his thesis. The passion involved in defending this thesis quite obviously had a patriotic basis. As Helmut Quaritsch wrote, proof of the existence of a German medieval state was “a necessity for national politics” in countering the “inferiority complex” which “appeared to afflict contemporary Germany regarding the reluctance of its predecessors to form a state.”³² There was a quite obvious national motive for these German historians, since they sought to create historical roots for the “delayed nation-state.”

Although Max Weber was not in any way an unpatriotic thinker, he was very much detached from these endeavours. He was very familiar with von Below’s book and knew all about the dispute; proof of this is not only in his critical analysis of the book³³ but also in his letter to its author, which von Below published proudly in the second edition.³⁴ Weber might well have gained here some inspiration for his political sociology, but he in *no* respect supported Below’s thesis, since he can only see “seeds” of state activity in the Middle Ages, not a developed state.³⁵ Instead, Weber introduced qualifications to the “medieval thesis,” and in so doing created the conditions for its subsequent rebuttal by Hermann Heller, Carl Schmitt and Otto Brunner.³⁶

Weber did not only have reservations about the theory of the medieval state but also of the patrimonial state, one of the prevailing contemporary models for the emergence of the state. This theory depended upon the existence of feudal relationships, and proposed that state power rested upon landed property within a state territory. This specifically German theory was developed by German lawyers in the later eighteenth century, seeking to create a “foundation for the autonomy of German territories in their own

³¹ Below, *Der deutsche Staat*, op. cit. Bd. I p. VI.

³² Helmut Quaritsch, *Staat und Souveränität, Bd. I: Die Grundlagen*, Athenäum, Frankfurt a.M. 1970 pp. 29f.

³³ Weber, WuG 137.

³⁴ Weber did not spare in his praise: “I am reading your book on the state with pleasure and instruction.” (Letter to von Below, 21 June 1914, in his *Briefe 1913–1914*, MWG II/8 p. 723; quoted in von Below, *Der deutsche Staat*, op. cit. Bd. I p. XXIV).

³⁵ There is no affinity between Weber and von Below, either in their basic problematic or in any other respect; Tenbruck’s claim that they had a “closer scholarly relationship” is untenable (“Max Weber and Eduard Meyer,” in Mommsen, Osterhammel (eds) *Max Weber and His Contemporaries*, 2nd ed. Routledge, London 2010 p. 258).

³⁶ Hermann Heller considered the term “medieval state” to be “entirely questionable,” since there was no monopoly of violence (Heller, *Staatslehre*, op. cit. p. 126); Carl Schmitt can only express his “astonishment” at von Below’s use of the concept of state (Schmitt, “Staat” [1941], op. cit. p. 384); Otto Brunner showed with a range of historical material and with the conceptual help of Max Weber that there was no such thing as a “state” in the Middle Ages (Brunner, *Land und Herrschaft*, op. cit. pp. 111ff.).

state institutions.”³⁷ The most important and prominent representative of this view was not however a German, but the Swiss Carl Ludwig von Haller, who systematically developed the idea in the early nineteenth century.³⁸ Max Weber’s view that it was well-known that the concept of the patrimonial state came from von Haller,³⁹ together with von Below’s claim that von Haller had “invented” the concept,⁴⁰ have been shown to be erroneous, since Brunner demonstrated that the doctrine of a patrimonial state was not Haller’s own idea.⁴¹

Weber, whose concept of patrimonial rule has even been called his “most important contribution to historical sociology,”⁴² did make a connection with this doctrine, while at the same time clearly distancing himself from it. He regarded patrimonial forms of rule in the Occident solely as “forerunners of modern state institutions” as they developed into territorially based rule with a monopoly of violence. Here there were early signs of the modern state,⁴³ but “the term ‘state’ in its present sense” was not itself applicable to patrimonial structures of rule.⁴⁴ This position was also reflected in Weber’s remark on the basic problem of patrimonialism: the existence of constant “conflict of the central power with the various centrifugal local powers.”⁴⁵ If there was no monopoly of violence then there is no way one can talk of a state. But what he said about the patrimonial state also coloured what he said about the state based upon ranks (*Ständestaat*): “The things we are now accustomed to regard as the content of the unified ‘supreme authority’ (*Staatsgewalt*) fell apart under that system into a bundle of individual entitlements in various hands. There was as yet no question of a ‘state’ in the modern sense of the word.”⁴⁶ Weber uses as his template the criterion of the monopoly of violence, matching this against structures of rule to assess their degree of stateness. And in this way he always comes to the conclusion that there are at most predecessors or “seeds” of stateness where violence is not yet monopolised by a central instance.

³⁷ Brunner, *Land und Herrschaft*, op. cit. p. 147.

³⁸ Carl Ludwig von Haller, *Restauration der Staatswissenschaft*, 2nd ed., Steiner, Winterthur 1820/21 Bd. 2 passim, Bd. 3 pp. 3–180.

³⁹ Weber, WuG 137.

⁴⁰ Below, *Der deutsche Staat*, op. cit. Bd. I p. IV.

⁴¹ Brunner, *Land und Herrschaft*, op. cit. p. 146.

⁴² Stefan Breuer, *Max Webers Herrschaftssoziologie*, Campus, Frankfurt a.M., New York 1991 p. 76. For Max Weber’s conception of patrimonialism see Breuer, “*Herrschaft in der Soziologie Max Webers*,” Harrassowitz, Wiesbaden 2011 pp. 87ff.; Siegfried Hermes, *Soziales Handeln und Struktur der Herrschaft*, Duncker & Humblot, Berlin 2003 pp. 114ff., 131ff.

⁴³ Weber, *Herrschaft*, MWG I/22-4 p. 343 (WuG 613).

⁴⁴ *Ibid.*, p. 411 (WuG 636).

⁴⁵ *Ibid.*, p. 343 (WuG 613).

⁴⁶ Weber, “Suffrage and Democracy in Germany” (1917), in his *Political Writings*, ed. Peter Lassman, Ronald Speirs, 6th ed., Cambridge University Press, Cambridge 2008 p. 101.

The few scattered remarks that Weber makes regarding the emergence of the state cannot be assigned to any particular theory of the emergence of the state. But when he writes that the “societization that we today call the ‘state’ typically originated in free ad hoc societizations of booty hunters to a military campaign,”⁴⁷ there is clearly a substantial affinity with theories that relate the emergence of the state to war and conquest. He does not say which campaigns he has in mind, nor does he locate them historically. We must therefore treat this idea of the emergence of the state from military campaigns of conquest and depredation more as a heuristic device that can be deployed as an alternative to that other major heuristic figure, contract theory. Weber enters a position here which is located in a tradition to which quite different thinkers have contributed. David Hume argued that all “governments” “have been founded originally, either on usurpation or conquest.”⁴⁸ Heinrich von Treitschke considered “war and conquest” to be “the most important factors in State construction,”⁴⁹ and even Nietzsche saw the emergence of the state as the exercise of brute force, a conqueror occupying territory and subordinating lands to its rule.⁵⁰ Weber did write, making a rare reference to Nietzsche, that it was “wilful” “to use Nietzsche’s ideas to argue that one victorious tribe subjugated another and then created a lasting apparatus,” but his criticism related only to the fact that conquest creates no such “lasting apparatus,” and that the state as an occasional formation of groups of men ceased to exist once a campaign was ended.⁵¹

Given Weber’s conception that the origin of the state was to be found in conquest and warfare, there could be thought to be some resemblance to the arguments advanced by Ludwig Gumplowicz and Franz Oppenheimer, who saw the state as the outcome of a process of violent conquest: as an instance forced upon the conquered by the conquerors in order to secure

⁴⁷ Weber, “On some categories of interpretive sociology” (1913), in his *Collected methodological writings*, ed. Hans Henrik Bruun, Sam Whimster, Routledge, London 2012 pp. 273–301, 288.

⁴⁸ David Hume, “On the Original Contract,” in his *Political Essays*, ed. Knud Haakonssen, 5th ed. Cambridge University Press, Cambridge 2006 pp. 189–190.

⁴⁹ Heinrich von Treitschke, *Politics*, vol. 1, Macmillan, New York 1916 p. 108.

⁵⁰ Nietzsche, “The Greek State,” in his *On the Genealogy of Morality*, ed. Keith Ansell-Pearson, Cambridge University Press, Cambridge 2006 pp. 168f. See on this Daniel Conway, “The Birth of the State,” in Herman W. Siemens, Vasti Roodt (eds), *Nietzsche, Power and Politics. Rethinking Nietzsche’s Legacy for Political Thought*, de Gruyter, Berlin, New York 2008 pp. 37–67; Tamsin Shaw, *Nietzsche’s Political Skepticism*, Princeton University Press, Princeton, 2007 esp. pp. 12ff.; Raymond Polin, “Nietzsche und der Staat oder die Politik eines Einsamen,” in Hans Steffen (ed.) *Nietzsche*, Vandenhoeck & Ruprecht, Göttingen 1974 pp. 27–44 (esp. 30f.).

⁵¹ Weber, *Herrschaft*, MWG I/22-4 p. 515 (WuG 670); id., “On some categories of interpretive sociology,” op. cit. p. 288.

this forcibly-imposed system of rule.⁵² They consciously saw themselves as the founders of a “sociological conception of the state” and claimed to have developed an empirical historico-sociological theory of the emergence of the state. However, on examination their approach turns out to be neither empirical nor sociological, since they work extensively with supposition and speculation, and in effect develop a relatively crude theory of power in which it is always the stronger who prevails. For this reason there seems little reason to retain the term “sociological theory of the state” for these writers although this designation was uncritically accepted by contemporaries⁵³ as well as later authors.⁵⁴ It is even less appropriate to associate Weber with this problematic category, since he shares little in common with the theories advanced by Gumplowicz and Oppenheimer. A review of contemporary theories of the state shows that only Weber can be said to have developed the basic outlines of a sociological theory of the state.⁵⁵

In Weber’s writing the historical dimension of the emergence of the state is less clearly worked out than other perspectives. Quite plainly, he was not really interested in the question of origins. Reinhard Bendix even went as far as to say that, for Weber, the question of the emergence of the modern state “was outside the competence of comparative sociological research,” or in any case, “outside the scope of his research.”⁵⁶ He does not cite chapter and verse, but his argument does find support in two interesting passages. Here Weber complains that knowledge of the evolution of the German state might seem to be “utterly stale and tedious, or at least a very secondary – and indeed, if it is carried out for its own sake, completely pointless – task.”⁵⁷ He also thought investigation of the genesis of Native American “states”

⁵² Ludwig Gumplowicz, *Die Sociologische Staatsidee*, 2nd ed., Wagner, Innsbruck 1902; Franz Oppenheimer, *The State. Its History and Development Viewed Sociologically* (1914), transl. John M. Gitterman, Transaction Publishers, New Brunswick 1999. For the contemporary reception of these works see Adolf Menzel, “Begriff und Wesen des Staates,” in *Handbuch der Politik*, ed. Paul Laband, Bd. 1, Rothschild, Berlin, Leipzig 1912 p. 37; id., *Beiträge zur Geschichte der Staatslehre*, Hölder, Vienna 1929 p. 547; Harry Elmer Barnes, *Sociology and Political Theory. A Consideration of the Sociological Basis of Politics*, Knopf, New York 1924 pp. 34f.; Otto Hintze, “Soziologische und geschichtliche Staatsauffassung. Zu Franz Oppenheimers System der Soziologie,” in his *Soziologie und Geschichte*, 3rd ed., Vandenhoeck & Ruprecht, Göttingen 1982 pp. 239f.

⁵³ For example, Menzel, “Begriff und Wesen des Staates,” op. cit. pp. 37f. Barnes thought their approach to be the most important sociological theory of the emergence and development of the state (Barnes, *Sociology and Political Theory*, op. cit. p. 53).

⁵⁴ For example, Kurt Lenk, *Staatsgewalt und Gesellschaftstheorie*, Fink, Munich 1980 pp. 152ff.

⁵⁵ See Andreas Anter, “La teoria dello Stato di Max Weber nel contesto contemporaneo,” *Il Pensiero Politico* 44 (2011) pp. 348–368, esp. 355ff.

⁵⁶ Reinhard Bendix, *Max Weber. An Intellectual Portrait*, Routledge, London 1998 p. 380.

⁵⁷ Weber, “Critical studies in the logic of the cultural sciences,” in his *Methodological Writings*, ed. Hans Henrik Bruun, Sam Whimster, Routledge, London 2012 p. 161.

(*Indianer-“Staaten”*) to make little sense, since “the way in which those states originated, and probably even their very existence, were ‘unimportant’ for the shaping of the political and cultural situation of the United States.”⁵⁸ These two statements show that he was not interested in the scholastic question of origin, but rather in the *course of development* of the modern state. Given this perspective, it is rationalisation, bureaucratisation, monopolisation and centralisation that are of central importance.

2 The history of the state as the history of bureaucracy

The officials are very well educated, but only in a one-sided way; in his own department, an official will see a whole train of ideas behind a single word, but you can spend hours on end explaining matters from another department to him, and while he may nod politely he doesn't understand a bit of it. (Franz Kafka, *The Castle*)

Max Weber was less interested in the emergence of the state than in its structural form and mode of functioning: bureaucracy. This is apparent in almost all those contexts in which he dealt with the state from a historical perspective. If he identified the “germ” of the modern state activity as everywhere appearing “in common with the development of bureaucratic forms”⁵⁹ and regarded the bureaucracy as the “germ of the modern occidental state,”⁶⁰ then the history of the modern state becomes for him the history of modern bureaucracy. Since this is not only true in a historical perspective but also of contemporary analysis, Weber's theory of the state can be read as a theory of bureaucracy, and his theory of bureaucracy as a theory of the state.

The theory of bureaucracy is of course one of the most frequently studied aspects of his work, but up until now its relation to the theory of the state has not often been adequately examined.⁶¹ This could seem so because his treatment of bureaucracy appears both impressive and complete. The following will not only deal with the relationship between the theories of state and of

⁵⁸ *Ibid.*, p. 151. Max Weber was referring here to an article by Kurt Breysig, “Die Entstehung des Staates aus der Geschlechterverfassung bei Tlinkit und Irokesen,” *Schmollers Jahrbuch* 28 (1904) pp. 483–527. Breysig sought to prove that the emergence of Indian “states” had the typical features of state formation, and were therefore of universal historical significance. This was precisely what Weber doubted, who was rather dismissive of Breysig's investigations based on “potsherds” (Weber, “Critical studies in the logic of the cultural sciences,” *op. cit.* p. 152.

⁵⁹ Weber, *Herrschaft*, MWG I/22-4 p. 179 (WuG 559).

⁶⁰ Weber, WuG 128; he makes use here of a metaphor in a manner which is unusual for him.

⁶¹ See Hubert Treiber, “Moderner Staat und moderne Bürokratie bei Max Weber,” in Andreas Anter, Stefan Breuer (eds), *Max Webers Staatssoziologie*, Nomos, Baden-Baden 2007 pp. 121–155.

bureaucracy but also show the importance of aspects of Weber's arguments related to the discussion of bureaucracy during the nineteenth and early twentieth centuries, modifying the points made there and developing them. His model of bureaucracy, for which there has been enough study, praise and criticism,⁶² will be dealt with here only insofar as it relates to aspects of the state.

Max Weber outlines and analyses the connection of state formation to bureaucratisation in the Occident, using a range of examples. He states quite laconically: "The modern state emerges when the prince takes the business into his own household."⁶³ Early modern "Continental state powers were collected together by those princes who pursued the bureaucratisation of administration with the least regard to all else."⁶⁴ He concluded from his historical investigations that "the longer the modern large-scale state lasted, the more it would become technically dependent upon a bureaucratic foundation." The prime cause was, he thought, "increasing demands on the administration," chiefly with respect to social policy that were in part piled on to the state, but which it also arrogated to itself.⁶⁵ In stating this, he adopts a position which enjoys widespread agreement today in the literature of legal and political sciences. It is nowhere disputed in recent literature that the extension of state functions in general, and of the social and welfare state in particular, have made a decisive contribution to bureaucratisation.⁶⁶

⁶² "Argument about this conception, the bending of concepts this way and that, attempts to reconstruct and supplement it, empirical testing, these are all the object of ongoing scientific labour," as Niklas Luhmann remarked not without a degree of irony ("Ends, Domination, and System," in his *The Differentiation of Society*, Columbia University Press, New York 1982 pp. 20–46, 20). Wolfgang Schluchter's comment regarding an "almost compulsive orientation" of many organisation sociologists to Weber remains true (*Aspekte bürokratischer Herrschaft. Studien zur Interpretation der fortschreitenden Industriegesellschaft*, List, Munich 1972 p. 18). Practically all organisational sociologists connect their work with Weber, irrespective of whether they agree or disagree with him. The productiveness of his conception even for historical research is shown by Tibor Süle's remarkable study – *Preußische Bürokratietradition. Zur Entwicklung von Verwaltung und Beamtenschaft in Deutschland 1871–1918*, Vandenhoeck & Ruprecht, Göttingen 1988 – which on the one hand uses Weber's model of bureaucracy as a theoretical tool, and on the other seeks to verify it with an empirical and historical investigation.

⁶³ Weber, "Socialism," in his *Political Writings*, op. cit. p. 281.

⁶⁴ Weber, *Herrschaft*, MWG I/22-4 p. 181 (WuG 560).

⁶⁵ *Ibid.*, pp. 181–183 (WuG 560f.).

⁶⁶ See Süle, *Preußische Bürokratietradition*, op. cit. pp. 25ff.; also Thomas Ellwein, *Der Staat als Zufall und als Notwendigkeit. Die jüngere Verwaltungsentwicklung in Deutschland am Beispiel Ostwestfalen-Lippe*, Bd. I, Westdeutscher Verlag, Opladen 1993; Rainer Wahl, "Die bürokratischen Kosten des Rechts- und Sozialstaats," *Die Verwaltung* 13 (1980) pp. 273ff.; Norberto Bobbio, *The Future of Democracy*, Polity, Cambridge 1987 p. 38.

But Weber is not the first to have presented this diagnosis. Even Robert von Mohl saw the extension of state activity as the decisive factor in bureaucratisation, arguing that “new demands and needs” would extend its range and consequently the reach of officialdom.⁶⁷ Josef Olszewski came to the conclusion that, with the development of large modern states, an inevitable consequence would be the “centralisation of administration” and the development of a bureaucratic “*Polycracy*,”⁶⁸ buttressing the state bureaucracy and reinforcing its supremacy of power.⁶⁹ It was quite clear to Weber that the development of the *social state*, in his time in its early stages, would inexorably force onward the pace of bureaucratisation. It is therefore very hard to understand how anyone could think that he had “failed to notice” the emergent social state of his time.⁷⁰ He was a close observer of the contemporary state, which in the later nineteenth century became a source of social welfare, developing a degree of *Daseinsvorsorge* (provision for existence)⁷¹ that other European states adopted much later. Progress of this kind inevitably came at a cost. The quantitative and qualitative extension of state activities necessarily led to the expansion and differentiation, formalisation and professionalisation of the administrative apparatus: to a “bureaucratisation of the bureaucracy.”⁷²

To the considerable list of further factors that contributed to bureaucratisation can be added the creation of standing armies, the advance of a money

⁶⁷ Robert von Mohl, “Ueber Bureaukratie” (1846), in his *Staatsrecht, Völkerrecht und Politik*, Bd. 2 (1862), Akademische Druck- und Verlagsanstalt, Graz 1962 p. 111.

⁶⁸ Josef Olszewski, *Bureaukratie*, Stubers, Würzburg 1904 p. 45.

⁶⁹ *Ibid.*, p. 274.

⁷⁰ An untenable point made by Manfred Rehbinder, “Max Weber und die Rechtswissenschaft,” in Manfred Rehbinder, Klaus-Peter Tieck (eds) *Max Weber als Rechtssoziologe*, Duncker & Humblot, Berlin 1987 p. 138. For Weber’s relationship to the *Sozialstaat* of his time, see John P. McCormick, *Weber, Habermas, and Transformations of the European State*, Cambridge University Press, Cambridge 2009 pp. 113ff.; Joachim Radkau, *Max Weber. A Biography*, trans. Patrick Camiller, Polity, Cambridge 2009 pp. 320f.; Horst Baier, “‘Vater Sozialstaat’. Max Webers Widerspruch zur Wohlfahrtspatronage,” in Christian Gneuss, Jürgen Kocka (eds), *Max Weber*, dtv, Munich 1988 pp. 47ff.

⁷¹ See the classic text by Ernst Forsthoff, *Die Verwaltung als Leistungsträger*, Kohlhammer, Stuttgart, Berlin 1938, espec. pp. 6ff. Forsthoff did not only coin the concept of “provision for existence” (*Daseinsvorsorge*), but showed, following Weber, that because of the high level of “neediness” of people in a technicised and urbanised world, states underwent a “extraordinary increase of power” (p. 7) and necessarily became “rationalised structures” (p. 9). For his concept of *Daseinsvorsorge* see Florian Meinel, *Der Jurist der industriellen Gesellschaft. Ernst Forsthoff und seine Zeit*, Akademie Verlag, Berlin 2011 p. 154ff.; Jens Kersten, “Die Entwicklung des Konzepts der Daseinsvorsorge im Werk von Ernst Forsthoff,” *Der Staat* 44 (2005) pp. 543–569.

⁷² Stüle, *Preußische Bürokratiemitradition*, op. cit. p. 26. Using statistical material, he analyses this process in a detailed but very clear manner, not least providing empirical and historical proof for Weber’s ideal-typical account of the manner in which the bureaucracy became rule-governed, formalised, and hierarchised (pp. 25ff.).

economy, a rational system of taxation, and the development of transport and communication technologies. Weber showed that there was a perfect symbiosis between the state, technology and bureaucracy. He viewed the railway and the telegraph not only as “pacemakers of bureaucratisation” but also as instruments of rule in the modern state, which could only be administered “because it commands the telegraph network, and has the post and railways at its disposal.”⁷³ He lists a number of factors that have contributed to bureaucratisation, and which stand in a self-reinforcing relationship to each other. He is not that interested in questions of causality, but it is plain that two factors are paramount: the inner momentum of the administrative sphere, and economic development. On the one hand the rational *Anstaltsstaat*, with the legal security and predictability that it provided, had been very favourable to capitalist development, even made it possible; on the other hand, state structures and modes of functioning became ever more like those of the capitalist economy, almost mimetically so. The modern capitalist enterprise required for its functioning a judiciary and administration whose functioning could be *rationally calculated*, in much the same way that one can predict the future output of a *machine*. In turn, the modern state itself became an enterprise (*Betrieb*) and was organised like a factory.⁷⁴

Weber creates the image of a perfect analogy, and he is tireless in describing it: Just as the so-called progress towards capitalism since the Middle Ages is the unambiguous standard of the modernisation of the economy, so the progress to a bureaucratised officialdom is the unambiguous standard of the modernisation of the state.⁷⁵ He diagnoses a “sociological affinity” of capitalism and bureaucracy,⁷⁶ which mutually reinforces them and assists their development, a highly successful process in which both parties are winners. His sociological comments on rulership are naturally no substitute for a history of the modern state, but they provide a whole range of theoretical and historical positions that can serve as the foundation for historical investigation, and should so be used. They prove not least that any history of the modern state must include those elements that have marked the state more strongly than any other: capitalism and bureaucracy.

In respect both of the historical and the contemporary form taken by the modern rational *Anstaltsstaat*, Weber devotes special attention to that

⁷³ Weber, *Herrschaft*, MWG I/22-4 p. 184f. (WuG 561).

⁷⁴ Weber, “Parliament and Government in Germany under a New Order” (1918), in his *Political Writings*, op. cit. pp. 147f.

⁷⁵ *Ibid.*, p. 145.

⁷⁶ Weber, “The three pure types of legitimate rule,” in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 pp. 133–145 (134). On the relationship of capitalism and bureaucracy in Weber’s writings see Alan Scott, “Capitalism, Weber and Democracy,” *Max Weber Studies* 1 (2000) pp. 33–55. See also Jürgen Kocka, “Capitalism and Bureaucracy in German Industrialization before 1914,” *Economic History Review* 34 (1981) pp. 453–468.

stratum which makes up the cornerstone of the modern state.⁷⁷ Specialised officials appear in his writings as the decisive protagonists of the genesis of state activity, such that the entire developmental history of the modern state is for him identical with the history of modern officialdom.⁷⁸ This idea – which Otto Kimminich somewhat optimistically thinks of today as “part of Central Europe’s educational stock”⁷⁹ but which can be found in “nearly all textbooks on administrative law (*Staatsrecht*)”⁸⁰ – is not a radically new one, but was part of the prevailing scholarly consensus in Weber’s time.⁸¹

Weber wishes to emphasise a singular historical constellation when writing that “No country, and no epoch, has ever been confronted, in the way that the modern Occident has been, with such an absolute and ineluctable consignment of our whole existence, the political, technical and economic conditions of our being, to the constraints of the rigid housing (*Gehäuse*) of a technically-trained *organisation* of officials.”⁸² This existential tenor, combined as it is with the recurrent Weberian notion of the shell or housing (*Gehäuse*), governs his perspective upon and evaluation of officialdom, which he never treats as a simple instrument of state rule, but also as its owner. This is shown most clearly in his essay “Parliament and Government in Germany under a New Political Order” which is, according to the subtitle, a “critique of officialdom.” Here he complains that the official has powers of decision over all our daily needs and complaints, and that “real rule” in the modern state “necessarily and inevitably lies in the hands of *officialdom*.”⁸³

The attribute of *rule* which is embedded in the concept of bureaucracy from the very first was indicated by the “inventor” of the word, the French economist Vincent de Gournay.⁸⁴ Robert von Mohl thought of bureaucracy

⁷⁷ Cf. Weber, “Prefatory remarks to the Collected Essays in the Sociology of Religion,” in Whimster (ed.), *The Essential Weber*, op. cit. pp. 101–112 (102).

⁷⁸ Cf. Weber, “The three pure types of legitimate rule,” op. cit. p. 135.

⁷⁹ Otto Kimminich, “Die Bedeutung des Beamtentums für die Heranbildung des modernen Staates,” in Walter Leisner (ed.) *Das Berufsbeamtentum im demokratischen Staat*, Duncker & Humblot, Berlin 1975 p. 47. See also Hans-Ulrich Derlien et al., *Bürokratietheorie*, VS Verlag Wiesbaden 2011 pp. 68ff.; Hans Hattenhauer, *Geschichte des deutschen Beamtentums*, 2nd ed. Heymanns, Cologne 1993.

⁸⁰ *Ibid.*, p. 50.

⁸¹ Albert Lotz points out that the emergence of a class of officials occurred “in direct connection with the growth of the modern state” (*Geschichte des deutschen Beamtentums*, Berlin 1909 p. 7). Otto Hintze comes to the same conclusion in his essay “Der Beamtenstand” (1911), in his *Soziologie und Geschichte*, op. cit. pp. 66–125.

⁸² Weber, “Prefatory remarks,” op. cit. pp. 102f. (translation modified).

⁸³ Weber, “Parliament and Government,” op. cit. p. 145.

⁸⁴ Around 1740 de Gournay diagnosed a new illness, that of “bureaumanie,” and a new form of rule, “bureaucracie”: “nous avons ... une maladie qui fait bien du ravage; cette maladie s’appelle la bureaumanie. Quelquefois il en faisait une quatrième ou cinquième forme du gouvernement sous le titre de bureaucracie” (cited as in Carl August Emge, “Bürokratisierung,” *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 3 (1950/1951) p. 179).

as “violently forging onward,” as a “feared and hated opponent” which has “taken command of the state.”⁸⁵ Josef Olszewski described how officials had gained “control of state affairs as a *monopoly*,” taken over “the monopoly of the political sciences”⁸⁶ and were slowly growing “into a powerful element which successively took from trustful rulers a part of their previous powers.”⁸⁷ Max Weber added to this: for him it is plain that officials have assumed the *entire* business of rule. Hence, as with his predecessors, his critique of bureaucracy became a critique of officialdom.

Unlike his predecessors, however, Weber did not resort to the withering polemics that were directed at officials in the nineteenth century. Marx scoffed that they were “the Jesuits and theologians of the state” whose credo was “subordination and dumb obedience,” “the chasing of higher posts,” the “making of a career.”⁸⁸ Robert von Mohl observed that the entire population was united in “their bitter hatred of the bureaucrats”⁸⁹ whose “narrow-minded superciliousness” and “tedious adherence to routine” was an irritation,⁹⁰ whose gaze never lifted above their “glacial files”⁹¹ and whose favourite pastime was “useless scribbling” and “wasting ink.”⁹² Karl Heinzen, the first analyst and brilliant critic of bureaucracy, attacked “the waste and the evil of rule by officials and the bureaucracy.”⁹³ Josef Olszewski despised the “blind obedience” of opportunistic officials⁹⁴ and was convinced that “only emancipation from bureaucratic *Polycracy* offers an escape from the terrorism of officialdom.”⁹⁵ Max Weber is likewise anything but an apologist for officialdom. But since he sought to overcome the “sterile complaints about the ‘Blessed Saint Bureaucracy’”⁹⁶ he adopted a stance of opposition to this much favoured, yet ineffective, polemic, and set about constructing a “political critique.” It is in this sense that we should understand the subtitle

⁸⁵ von Mohl, “Ueber Bureaukratie,” op. cit. p. 104.

⁸⁶ Olszewski, *Bureaukratie*, op. cit. p. 46.

⁸⁷ *Ibid.*, p. 44.

⁸⁸ Karl Marx, *Critique of Hegel's “Philosophy of Right,”* transl. Joseph O'Malley, Cambridge University Press, Cambridge 1977 pp. 46–47 (translation modified).

⁸⁹ von Mohl, “Ueber Bureaukratie,” op. cit. p. 101.

⁹⁰ *Ibid.*, p. 102.

⁹¹ *Ibid.*, p. 103.

⁹² *Ibid.*, p. 115. He pretends here that these are just widespread opinions which he is reporting in a kind of “value free” manner, but it is not difficult to read his own critique in these remarks.

⁹³ Karl Heinzen, *Die preussische Bureaukratie*, C. W. Leske, Darmstadt 1845 p. 13. One thing that really pleases him is that at least word is not German in origin: “The word bureaucracy is one of those discreditable words which we ... cannot replicate in our mother tongue. It is more to the credit of our mother tongue, than to ourselves, if we adopt even bad things from abroad for which we have no name in German.”

⁹⁴ Olszewski, *Bureaukratie*, op. cit. p. 55.

⁹⁵ *Ibid.*, p. 50.

⁹⁶ Weber, “Parliament and Government,” op. cit. p. 180 (PS 354).

to "Parliament and Government." As happened so often, his position is one of ambivalence. While criticising officials, he recognises their historical significance in the emergence of the state, and also admires their achievement in making the state work. He is well aware that the success story of the modern state is not least of all the success story of officialdom.

For this victorious progress, the "onward march of bureaucracy,"⁹⁷ it is the well-known structural principles that are the deciding factor, principles that have an advantage over every other organisational structure of state rule: precision, speed, calculability, hierarchy, division of labour, effectiveness. Weber is not the first to name these principles. Even Hegel saw the bureaucracy as an apparatus made up of officials, organised according to the principles of "hierarchy" and "responsibility."⁹⁸ He considers division of labour and centralisation to be necessary to achieve "facility, speed, and effectiveness in measures adopted for the universal interest of the state."⁹⁹ Marx, who said that Hegel effected "an empirical description of the bureaucracy,"¹⁰⁰ placed emphasis both on the necessarily formalistic character of bureaucracy and the necessarily bureaucratic nature of the state,¹⁰¹ aspects that play a central role in Weber's analysis.

But neither Marx¹⁰² nor any other nineteenth century thinker developed a precise concept of bureaucracy.¹⁰³ Robert von Mohl, who did try to reach a definition,¹⁰⁴ sees complete confusion in the prevailing use of the catchword: while "in all places and in relation to the most varied occasions one talks of 'bureaucracy,'" everyone understands it to mean something different.¹⁰⁵ Even Josef Olszewski, who had identified the bureaucratic principles of specialised training, use of written records, and the duties of loyalty and obedience,¹⁰⁶ was only able to generally define bureaucracy as a "hierarchically organised corporation."¹⁰⁷ Significantly, there is no discussion

⁹⁷ Ibid. p. 146.

⁹⁸ Hegel, *Elements of the Philosophy of Right*, 8th ed. Cambridge University Press, Cambridge 2003 p. 334 (§ 295).

⁹⁹ Ibid., p. 331 (§ 290).

¹⁰⁰ Marx, *Critique*, op. cit. p. 45.

¹⁰¹ Ibid., p. 46.

¹⁰² Marx simply presented a cascade of fine-sounding but redundant formulations: that bureaucracy was "state formalism," the "formal mind of the state," the "illusion of the state," the "imaginary state" or the spiritualism of the state" (ibid., pp. 46f.).

¹⁰³ For an account of the approaches to bureaucracy taken by nineteenth century thinkers see Martin Albrow, *Bureaucracy*, 2nd ed. Macmillan, London 1989 pp. 18ff. He places the work of Weber in the context of Michels, Marx and Schmitter (pp. 50ff.).

¹⁰⁴ His definition was that bureaucracy was "some kind of tendency or activity of a governing power" (von Mohl, "Ueber Bureaukratie" op. cit. p. 101), but even he thought that this was less than satisfactory.

¹⁰⁵ Ibid., p. 100.

¹⁰⁶ Olszewski, *Bureaukratie*, op. cit. pp. 107ff., 95ff., 137ff., and 147ff.

¹⁰⁷ Ibid., p. 49.

of bureaucracy in the state theory of the nineteenth and early twentieth centuries, and one would look in Jellinek in vain for any such discussion.¹⁰⁸ Weber is certainly the first who sought to examine the relation of state and bureaucracy rather more closely, but since he never did so systematically, we have to reconstruct this relationship.

Weber outlines a gloomy future in which all social and state life is totally bureaucratized, his apocalyptic vision allowing no hope of an alternative. Once a bureaucratic ruling apparatus is in place the ruled “can neither do without it, nor replace it,” so that thoughts of any way out become “ever more utopian”: “Where the bureaucratization of administration has once been entirely implemented a more or less indestructible form of ruling relationships is created.”¹⁰⁹ His prophecy, based upon a sociological diagnosis of the inevitable and unavoidable nature of state bureaucracy, could well make use of Dante’s motto: “Lasciate ogni speranza, voi ch’entrate.” It was not just Max Weber who gave up all hope. As early as 1845, Karl Heinzen remarked with both resignation and derision that bureaucracy evidently was of “divine origin,” since it was “infallible and ubiquitous.”¹¹⁰ Marx remarked that bureaucracy “is a circle from which no one can escape.”¹¹¹ John Stuart Mill warns that “where everything is done through the bureaucracy, nothing to which the bureaucracy is really adverse can be done at all.”¹¹² Max Weber’s deep pessimism stands foursquare within a tradition to which some of the sharpest intellects of the nineteenth century contributed. Just like those who enter Dante’s hell, those who enter Weber’s bureaucratic empire are greeted with: “Abandon all hope.”

His apprehensive question regarding the future political organisational form of the state must be read in the light of this resignation. Given the power of “state officialdom,” how might it be at all possible to keep the monstrous supremacy of this stratum within bounds and monitor it effectively?¹¹³ As a pessimist, realist and anti-utopian, he demonstrates that even anarchism – which he in any case thinks to be naïve – has not the slightest chance of undoing the Gordian knot that bureaucratic state rule represents. He is in complete agreement with Bakunin that files and documents are the foundation of bureaucratic rule, but considers that the abolition of both records and rule to be illusory. “The naïve idea of Bakuninism: by destroying records you at the same time destroy that foundation of ... ‘rule’ forgets

¹⁰⁸ Except for the remarks in his posthumous fragment “Besondere Staatslehre,” in his *Ausgewählte Schriften und Reden*, ed. Walter Jellinek, vol. 2, Häring, Berlin 1911 pp. 288ff.

¹⁰⁹ Weber, *Herrschaft*, MWG I/22-4 p. 208 (WuG 570).

¹¹⁰ Heinzen, *Die preußische Bürokratie*, op. cit. p. 134.

¹¹¹ Marx, *Critique*, op. cit. p. 47.

¹¹² John Stuart Mill, “On Liberty,” in his *“Utilitarianism” and “On Liberty,”* ed. Mary Warnock, Blackwell, Oxford 2003 p. 178.

¹¹³ Weber, “Parliament and Government,” op. cit. p. 159.

that, quite independently of documents, the orientation of *human beings* to the maintenance of established rules and rulings continues."¹¹⁴ He regarded freedom from bureaucracy to be just as utopian as freedom from rulership. Since all human mutual activity is structured by systems of rule, the destruction of rule one day would simply be followed by a new form of rule the day after.

Two comments made by Weber suggest that even revolutions had no chance of destroying bureaucracy. First, he regarded the "smooth continuing functioning of the administrative staff and the continuing validity of its orders under the new holders of power" during the November revolution as an "excellent example" of the ineluctability of bureaucracy.¹¹⁵ Second, he showed that "since the time of the first French empire the ruling apparatus remained substantially the same," making "a 'revolution,' in the sense of the violent creation of entirely new ruling structures an impossibility, on purely technical grounds."¹¹⁶ He categorically denies that revolutions can make an exit from the prevailing influence of bureaucracy possible. State forms come and go, but bureaucracy always remains.

In arguing in this way Weber is following on from Alexis de Tocqueville – whose analysis of the pre- and post-revolutionary French state demonstrated that the administrative apparatus of the *ancien regime*, whose feudal institutions were in any case purely nominal and had long been bureaucratized, was in no respect greatly affected by the French Revolution but instead remained in place without a break.¹¹⁷ Even though it is still unclear to what extent Weber was familiar with Tocqueville's writing,¹¹⁸ more than any

¹¹⁴ Weber, *Herrschaft*, MWG I/22-4 p. 209 (WuG 570).

¹¹⁵ Weber, WuG 155.

¹¹⁶ Weber, *Herrschaft*, MWG I/22-4 p. 209 (WuG 571). It would be worthwhile looking more closely at Weber's concept of revolution and investigating its theoretical and historical role. See Randall Collins, "Weber and the Sociology of Revolution," in Charles Camic et al. (eds), *Max Weber's Economy And Society: A Critical Companion*, Stanford University Press, Stanford 2005 pp. 297–321; Dirk Käsler, *Revolution und Veralltäglicdung. Eine Theorie postrevolutionärer Prozesse*, Nymphenburger, Munich 1977 pp. 12ff.

¹¹⁷ Alexis de Tocqueville, *The Ancien Régime and the French Revolution*, ed. Jon Elster, Cambridge University Press, Cambridge 2011 pp. 39ff., 59ff., and 170ff. For the "administrative" point of view, the Revolution represented a caesura only to the extent that, by removing absolute monarchy and the remaining elements of feudal order, it created the conditions for a forced bureaucratization.

¹¹⁸ Cf. Wilhelm Hennis, "Tocqueville's 'New Political Science'," in his *Politics as a Practical Science*, transl. Keith Tribe, Palgrave, Basingstoke 2009 pp. 148ff.; Jim Faught, "Interests, Values and Democracy: Tocqueville and Weber," *Journal of Classical Sociology* 7 (2007) pp. 55–81; Stephen Kalberg, "Tocqueville and Weber on the Sociological Origins of Citizenship," in Ralph Schroeder (ed.), *Max Weber, Democracy and Modernization*, St. Martin's Press, New York 1998 pp. 93–112; John Patrick Diggins, "America's Two Visitors: Tocqueville and Weber," *The Tocqueville Review/La Revue Tocqueville* 17 (1996) pp. 165–182.

other political thinker of the twentieth century, Weber can be placed – both in respect of the questions he poses and the answers he gives – in a tradition established by the great Frenchman. Neither Tocqueville nor Weber wished to dispute the epochal historical significance of the Revolution. But the sociological perspective on the state that they both share gives them a strong interest in what goes on backstage in this spectacular theatre of revolution: while there is shooting and guillotining onstage, the actors and extras coming and going, the directors remain the same.

Weber's diagnosis joined on not only to that of Tocqueville but also to Josef Olszewski's, who maintained "that even the most radical transformation of the social order," as for example in the French Revolution, "did not only fail to remove the state bureaucracy, but on the contrary, boosted it to the height of its powers."¹¹⁹ The sociological interpretation of the role of the state in the Revolution that we find in Tocqueville, Weber and Olszewski has been extended by Heinz O. Ziegler in a neglected study, where he demonstrated that the administration "was relatively untouched by the revolutionary overthrow of the constitution," moving on without interruption "to reinforce and develop even more strongly centralisation and bureaucratisation," arguing that the "centralisation and rationalisation of administration" begun under the *ancien régime* was simply developed yet further by the French Revolution.¹²⁰

What Weber says of internal state processes applies just as much to the case where a state is occupied by enemy forces: "If the enemy occupies territory, a rationally ordered system of officials continues to function without any problem, just the administrative heads being changed." This arises because of the indifference, neutrality and formality of the apparatus "which very easily finds itself prepared to work for anyone capable of extending their rule over this apparatus."¹²¹ Olszewski had already come to this conclusion, showing in the case of the political upheavals of the nineteenth century that bureaucracies had always subjugated every new government and were always in a position "to adjust in the blink of an eye, and adapt to the new order

¹¹⁹ Olszewski, *Bureaukratie*, op. cit. p. 51. Like Tocqueville, he saw France as the pre-eminent country of bureaucratisation: "Thanks to Napoleon, France became a bureaucrat's paradise, and has remained so ever since. ... Liberty has been decreed and proclaimed twenty times in this state, while the way in which daily life is shaped by an army of state functionaries, and slavery, only goes to show that liberty amounts to no more than high-sounding phrases" (pp. 51f.).

¹²⁰ Heinz O. Ziegler, *Die moderne Nation. Ein Beitrag zur politischen Soziologie*, J.C.B. Mohr (Paul Siebeck) Tübingen 1931 p. 121. "Nowhere do revolutions destroy, they everywhere adopt and strengthen the institutions of absolute centralisation, since it is technically well-adapted to the need for calculability in state action, and the uniform direction of mass behaviour" (p. 86). The Weberian tenor of his study is no accident; he acknowledges his debt to Weber "in his basic questions" and in his sociological approach (p. 12).

¹²¹ Weber, *Herrschaft*, MWG I/22-4 p. 209 (WuG 570).

of things."¹²² Like Olszewski, Weber does not evaluate this observation, but treats it as an empirical, historical and sociological fact. His diagnosis, which can at the same time be read as a prognosis, finds confirmation not only in the theory of the state that followed directly upon his work¹²³ but also in the history of the twentieth century. How smoothly this "continued functioning" can proceed, and how very easily the bureaucracy switches masters, is proved by the slickness of the process of *Gleichschaltung* in National Socialist Germany. In 1933 not only was the bureaucracy very easily readied to serve the new holders of power but also allowed itself to become a willing instrument of terrorist rule. And naturally after 1945 officialdom continued to function – first of all under the occupying powers and then in the Bonn Republic, and then flawlessly continuing while changing only those in the highest office.

Just like Weber's interpretation of anarchism, which he really did not take seriously at all, his view of socialism is structured by the question: given the sociological affinity between capitalism and bureaucracy, could socialism offer an opportunity of breaking this linkage? There was no such chance, according to Weber, quite the opposite: while in capitalism political and private-economic bureaucracies "exist alongside one another at present, as separate entities," keeping each other in check, in socialism both bureaucracies were "a single body with identical interests and could no longer be supervised."¹²⁴ Weber thought of the relationship between state power and private enterprise as a kind of division of powers, seeing this division as the sole guarantee that each side would keep the other in check and not coalesce into a "totality." Seen from this point of view, Socialism implied a nullification of this division of powers with very serious ramifications: "If private capitalism were eliminated, state bureaucracy would rule *alone*."¹²⁵ Behind socialism, so runs his clear-sighted sociological diagnosis of the state, there is only the "sober fact of *universal bureaucratisation*."¹²⁶

¹²² Olszewski, *Bureaukratie*, op. cit. pp. 55f.

¹²³ Unmistakably influenced by Weber, Otto Hintze thought it "an illusion" that one could do without the "indispensable machinery" of the administrative bureaucracy: "This bureaucracy provides the props and supports that in troubled times keep the wobbly state structure upright. Its maintenance and perfection is a state interest of the highest order." (Hintze, "Der Staat als Betrieb und die Verfassungsreform" [1927], in his *Soziologie und Geschichte*, op. cit. p. 208). Carl Schmitt expressed the same idea more forcefully in the turbulent year of 1932: "In contrast to the different state forms and types, the "bureaucracy" often exhibits the neutrality of a mere technical instrument, which ... can serve various, even contradictory, political directions." (Schmitt, *Legality and Legitimacy*, ed. by Jeffrey Seitzer, Duke University Press, Durham, London 2004, p. 11). A few months later this turned out to be very true. And during the following years Schmitt's role in this was not an honourable one.

¹²⁴ Weber, "Socialism" (1918), in his *Political Writings*, op. cit. p. 286 (MWG I/15 p. 615).

¹²⁵ Weber, "Parliament and Government," op. cit. p. 157.

¹²⁶ *Ibid.*, p. 155.

Weber's judgement of 1918, made when the first socialist state was just six months old, finds confirmation in historical development. In the socialist states of the twentieth centuries bureaucracies developed whose authoritarian and totalitarian structures entirely transcended all previously existing bureaucratic states, and which even made Weber's vision of a "shell of bondage" seem a comforting place to be. It is no accident that many analysts of the socialist bureaucracies of Eastern Europe have used Max Weber's positions and concepts.¹²⁷ No one else saw more clearly the consequences of an experiment that was set in motion in 1917 and which then collapsed dramatically in 1989. As early as 1894, Weber had foretold that this experiment would necessarily end in the most grotesque state despotism and authoritarianism: "A socialist organisation would connect every individual to one thread, and place all these threads in the hands of a central authority which would then direct every individual to the position where that individual could be most usefully employed, according to the knowledge that he or she possessed."¹²⁸ These are prophetic words; but neither here, not later, does he allow himself to be swayed by antisocialist emotion. What is striking in his analysis is the clear and open sociological perspective which he uses to foretell the consequences of socialism.

Eight years previously Nietzsche had already proposed, with a similarly incisive "glance at the state," that the "subordination" that existed in the "bureaucratic state" would be enhanced in socialism.¹²⁹ This is the "fanciful younger brother of the almost expired despotism" and hence "in the profoundest sense reactionary. For it desires an abundance of state power such as only despotism has ever had; indeed it outbids all the despotisms of the past inasmuch as it expressly aspires to the annihilation of the individual."¹³⁰ Here Weber's affinity to Nietzsche is once more in evidence. Both Weber and Nietzsche see the scope for socialism to enhance state bureaucracy, both consider it to be a significant elimination of the division of powers, and both foretell the ominous consequences of an authoritarian central apparatus for the individual. Max Weber was usually pessimistic about the future, but in November 1918 he was instead optimistic: "Bolshevism is a military dictatorship like any other and will collapse like all others."¹³¹

¹²⁷ Thomas H. Rigby, "Political Legitimacy under Mono-organisational Socialism," in his *The Changing Soviet System*, Elgar, Aldershot 1990 pp. 155ff.; Maria Hirszowicz, *The Bureaucratic Leviathan. A Study in the Sociology of Communism*, Robertson, Oxford 1980 pp. 14ff.; Martin Krygier, "Weber, Lenin and the Reality of Socialism," in Eugene Kamenka, Martin Krygier (eds), *Bureaucracy*, Edward Arnold, London 1979 pp. 70f.

¹²⁸ Weber, "Die Börse" (1894), in his *Börsenwesen*, MWG I/5 p. 155.

¹²⁹ Friedrich Nietzsche, *Human, All Too Human* (1878), transl. R. J. Hollingdale, Penguin, London 1994 p. 162.

¹³⁰ *Ibid.*, p. 173.

¹³¹ The thrust of his speech of 4 November 1918 on "Germany's New Political Order," MWG I/16 p. 365.

Even if the Soviet system was in not a military dictatorship, as Gianfranco Poggi rightly objects,¹³² the truth of Weber's prediction about the inevitable collapse would only become evident – some seventy years later.

3 Max Weber's questions

Weber's question regarding the possibility of supervising and regulating the state bureaucracy, a question regarding the future of the state, raises the question of all questions which all critics of bureaucracy have raised, without exception. It was most clearly formulated by Josef Olszewski: "How should one fight the bureaucracy?"¹³³ Hegel thought that protection from the abuse of power and from the "subjective arbitrariness" of the officials should on the one hand be secured by "control from above" through the principles of "hierarchy" and "responsibility" and, on the other, through supervision "from below," through the competences enjoyed by "communities and corporations."¹³⁴ This was the federalist solution that Heinrich von Treitschke also had in view when he said that "only the independence of strong provinces" could serve as a protection "against the autocratic rule of the bureaucracy."¹³⁵ For Robert von Mohl, the abuse of power by the bureaucracy can be countered first of all by practical proposals for reform put forward by science, second by reducing state activity and third, by the professionalisation of the officials.¹³⁶ John Stuart Mill demanded that the competences of the bureaucracy be cut back, subordinating them to the "superintendence" of an authority outside the government, although he did not say which authority this should be.¹³⁷

All these proposals from the nineteenth century amount to little more than vague ideas; it was Josef Olszewski who in 1904 first formulated an approach that now seems very modern. He proposed "a simplification of substantive and formal law," "an end to the prevailing addiction to ever greater complication in the structure of the administrative machine," in short: "the simplification of the administrative machine."¹³⁸ However, since for the supervision of the bureaucracy "in turn a whole series of further arrangements and institutions" would have to be created, together with "a large quantity of decrees, and for these, further commentaries and explanations," he is quite aware that supervision of the bureaucracy is only possible at the cost of even more bureaucracy. He therefore comes to the resigned conclusion: "So long as the state exists, then there will be offices and

¹³² Gianfranco Poggi, "Recent Work on Weber," *Political Theory* 26 (1998) pp. 583–590, 589. He turns rightly here against the position in the first edition of my book.

¹³³ Olszewski, *Bureaukratie*, op. cit. p. 273.

¹³⁴ Hegel, *Elements of the Philosophy of Right*, op. cit. p. 334 (§ 295).

¹³⁵ Heinrich von Treitschke, "Cavour" (1869), in his *Historische und politische Aufsätze*, Bd. 2, 6th ed. Hirzel, Leipzig 1903 p. 385.

¹³⁶ Mohl, "Ueber Bureaukratie," op. cit. pp. 114, 123.

¹³⁷ Mill, "On Liberty," op. cit. p. 179.

¹³⁸ Olszewski, *Bureaukratie*, op. cit. pp. 278f.

officials, and they will certainly always maintain a significant influence on the welfare and well-being of society."¹³⁹

Weber's view that the bureaucracy was inescapable is not only a conclusion formed from his studies of the sociology of rule, but one that corresponded to prevailing opinion. He was quite certainly aware of the ways in which it was suggested that bureaucracy could be supervised, as well as the problem that while supervision from above led only to the extension of bureaucracy, supervision from below through decentralisation and federalism is in turn only a control by bureaucratised agencies. Supervision by the sciences amounts to supervision by one of the most bureaucratised of these agencies. The solution that Weber had in mind cannot, therefore, be one of those proposed by his predecessors. He placed his hopes in an institution whose supervisory instruments had in the nineteenth century not yet been developed: parliament. He considered this institution to be "indispensable as an organ for controlling officialdom"¹⁴⁰ since its right of inquiry made possible the "continous control" of the bureaucracy.¹⁴¹ But even parliament is only a blunt instrument in the struggle against bureaucracy, as "officialdom's most important *instrument of power* is the transformation of official information into *secret information ...*, which ultimately is merely a device to *protect* the administration *from control*."¹⁴² He had to, in addition, recognise that parties also confronted an ineluctable fate: "they succumb to bureaucratisation in much the same way as the state apparatus."¹⁴³ One can complain that Weber, the most acute analyst of bureaucracy in the twentieth century, has no ready remedy for a problem which he had himself identified as an oppressive problem. But his pessimistic realism is certainly a great deal more honest than the empty phrases and elaborate expressions of bafflement in the bureaucratic critique of bureaucracy advanced today.

Hence we do not find in Weber an answer to the problem of the bureaucratised state, but instead a series of *questions*. These often tell us more than any answers. "For, gentlemen," he said at the first meeting of the German Sociological Society, "our most essential scholarly task is the formulation of *questions* which we can then seek to resolve."¹⁴⁴ This is a task that he stated again and again. At the 1905 meeting of the Verein für Socialpolitik, he declared that the question which exclusively interested him was what, "characterologically," did men become in the bureaucratic state, given the "authoritarian sensibility, the sense of being regulated, commanded, constrained" which today's state involved.¹⁴⁵ Four years later, in view of the

¹³⁹ Ibid., pp. 59, 280.

¹⁴⁰ Weber, "Parliament and Government," op. cit. p. 227.

¹⁴¹ Ibid., p. 180.

¹⁴² Ibid., p. 179.

¹⁴³ Ibid., p. 228.

¹⁴⁴ Weber, "Rede auf dem ersten Deutschen Soziologentage in Frankfurt 1910," GASS 433f.

¹⁴⁵ Weber, "Das Arbeitsverhältnis in den privaten Riesenbetrieben" (1905), in his *Wirtschaft, Staat und Sozialpolitik*, MWG I/8 p. 253 (GASS 396).

“relentless progress of bureaucratic mechanisation” he refined his question: “The question that concerns us is not: how can we alter this development in some way? – for we cannot. The question is rather: what are the consequences?”¹⁴⁶ Here he provides an answer to the question he had posed four years earlier, and which had at that time been left open: human beings in the bureaucratic state will become beings “who need ‘order’ and nothing but order, who become anxious and cowardly the moment that this order is shaken, and helpless when they are torn from their exclusive adaptation to this order.” His “central question” is “what have we got with which we can oppose this machinery,” to protect ourselves from “the autocracy of a bureaucratically ideal life.”¹⁴⁷

If Weber says that this cannot be answered here today, then this is symptomatic. Every time that he poses the question of the preservation of freedom and individuality in the bureaucratic state, he immediately breaks discussion off: with the remark that the answer “cannot be given here,” or is “currently of no interest.” This is also evident in his question, “How is it *at all possible* to salvage any remnants of ‘individual’ freedom of movement *in any sense*, given this all-powerful trend towards bureaucratisation?”¹⁴⁸ Since he regards the advanced of bureaucracy to be unstoppable, it is clear to him that there is no salvation, and so no answer to the question he poses. One has to assume that his own admission renders any response obsolete. If bureaucracy is inescapable, then this is also true for its consequences in de-individualisation and the loss of freedom. He therefore drops the question of how this tendency might in some way be changed and turns to the only topic that interests him: the consequences of this developmental tendency. And it is this line of thought that guides his interpretation of the modern bureaucratic state.

These issues relate exclusively to one specific phenomenon. We are not here talking about the revival of discussion of the central theme of Weber’s writing, the search for which has preoccupied Weber philologists since the 1980s.¹⁴⁹ The controversy over whether there is *one* question or problematic that governs all his work is doomed to go round in circles. Not

¹⁴⁶ Weber, “Die wirtschaftlichen Unternehmungen der Gemeinden” (1909), *ibid.*, p. 362 (GASS 414).

¹⁴⁷ *Ibid.*

¹⁴⁸ Weber, “Parliament and Government,” *op. cit.* p. 159.

¹⁴⁹ Cf. Wilhelm Hennis, *Max Weber's Central Question*, transl. Keith Tribe, Threshold Press, Newbury 2000; *id.*, *Max Weber's Science of Man*, transl. Keith Tribe, Threshold Press, Newbury 1999; Lawrence A. Scaff, “Wilhelm Hennis, Max Weber, and the Charisma of Political Thinking,” in Andreas Anter (ed.), *Wilhelm Hennis' Politische Wissenschaft*, J.C.B. Mohr (Paul Siebeck), Tübingen 2013 pp. 317ff.; Sam Whimster, Scott Lash (eds), *Max Weber, Rationality and Modernity*, 2nd ed. Routledge, London 2006; Wolfgang Schluchter, *Rationalism, Religion, and Domination: A Weberian Perspective*, transl. Neil Solomon, University of California Press, Berkeley, Oxford 1989; Jürgen Habermas, *The Theory of Communicative Action*, transl. Thomas McCarthy, vol. 1, Polity, Cambridge 1984.

only does Weber analyse different objects of investigation from different angles – as we have seen with his treatment of bureaucracy – he is quite capable of aiming a variety of questions at one single object. Of course, these do tend to have a common thrust: if he asks how individuality and freedom are to be preserved and the power of bureaucracy limited, there can be no doubt that this is a liberal standpoint. He is in the same tradition as Robert von Mohl, who thought the “self-determination of the individual” to be endangered by the bureaucratic state;¹⁵⁰ a tradition of which Alexis de Tocqueville and John Stuart Mill are also part, who see liberty threatened in the bureaucratic state. While Weber’s treatment of the development of the modern state seeks to demonstrate the advance of bureaucracy, his analysis of the state of his own time is guided by the question of how the bureaucracy can be constrained and supervised. Stefan Breuer has gone so far as to argue that “Weber’s entire political theory is geared to the problem of how to produce sufficient political energy to keep the bureaucracy at the status of a mere instrument, and to curb its regressive internal dynamics.”¹⁵¹ There is in Weber none of that liberal optimism that considers scientific knowledge, the reduction in the size of the state or the limitation of its competences as feasible options. Such liberal ideas, espoused by the likes of Robert von Mohl or John Stuart Mill are for him no more than pious daydreams.

4 State and law

For Max Weber, the history of the modern state is the history of a unique process of monopolisation that takes place not only in the domain of administration and the exercise of violence but also in the sphere of law. As a trained lawyer, he devotes far more attention to developments in this area than to others. He regards the monopoly of violence as the leading characteristic of the state but, for the exercise and functioning of state power, he considers that the law, in his view the most important form of “normative regulation” of state action,¹⁵² is of no lesser importance. The modern state is inconceivable without the law, and modern law inconceivable without the state. The emergence of the state is a process of monopolisation, rationalisation

¹⁵⁰ Von Mohl, “Ueber Bureaukratie,” op. cit. p. 112.

¹⁵¹ Stefan Breuer, “Rational Domination. A Category of Max Weber,” in *Law and State* 44 (1991) pp. 92–125 (110).

¹⁵² Weber, “The ‘Objectivity’ of Knowledge in Social Science and Social Policy,” in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 p. 371. On the relation of rational law to the modern state in Weber see Stefan Breuer, “Max Webers Staatssoziologie,” *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 45 (1993) pp. 203ff.; Alberto Febbrajo, “Kapitalismus, moderner Staat und rational-formales Recht,” in Manfred Rehbinder, Klaus-Peter Tieck (eds), *Max Weber als Rechtssoziologe*, Duncker & Humblot, Berlin 1987 pp. 57ff.

and objectification – and at the same a process of *giving legal form* to the exercise of state power. The genesis of rational law is in turn a process of “Verstaatlichung aller Rechtsnormen.”¹⁵³ The following will examine this complex interconnection between state and law.

By monopolising the generation of law and its execution the state becomes the source and guarantee of the law in general. Law exists only as something that is created, given statutory form, made the subject of judicial judgement, supervised and executed by the state. The monopoly of the law finds its corollary in the monopoly of violence: “Today the forcible compulsion of the law is the monopoly of the state as institution.”¹⁵⁴ There is not only a historic parallel between the developmental path of both monopolies but also a functional relationship, since the monopoly of violence is the foundation of the monopoly of the law. Weber refers to the “state guarantee” for the law, where “legal coercion” is exercised by the “*physical means of coercion*” exercised by the state.¹⁵⁵ Here he borrows almost word-for-word from Jellinek’s description of the monopoly over the law enjoyed by the state, as the “product of a lengthy historical process”:

The development of the state is everywhere accompanied by a process in which independent sources of the law and of legal protection are absorbed, so that eventually the state appears to be the sole source through which the law can be systematically developed, and disposition of means of legal coercion belongs to the state alone. Today, all systematic ... development of the law is either done by the state itself, or the state delegates or sanctions this power.¹⁵⁶

This relation of state, law and coercion was something that Georg Jellinek, Max Weber and all contemporary writers on the state took for granted. And the same is true of more recent writers.¹⁵⁷

Coercion plays a central role in Weber’s concept of the state and is also fundamental to his concept of law. He defined the law as an “order” which is “externally underwritten by the likelihood (*Chance*) that physical or mental *coercion* will be applied by a *specialised staff* of people whose task is to enforce conformity or punish contravention.”¹⁵⁸ He is more precise elsewhere: “‘Law’ is for us an order with specific guarantees for the chance

¹⁵³ Weber, *Gemeinschaften*, MWG I/22-1 p. 208 (WuG 516).

¹⁵⁴ Weber, *Recht*, MWG I/22-3 p. 198 (WuG 183).

¹⁵⁵ *Ibid.*

¹⁵⁶ Jellinek, *Allgemeine Staatslehre*, op. cit. p. 256.

¹⁵⁷ For instance, Christian Waldhoff, *Staat und Zwang. Der Staat als Rechtsdurchsetzungsinstantz*, Schöningh, Paderborn 2008 pp. 11ff.; Reinhold Zippelius, *Grundbegriffe der Rechts- und Staatssoziologie*, 3rd ed. J.C.B. Mohr (Paul Siebeck), Tübingen 2012 pp. 103ff. Weber’s approach to the law and coercion is dealt with pp. 109ff.

¹⁵⁸ Weber, *Economy and Society*, Ch. 1 § 6 II b.

of its empirical validation. And by 'guaranteed objective law' the instance should be understood: that the guarantee takes the form of the existence of a 'coercive apparatus'.¹⁵⁹ The decisive sociological criterion for the law is therefore its *validation (Geltung)*, which in turn depends upon its *implementation* and is ultimately guaranteed by a coercive apparatus. No law can draw its validity simply from pure coercion, in the same way that no order can be sustained through naked force. The validity of law in the modern state depends upon a belief in the legality of state law: a belief in the *legitimacy* of the legal order.¹⁶⁰

Here Max Weber can once again borrow from the substantive position outlined by Georg Jellinek, who rebutted the received opinion of the time that coercion was the sole guarantor and the sole characteristic of the law. For Jellinek, however, coercion was only "compulsory coercion," since mere coercion could never guarantee the law.¹⁶¹ He showed quite convincingly that it was not coercion, but rather acceptance, which was the essential feature of the law and that the acceptance of the law "depended upon its validity."¹⁶² Max Weber is clearly indebted to this conception of the law, which contains the core of his understanding of legitimacy, but in some respects he does not entirely accept its implications, since he placed much more emphasis upon coercion than did Jellinek.

The concept, nature and function of a "legal order" plays a central role in Weber's description of the relationship between law and the state. The parallel monopolisation of violence and the law that are completed by the "concept of a legitimate legal order" leads to the gradual transformation of the modern state into "an institution for the protection of the law."¹⁶³ The precondition for the emergence of a state legal order is the disempowering and appropriation by a central agency of independent sources of coercion. He identifies both economic and administrative factors that play a part in this process: the interest of the state is given powerful and decisive support by "interested parties with market power," among which are the urban bourgeoisie, who have an economic interest in the creation of legal security and legal protection.¹⁶⁴ The implementation of a modern economic order is inconceivable without a legal order founded in the state, since this economic order is based upon "the opportunities (*Chancen*) created by contracts," requiring a "prompt and securely functioning" system of law underwritten by the state; while on the other hand modern economic development contributes to the "monopolisation and regimentation of all

¹⁵⁹ Weber, *Recht*, MWG I/22-3 p. 195 (WuG 182).

¹⁶⁰ *Ibid.*, pp. 199f. (WuG 182).

¹⁶¹ Jellinek, *Allgemeine Staatslehre*, op. cit. pp. 334f.

¹⁶² *Ibid.*, p. 334.

¹⁶³ Weber, *Gemeinschaften*, MWG I/22-1 p. 214 (WuG 519).

¹⁶⁴ *Ibid.*

'legitimate' coercive powers."¹⁶⁵ Three factors can be recognised in Weber's arguments which, in combination, lead to the formation of a legitimate legal order: economic development, the monopolisation of violence and the monopolisation of the law.

Given the fact that state action always proceeds along legal lines, and of course that Weber defined the state as a "legal relationship,"¹⁶⁶ it seems entirely inconsistent that he did not include the criterion of law in his concept of the state. He has been repeatedly criticised on exactly this point, most emphatically by Hans Kelsen.¹⁶⁷ One of the most frequent criticisms made of Weber is the objection that he "neglected the normative merit and constitutive significance of law for the state."¹⁶⁸ But is there any justification for this criticism? By excluding law from his definition of the state he did in fact deviate from the mainstream of German political theory, which always treated the "law" as an essential element of the concept of the state.¹⁶⁹ One might miss having the law as an element of his definition of the state, but the law is in fact absolutely fundamental to his understanding of the state, and there can be no doubt about this given the very many arguments regarding the interdependence of state and law. Besides that, the law is an implicit element in his concept of the state, for this contains the criterion of "order," which is in turn defined as "law" if it is guaranteed by a coercive apparatus. And this is true of the modern state. In the "Basic Sociological Concepts" Weber expressly states that a "legal order" is "formally characteristic of the modern state."¹⁷⁰

Kelsen is therefore quite right to claim that both the definition of the state as well as the "entire construction of the Weberian conceptual system" presumes that the state is a "legal order."¹⁷¹ But when he goes on to cite the "monopolistic character" of the state as proof that Weber "essentially understood the state to be a normative legal order"¹⁷² this claim has no

¹⁶⁵ Weber, *Recht*, MWG I/22-3 p. 247 (WuG 198).

¹⁶⁶ *Ibid.*, p. 209 (WuG 186).

¹⁶⁷ Hans Kelsen, *Der soziologische und juristische Staatsbegriff. Kritische Untersuchung des Verhältnisses von Staat und Recht*, 2nd ed. J.C.B. Mohr (Paul Siebeck), Tübingen 1928 pp. 156ff.

¹⁶⁸ Gerhard Hufnagel, *Kritik als Beruf. Der kritische Gehalt im Werk Max Webers*, Propyläen, Frankfurt a. M., Berlin 1971 p. 172.

¹⁶⁹ As with Kant's well-known definition of the state (*The Metaphysics of Morals* [1797], ed. by Mary Gregor, Cambridge University Press, Cambridge 1996); or in the definition of the state made by the young Carl Schmitt, who thought that the state was "the legal entity whose meaning lay exclusively in the realisation of the law" (*Der Wert des Staates und die Bedeutung des Einzelnen*, J.C.B. Mohr [Paul Siebeck], Tübingen 1914 p. 52).

¹⁷⁰ Weber, *Economy and Society*, Ch. 1 § 17.3.

¹⁷¹ Kelsen, *Der soziologische und der juristische Staatsbegriff*, op. cit. p. 169.

¹⁷² *Ibid.*, p. 170.

foundation, since the existence of a *legal order* is in no way implied by this monopolistic aspect. And his related claim that Weber's concept of the state "repeatedly involves a covert identification" of state and law is simply absurd.¹⁷³ Weber makes no such identification, for state and law are categories that operate upon two distinct levels: state is an organisation, and law is the system of norms for this organisation. Kelsen interprets Weber from the ideological perspective of his *Reine Rechtslehre*. This diminishes quite substantially the value of his important analysis of the reception of Weber's idea, which is not only the first examination of the relation of state and law in Weber but remains the most thorough examination.¹⁷⁴ He pursues a kind of dual strategy in which he seeks on the one hand to demonstrate the inadequacy of Weber before the tribunal of his own legal doctrine, while on the other revealing Weber's sociology of the state to be a legal doctrine.¹⁷⁵ It is clear that this strategy is doomed to failure, since it follows two mutually exclusive aims. He seeks to extend Weber's conception of the state *ad absurdum* using the categories of legal positivism. Weber's sociology of the state stands accused before the tribunal of the *Reine Rechtslehre* like a revolutionary before the High Court. The real question is whether this jurisdiction is at all capable of making appropriate judgments, quite apart from determining a fitting sentence. And the answer to this is in the negative.

Why Weber excluded law from his concept of the state remains a matter of speculation. But three reasons spring to mind: first, the intention of avoiding the legal positivist identification of state and law; second, the wish to make a clear distinction with respect to a legalistic concept of the state, which he wishes to be very clearly separated from his sociological concept; and third, to avoid any association with the nature and concept of the "state based upon the rule of law" (*Rechtsstaat*). It is no doubt chiefly methodological concerns that led him to steer clear of anchoring law in the state *expressis verbis*. This has nothing to do with his alleged refusal to have anything to do with the doctrine of the state based on the rule of law. He is certainly no apologist for this particular doctrine, conceived originally by Robert von

¹⁷³ *Ibid.*, p. 156.

¹⁷⁴ On the relationship of Weber and Kelsen see Agostino Carrino, "Max Weber et Hans Kelsen," in Carlos-Miguel Herrera (ed.), *Le droit, le politique: autour de Max Weber, Hans Kelsen, Carl Schmitt*, L'Harmattan, Paris 1995 pp. 185–203; Norberto Bobbio, "Max Weber und Hans Kelsen," in Rehinder, Tieck (eds) *Max Weber als Rechtssoziologe*, op. cit. pp. 109ff.; Weyma Lübbe, *Legitimität kraft Legalität. Sinnverstehen und Institutionenanalyse bei Max Weber und seinen Kritikern*, J.C.B. Mohr (Paul Siebeck), Tübingen 1991 pp. 25ff. A publication on "Concept Formation in Hans Kelsen and Max Weber," ed. by Peter Langford, John McGarry, and Ian Bryan, is announced for 2014.

¹⁷⁵ Kelsen, *Der soziologische und der juristische Staatsbegriff*, op. cit. p. 169.

Mohl and systematically developed by Rudolf Gneist.¹⁷⁶ There is however not the slightest support in Weber's writing for Mommsen's claim that he criticised the liberal doctrine of the state based upon the rule of law "mercilessly and without illusions," and that for Weber the concept of the state based on the rule of law had been devalued by its class-bound character and the instability of any belief in natural law that underwrote it.¹⁷⁷ From the fact that he was sceptical of Natural Law it does not follow that he was also dubious about the idea of the state based on the rule of law. In his writings, there is neither a disillusioned critique of the liberal doctrine of the state nor any proof for the supposed loss of eminence of the concept of the state based on the rule of law. Moreover, it remains a mystery how Mommsen could arrive at the conclusion that Weber replaced the concept of the state based on the rule of law with the concept of "legality."¹⁷⁸ This argument, which he can neither explain nor prove, is untenable – and not just because he muddles categories from different levels, just like Kelsen. Since the state based on the rule of law is a state form, and legality the mode of functioning of this form, Weber can hardly replace the one with the other.

What Weber does say about the state based upon the rule of law certainly lacks the euphoria of liberal apologists; but there is no sense of critique here, more unambiguous endorsement. His interpretation of the modern state as a type of legal rule (since laws rule), together with his statements on the connection of state and law, clearly express the fact that, for him, the state can only be a state based on the rule of law. All the same, today there is an inclination to rate its significance more highly than Weber and most of his contemporaries were prepared to do. The experience of the abolition of the state based upon the rule of law by the dictatorships of the twentieth century has sharpened a historical consciousness that the *Rechtsstaat* represents the fundamental condition for freedom within a state order. Historical experiences alter not only the semantic of concepts related to the theory of the state but also the values with which they are associated. The state based upon

¹⁷⁶ Rudolf Gneist, *Der Rechtsstaat*, Springer, Berlin 1872. On the concept and history of the *Rechtsstaat* see Gustavo Gozzi, "Rechtsstaat and Individual Rights in German Constitutional History" in Pietro Costa, Danilo Zolo (eds), *The Rule of Law*, Springer, Dordrecht 2007 pp. 237–259; Philip Kunig, "Der Rechtsstaat," in Peter Badura, Horst Dreier (eds), *Festschrift 50 Jahre Bundesverfassungsgericht*, J.C.B. Mohr (Paul Siebeck), Tübingen 2001 pp. 421–444; Katharina Sobota, *Das Prinzip Rechtsstaat. Verfassungs- und verwaltungsrechtliche Aspekte*, J.C.B. Mohr (Paul Siebeck), Tübingen 1997 pp. 263ff.; Ernst-Wolfgang Böckenförde, "Entstehung und Wandel des Rechtsstaatsbegriffs," in his *Recht, Staat, Freiheit*, Suhrkamp, Frankfurt a.M. 1991 pp. 143–169; D. Neil MacCormick, "Der Rechtsstaat und die rule of law," *Juristenzeitung* 50 (1984) pp. 65–70.

¹⁷⁷ Mommsen, *Max Weber and German Politics*, University of Chicago Press, Chicago 1990 p. 393.

¹⁷⁸ *Ibid.*, p. 394.

the rule of law was certainly not a value for Weber. So it is a pity that he was never interested in substantiating theoretically the state based on the rule of law, which is quite rightly a core element of modern theories of the state.

And so if Weber does not place great emphasis on the rule of law, he instead places greater emphasis upon a feature that is also a constitutive element of the state based on the rule of law: the division of powers. This plays an important role in his understanding of the structure and functioning of state rule, since the “singularity of the modern state institution, organised according to ‘competences’” derives from its combining the limitation of powers with their division.¹⁷⁹ As far as Weber is concerned, the emergence of the modern state is a process in which legal spheres become more differentiated and individually distinct: the spheres of public and private law become separated, and also the functional division of labour becomes more elaborated in the exercise of state powers.¹⁸⁰ He sees a causal relationship between these two aspects, invoking Montesquieu in suggesting that “it is only the division of powers that makes the conception of ‘public law’ possible.”¹⁸¹ This he considers to be a specifically occidental phenomenon, for “not every kind of division of powers creates the idea of public law; this is only done specifically by the rational state institution. It is only in the Occident that a scholarly discourse of public law developed, because only here has political organisation completely assumed the character of an institution with rationally-structured competences and the division of powers.”¹⁸²

At one point Weber does qualify his argument by stating that the division of powers is “not necessarily modern,”¹⁸³ but elsewhere he treats it as an undoubted part of the process of Occidental rationalisation, an achievement of political modernity. It occurred neither in Antiquity nor in the Middle Ages. It is only in the modern institutional state that it becomes a constitutive moment for the structure and functioning of political rule, creating a clear and certain distribution of competences and rendering the functioning of the institutional apparatus predictable. This is, in turn, of very great economic relevance, since the functionality and predictability associated with the division of powers “favours the rationalisation of the economy.”¹⁸⁴ Distribution of competences, rationality and predictability

¹⁷⁹ Weber, *Recht*, MWG I/22-3 p. 297 (WuG 393).

¹⁸⁰ *Ibid.*, p. 301 (WuG 395).

¹⁸¹ *Ibid.*, p. 297 (WuG 394). Max Weber says here that he is quoting Montesquieu, but the passage cannot be found in Montesquieu's writings. Weber's formulation can however be found, and almost word for word, in Jellinek, who argued that the division of powers first made possible the “guarantee for public law.” (Jellinek, *Allgemeine Staatslehre*, op. cit. p. 790)

¹⁸² Weber, *Recht*, MWG I/22-3 p. 297 (WuG 394).

¹⁸³ Weber, WuG 166.

¹⁸⁴ *Ibid.* On the relationship of economic and legal development see especially Weber, *Recht*, MWG I/22-3 p. 301ff. (WuG 395ff.).

form the determining perspective from which Weber views the division of powers as the moulding principle for the structure of the modern state. There is a parallel to the state based on the rule of law here: for he is not here interested in a normative account of the division of powers, then and now part of the established canon of the theory of the state,¹⁸⁵ but only for those dimensions relating to the sociology of rule and of the state.¹⁸⁶

Rational law, rational state

The constitutive significance of the law for the development and present structure of the state is most clearly expressed in Weber's statement that the "rational state" is based upon "rational law."¹⁸⁷ In his studies on the state and the sociology of law we continually encounter the interdependent relationship between law and the state: that rational law is the foundation of the rational state, and that the state creates and guarantees rational law. The law is thus *verstaatlicht*, and the state *verrechtlicht*. A consistent expression of this is the specification of the state as a type of legal-rational rule. The legitimacy of the modern state rests primarily on a belief in its legality: the rational composition, application and implementation of rational law. But what is rational about this rational law, which is constitutive for the rational state?

As Weber says, law can be "rational" in very different ways: either in a *generalising* sense, which means "the reduction of operative reasons for a decision in an individual case to one or more 'principles'"; or in a *systematising* sense, such that legal principles "form in respect of each other a logically clear, coherent, and above all seamless system of rules."¹⁸⁸ Besides that, law can "be rational in regard either to formal or material factors." Formally rational law is law that is properly composed and applied; materially rational law is law that is oriented to norms of "qualitative dignity," among which Weber includes ethical imperatives or political maxims.¹⁸⁹

¹⁸⁵ Contemporary with Weber see Jellinek, *Allgemeine Staatslehre*, op. cit. espec. p. 790; for today's equivalent see Reinhold Zippelius, *Allgemeine Staatslehre*, 16th ed., C. H. Beck, Munich 2010 pp. 244ff.; Roger Masterman, *The Separation of Powers in the Contemporary Constitution*, Cambridge University Press, Cambridge 2010; Eoin Carolan, *The New Separation of Powers: A Theory for the Modern State*, Oxford University Press, Oxford 2009; Christoph Möllers, *Gewaltengliederung. Legitimation und Dogmatik im nationalen und internationalen Rechtsvergleich*, J.C.B. Mohr (Paul Siebeck), Tübingen 2005; Josef Isensee (ed.), *Gewaltenteilung heute*, C. F. Müller, Heidelberg 2000.

¹⁸⁶ This especially clear in his discussion of "collegiality and the division of powers" (WuG 158ff.).

¹⁸⁷ Weber, *Abriß der universalen Sozial- und Wirtschaftsgeschichte*, MWG III/6 p. 369 (WG 290).

¹⁸⁸ Weber, *Recht*, MWG I/22-3 pp. 301–303 (WuG 395f.).

¹⁸⁹ *Ibid.*, p. 304 (WuG 396f.). On the relationship between formal and material law see Julien Freund, "Die Rationalisierung des Rechts bei Max Weber," in Rehbinder, Tieck (eds), *Max Weber als Rechtssoziologe*, op. cit. esp. pp. 22ff.; Febbrajo, "Kapitalismus," op. cit., esp. pp. 72ff.

It is evident that in both forms of rationality we are dealing with ideal types, since formal law always includes material principles in some way or another and material law always takes account of formal principles. Rationality and formality are, for Weber, the leading properties of modern law. But he also knows that the state, to borrow from Hegel, “is of this world”: placed within the domain of economic, political and social tensions and conflicts, so that inevitably, “material demands are made of the law” which “fundamentally place in question the formalism of the law.”¹⁹⁰

The fascination of Max Weber’s studies in the sociology of law lies not least in the way that he provides a masterly demonstration and interpretation of the rationalisation of law and its correspondence to the rationalisation of the state. Numerous historico-legal studies have taken this as their point of departure.¹⁹¹ For his part, his questions and results are oriented to the work of Georg Jellinek, who pointed out that all legal history was characterised by “an unbroken process of rationalisation,” a process of rationalisation “in which the state also played its part.”¹⁹² Some of Weber’s central perspectives draw upon the spirit of Jellinek’s *Allgemeine Staatslehre*, the work of his Heidelberg friend and colleague.¹⁹³ Jellinek’s bare propositions are turned into Weber’s detailed elaborations, in so doing laying the foundations for the sociology of the law and of the state in the twentieth century. His archaeology of rational law is at the same time an archaeology of the modern state.

The progressive rationalisation and systematisation of the law, its shift into positivism and absorption by the state, these all necessarily involve the

¹⁹⁰ Weber, *Recht*, MWG I/22-3 p. 624 (WuG 507).

¹⁹¹ On the rationalisation of the law see François Chazel, “Communauté politique, État et droit dans la sociologie Wébérienne,” *L’Année sociologique* 59 (2009) pp. 275–301; Jens Petersen, *Max Webers Rechtssoziologie und die juristische Methodenlehre*, de Gruyter, Berlin 2008, pp. 139ff.; Pietro Rossi, *Max Weber. Una idea di Occidente*, Donzelli Editore, Roma 2007 pp. 281ff.; Breuer, “Rational Domination,” op. cit. espec. pp. 103ff.; Freund, “Die Rationalisierung des Rechts,” op. cit. pp. 9ff.; Febbrajo, “Kapitalismus,” op. cit. pp. 70ff.

¹⁹² Jellinek, *Allgemeine Staatslehre*, op. cit. pp. 354f.

¹⁹³ For Jellinek’s influence on Weber see Andreas Anter, “La teoria dello Stato di Max Weber nel contesto contemporaneo,” *Il Pensiero Politico* 44 (2011) pp. 348–368; Realino Marra, *La religione dei diritti. Durkheim – Jellinek – Weber*, G. Giappichelli Editore, Torino, 2006 pp. 50ff., 99ff.; Stefan Breuer, “Von der sozialen Staatslehre zur Staatssoziologie. Georg Jellinek und Max Weber,” in Andreas Anter (ed.), *Die normative Kraft des Faktischen. Das Staatsverständnis Georg Jellineks*, Nomos, Baden-Baden 2004 pp. 89–112; Duncan Kelly, *The State of the Political. Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt and Franz Neumann*, Oxford University Press 2003 pp. 97ff.; Furio Ferraresi, *Il fantasma della comunità. Concetti politici e scienza sociale in Max Weber*, Franco Angeli, Milano, 2003 pp. 333ff.; Andreas Anter, “Max Weber und Georg Jellinek. Wissenschaftliche Beziehung, Affinitäten und Divergenzen,” in Stanley L. Paulson, Martin Schulte (eds), *Georg Jellinek. Beiträge zu Leben und Werk*, J.C.B. Mohr (Paul Siebeck), Tübingen 2000 pp. 67–86.

displacement and downgrading of law which is neither linked to the state nor is positive. Weber restricts this development to the modern Occidental state, since it is only here that state-based statutory law has displaced all other forms of law and especially natural law. As he wrote, "only in the Occident" is known a State "with a rationally-constructed 'constitution', a rational body of law, and an administration bound to rationally-formulated rules – 'laws.'"¹⁹⁴ Beyond the Occident there was no such thing as "rational legal doctrine," nor a "theory of the state" because there was a lack of "system and rational concepts," as well as of the "rigorous legal structure and way of thinking to be found in Roman Law, and the Occidental law built upon it."¹⁹⁵ Modern rational law, whose rationality is marked above all else by its rigour and systematic character, derives from Roman Law,¹⁹⁶ the reception of which had left its mark not only upon all Continental European law but also on the political, social and economic development of the Occident. This process of reception had revolutionised legal thinking more than any other legal development.

Beginning with late-medieval Northern Italian legal schools, Weber illustrates the manner in which Roman Law effected an unprecedented conquest of the entire Continent, providing an analysis of the process that remains exemplary today. He considers the decisive *sociological* aspect of this reception to be the fact that it "created formal legal thinking," such that "the prevailing conception of law today as a logically coherent and complete complex of 'norms' for application" became "the unique standard."¹⁹⁷ Following Ehrlich, he emphasised that the precondition for this reception was that Roman Law could "denationalise existing law" and "be elevated to the 'logically correct' law, pure and simple."¹⁹⁸ In Weber's time there was vigorous yet indecisive debate on the *cause* of the reception, especially over the old question of whether economic or non-economic – purely legal factors themselves – represented its motive force. He cited a variety of factors that favoured the reception process, made it possible or drove it onward, but clearly had difficulty in identifying any one factor as playing a decisive role. But he was certain of the "substantial necessity of the legal enterprise," in which a decisive part was played by "the inculcation through specialised training of the capacity to work on complex circumstances and arrive at a legally unambiguous question," as well as the "necessity for the rationalisation of legal procedure."¹⁹⁹

¹⁹⁴ Weber, "Prefatory remarks to the Collected Essays in the Sociology of Religion," in *The Essential Weber*, op. cit. p. 103, transl. modified ("Vorbemerkung," RS I pp. 3f.).

¹⁹⁵ *Ibid.* pp. 101f. transl. modified ("Vorbemerkung," RS I p. 2).

¹⁹⁶ Weber, *Abriß der universalen Sozial- und Wirtschaftsgeschichte*, MWG III/6 p. 370 (WG 290).

¹⁹⁷ Weber, *Recht*, MWG I/22-3 p. 583 (WuG 493).

¹⁹⁸ *Ibid.*, p. 582 (WuG 492).

¹⁹⁹ *Ibid.*, p. 579f. (WuG 491).

The coalition of interests that becomes clear here, between legal practitioners and those involved in the law, has analogies with a number of other coalitions that promoted the reception process. Weber attributed the “onward movement of formal-rational elements” primarily to the need of administration for uniformity, systematisation, formalisation and an “interest in enhanced rationality,” which meant the “increasing rule of formal legal equality” which went “hand in hand” with the political interests of princes.²⁰⁰ There was one universal characteristic feature of the legal policy of such rulers in their “insistence upon uniformity and systematisation of the law: codification. The prince seeks ‘order.’” This desire corresponded both to the “technical needs of administration, and to the personal interests of his officials,” whose career prospects improved in step with increasing legal uniformity, freeing them from an expertise that tied them to just one particular administrative location.²⁰¹

Other groups joined this coalition of interests. Officials sought “render the law ‘comprehensible and transparent,’ while the bourgeois strata sought ‘certainty’ in legal process”; the aim of the bourgeoisie lay in “law that worked predictably,” “guaranteeing with certainty the legally-binding nature of contracts,” and a legal system that was “unambiguous, clear, and beyond arbitrary administrative intervention.”²⁰² This “alliance” of princely and bourgeois interests was one of the “most important driving forces of the formal rationalisation of the law.” Weber does concede that this collation was not a necessary one, since direct “co-operation” between these powers was not always required, although he then goes on to maintain that that rationalisation of the law had indeed failed everywhere “this alliance was absent.”²⁰³ This objection is quite typical of his style of argument, moving forward in an endless chain of statements taking the form: yes, but ...; and constantly warding off any kind of causal explanation. This can be seen most clearly in his dispute with Georg von Below’s proposition that the reception of Roman Law was the cause of the emergence of capitalism. This is disputed because Weber will allow only that this reception process led to the creation of *formal and legal thinking*.²⁰⁴ But his subsequent discussion of this demonstrates that capitalism necessarily relied upon just this formalised and rationalised law, that in fact it first made possible the emergence of capitalism since it need “a system of law” whose operation could be “calculated and predicted like that of a machine.”²⁰⁵ And so he does not want to allow

²⁰⁰ Ibid., p. 567 (WuG 487).

²⁰¹ Ibid., p. 569 (WuG 488).

²⁰² Ibid., pp. 569, 567 (WuG 488, 487).

²⁰³ Ibid., pp. 567, 511 (WuG 487, 468).

²⁰⁴ Weber, *Abriß der universalen Sozial- und Wirtschaftsgeschichte*, MWG III/6 p. 372 (WG 291f.).

²⁰⁵ Ibid., p. 373 (WG 293).

the reception of Roman law to be a *cause* of the emergence of capitalism, rather a necessary *precondition*, as he demonstrates.

Weber explains the rationalisation of the law in terms of a chain of economic and political interests, a sequence that can also be traced through his interpretation of the emergence of bureaucracy, the monopoly of violence, and of the state. The rationalisation of the law emerges in his work as both product and condition of an extremely successful “grand coalition” of princes and officials, lawyers and capitalists, all of whom had a common interest in the formalisation, systematisation and rationalisation of the law. This process was facilitated and accelerated by the emergent territorial state, suppressing legal particularities and standardising law and administration. The territorial state also found here an important and reliable ally: the creation of calculable and formal law was achieved by “the state forging an alliance with lawyers, to impose its claims to power.”²⁰⁶

The role of the lawyer in the development of the law is no less complex than this development itself, since the lawyer was both agent and product of this process. Among the decisive sociological consequences of the reception of Roman law Weber included the “novel stratum” of university-trained lawyers, something which was unique to the Occident, but which had also driven the reception process forward.²⁰⁷ Lawyers had not just had a decisive influence on legal development, they also played a great role in the emergence and development of the state itself, for everywhere the revolution in politics associated with the development of the modern state was conducted by lawyers.²⁰⁸ The birth of the modern Occidental state was “essentially the work of *lawyers*”; the dominating influence was not only limited to the origins and development of the Occidental state, but reached right up to the present in Weber’s view, since they were of “decisive importance” for the “entire political structure” of the Occident.²⁰⁹ Hence Max Weber can only conclude that, today, we live “in an age where *lawyers rule*.”²¹⁰

In this way lawyers are ascribed a significance similar to that of officials. While Weber remains ambivalent about the latter – in all of his writings one finds not the slightest criticism of the former. Since “the great *advocate* is the only lawyer who, in contrast to the official, is trained to *fight* and to *represent a case* effectively by fighting,” and Weber would like to see “*far more skills* in ... advocacy in evidence in our public pronouncements,”²¹¹ he defends lawyers, a profession which he admires, against all criticism. It was “simply

²⁰⁶ Ibid.

²⁰⁷ Weber, *Recht*, MWG I/22-3 p. 581 (WuG 492); id., “The Profession and Vocation of Politics,” in his *Political Writings*, op. cit. p. 328.

²⁰⁸ Weber, “The Profession and Vocation of Politics,” op. cit. p. 328.

²⁰⁹ Weber, “Einleitung in die Wirtschaftsethik der Weltreligionen,” RS I 272.

²¹⁰ Weber, “Parliament and Government,” op. cit. p. 191.

²¹¹ Ibid.

to play into the hands of the much (and generally quite unjustly) criticised ‘rule by advocates’ in parliamentary democracies,” for “the modern advocate and modern democracy absolutely belong together.”²¹² This diagnosis remains valid, and today more than at any time before, since rule by lawyers has been further extended in the parliamentary democracies of the twentieth century. In party and association, parliaments and governments, ministries and administrations, they have taken up unchallenged a dominant position. Politics is run by lawyers, and they possess something close to a monopoly in the administrations that appears to be almost completely secure. This is not only due to a long-established tradition which is particularly strong in Germany, going back centuries, but due to the autonomy and requirements of a parliamentary legislative state which necessarily favours the lawyer as the ideal representative of the apparatus, even making such a figure a necessity.²¹³

From Weber’s observations on the rationalisation of law and state we can reconstruct a successful, but also consequential, policy of alliances of almost Bismarckian qualities. Four agents play the main roles here: the state, the economy, officials and lawyers. Julien Freund went so far as to maintain that there had been a “conspiracy of politics, economy, law and even of morality” in “rationalising the universe of the everyday.”²¹⁴ It has to be said however that the rationalisation of law was no strategically planned project. Max Weber talked often enough about “alliances” and meant that not only metaphorically; but one can hardly claim that the participants in this process, working for centuries and with divergent regional rates of development, were engaged in a deliberate undertaking.

The triumph of legal positivism

Whichever alliances were successful, whatever interests they represented, who the actual agents were, it is certain that the rationalisation of law led unerringly to legal positivism – which for the time being marks the terminus of the rationalisation of law in the modern state. The history of Occidental law is a success story for legal positivism, which Weber thought was “for the

²¹² Ibid., p. 217; id., “The Profession and Vocation of Politics,” op. cit. p. 329.

²¹³ This is all the more so given that political, social and state life, especially in Germany, has been to a great extent “juridified.” – Since the lawyer is “the typical official of any administration,” for the lawyer Ernst Forsthoff it is a shocking idea that “ministries of culture are left to specialists and so are transformed into sites of educational experiment” (Forsthoff, *Der Staat der Industriegesellschaft*, op. cit. p. 110). And so even education is grist to the lawyer’s mill. But Forsthoff sees one last domain from which they can be kept: “It is obvious that the construction of autobahns is designed, supervised and completed by technical specialists” (Ibid.). For which we can be thankful.

²¹⁴ Freund, “Die Rationalisierung des Rechts,” op. cit. p. 27.

time being unstopably advancing."²¹⁵ And to retain the military metaphor, this advance was accompanied by a constant rearguard action on the part of natural law, since "as a result of the progressive dissolution and relativisation of all metalegal axioms as such" today even "the axioms of natural law were now deeply discredited," and they had "lost their role as viable supports for law."²¹⁶ The fate of natural law has perhaps nowhere been described so unambiguously as in this formulation, although this farewell is not in any sense pejorative, despite what one finds in the literature. Max Weber's inclination is rather to lay emphasis upon the enormous historical importance of natural law for the development of the modern state, and of modern law. When he writes that that the dogma of natural law had enhanced "the tendency towards a logically abstract law, of the power of logic in legal thinking in general,"²¹⁷ he is attributing to natural law a decisive part in the rationalisation of the law. Moreover, he considers that natural law not only played an influential part in the creation and interpretation of the law but also had a major influence upon the modern state.²¹⁸ There is some historical irony in the fact that the process of rationalisation set in train by the doctrine of natural law first of all qualified it, and then ultimately led to its dissolution. This is a fate which natural law shares with many other historical phenomena.

In taking this position Weber was simply endorsing prevailing opinion. In 1854 Bernhard Windscheid had delivered the following apodictic judgement in his address at Greifswald University: "For us there is no absolute law. The dream of natural law is gone, and the titanic efforts of modern philosophy have not stormed the heavens."²¹⁹ The heaven of state law was instead conquered by legal positivism, which from the mid-nineteenth century became the prevailing view in German state theory and which in Max

²¹⁵ Weber, *Recht*, MWG I/22-3 p. 611 (WuG 502).

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*, p. 609 (WuG 501).

²¹⁸ *Ibid.* It is not possible to deal in detail here with the significance of Weber's understanding of natural law. See *ibid.*, pp. 592ff. (WuG 496 ff.); Joachim Radkau, *Max Weber*, trans. Patrick Camiller, Polity, Cambridge 2009 pp. 263ff.; Jens Petersen, *Max Webers Rechtssoziologie und die juristische Methodenlehre*, de Gruyter, Berlin 2008, pp. 88ff.; Duncan Kennedy, "The Disenchantment of Logically Formal Legal Rationality," in Charles Camic et al. (eds), *Max Weber's Economy And Society*, Stanford University Press, Stanford 2005 pp. 322–365 (337ff.); Masahiro Noguchi, *Kampf und Kultur. Max Webers Theorie der Politik aus der Sicht seiner Kultursoziologie*, Duncker & Humblot, Berlin 2005 pp. 71ff.; Ludger Honnfelder, "Rationalization and Natural Law," *Review of Metaphysics* 49 (1995/96) pp. 275–294; Freund, "Die Rationalisierung des Rechts," *op. cit.* pp. 18f.

²¹⁹ Bernhard Windscheid, "Recht und Rechtswissenschaft. Greifswalder Universitäts-Festrede" in his *Gesammelte Reden und Abhandlungen*, ed. Paul Oertmann, Duncker & Humblot, Leipzig 1904 p. 9.

Weber's time was at its zenith.²²⁰ Its leading representatives, Carl Friedrich von Gerber and Paul Laband, were also the leading theorists of state law of their time.²²¹ For positivism, law is an autonomous, closed and logical system of legal categories that can be rigorously distinguished from any non-legal perspective, as for example, social and political perspectives. Positive method therefore aims at the deductive, formal elaboration and application of positive law.

There is no need to emphasise that this conceptualisation of the law, supposedly free of any connection to the political, was anything but non-political;²²² nor that Gerber and Laband were apologists for those in power,²²³ nor that their doctrine served conservatism and monarchism.²²⁴ It is a cliché in the literature that the Gerber-Laband school, and their credo of a strict limitation to the formal interpretation and application of valid law helped

²²⁰ On legal positivism see Neil MacCormick, Ota Weinberger, *An Institutional Theory of Law: New Approaches to Legal Positivism*, 3rd ed., Kluwer, Dordrecht 2010; José Juan Moreso (ed.), *Legal Theory. Legal Positivism and Conceptual Analysis*, Franz Steiner, Stuttgart 2007; David Dyzenhaus, "The Genealogy of Legal Positivism," *Oxford Journal of Legal Studies* 24 (2004) pp. 39–67; Matthew H. Kramer, *In Defense of Legal Positivism*, Oxford University Press, Oxford 2003; Walter Ott, *Der Rechtspositivismus. Kritische Würdigung auf der Grundlage eines juristischen Pragmatismus*, 2nd ed., Duncker & Humblot, Berlin 1992.

²²¹ Laband achieved a prominence that hardly any other lawyer has matched, a prominence that went far beyond the limits of his own discipline. He had it on the highest authority that his scholarly work was regarded as being of "important interest for the Reich" (Laband, *Lebenserinnerungen*, Mosse, Berlin 1918 p. 87). This autobiography is a distressing document of unbearable self-adulation; in it he reports how, in an audience with Kaiser Wilhelm II, the emperor praised him as follows: "You really are one of the most famous men. The whole world talks about you" (p. 107). He wrote a number of memoranda for German and European royal households and in this way influenced questions of succession and issues of political authority and constitutional position – for instance, in the dispute over the succession to the Lippe throne after Prince Woldemar zur Lippe-Detmold died childless. This dispute attracted a great deal of political attention, and was even reported abroad. While Weber was on his American tour, himself half a Lipper, he noted how "American newspapers were just reporting, with ironic pleasure, all stages of the Lippe struggle for succession" (Marianne Weber, *Max Weber. A Biography*, 5th ed., Transaction, New Brunswick 2009 p. 295).

²²² Ulrich Scheuner, "Das Wesen des Staates und der Begriff des Politischen in der neueren Staatslehre," in Konrad Hesse et al. (eds), *Staatsverfassung und Kirchenordnung*, J.C.B. Mohr (Paul Siebeck), Tübingen 1962 p. 228.

²²³ Claus-E. Bärsch, "Die Rechtspersönlichkeit des Staates in der deutschen Staatslehre des 19. und beginnenden 20. Jahrhunderts," in Gerhard Göhler et al. (eds), *Die Rationalität politischer Institutionen*, Nomos, Baden-Baden 1990 p. 428.

²²⁴ To be precise, "The claim that the rigorously scientific method of state doctrine is independent of value judgements related to world view and politics is a façade. In actuality, 'legal method' served the existing order of state and society by restricting itself to a formal treatment of the prevailing public law." (Peter von Oertzen, *Die soziale Funktion des staatsrechtlichen Positivismus*, Suhrkamp, Frankfurt a.M. 1985 p. 321.)

reinforce contemporary conservative and monarchical relations, even that they promoted the ideology of legitimacy of Wilhelminism.²²⁵ Of course, legal positivism was not in the vanguard of social progress, but legal science is not often encountered there. And that is no accident. "The professional duty of preserving existing law tends to place legal practitioners generally among 'conservative' powers."²²⁶ As almost always, he should be read literally here, because he means "conservative" in the sense of "preserving," and moreover in a fully positive sense. But does he also share the "founding maxim of legal positivism, which obliges lawyers to recognise only positive law"?²²⁷ At first sight, this does seem to be the case. He states: "If someone is not suited to decisions over what *should be*, it is the lawyer who, if he wants to be a man of science, is obliged to be a formalist."²²⁸ But since Weber is concerned to strictly separate jurisprudence from his science, this statement cannot be viewed as a description of himself.

Max Weber is certainly anything but a dedicated foe to legal positivism, whose "unstoppable advance" he in no way regretted. His conception of legal rule – that any law can be created by formally correct procedures and no longer depends upon the validity of higher principles – no doubt *also* runs back to legal positivistic ideas. This has resulted in his being repeatedly associated with legal positivism²²⁹ by authors as Habermas,²³⁰ or Schluchter, who even simply declares him to be a "representative of legal positivism."²³¹ There is no basis for that. Simply the fact that the category of legitimation is the axis of his theory of the state, of rule and of law demonstrates his

²²⁵ See for example Bärsch, "Die Rechtspersönlichkeit des Staates," op. cit. p. 428; Oertzen, *Die soziale Funktion*, op. cit. espec. pp. 281ff.; Scheuner, "Das Wesen des Staates," op. cit. espec. pp. 227ff. Not without some justice, Forsthoff takes the view that legal positivism has "for decades been the whipping boy of modern legal dogmatists and facile know-alls, a fate which it does not deserve because of the contribution it made to the elevation of German legal culture upon which one can only look back in envy" (Forsthoff, *Der Staat der Industriegesellschaft*, op. cit. p. 15).

²²⁶ Weber, *Recht*, MWG I/22-3 p. 612 (WuG 502).

²²⁷ Forsthoff, *Der Staat der Industriegesellschaft*, op. cit. pp. 15f.

²²⁸ Weber, "Das Verhältnis der Kartelle zum Staate" (1905), in his *Wirtschaft, Staat und Sozialpolitik*, MWG I/8 p. 271 (GASS 401f.).

²²⁹ Manfred Rehbinder, "Max Weber und die Rechtswissenschaft," in Rehbinder, Tieck (eds) *Max Weber als Rechtssoziologe*, op. cit. p. 141; Fritz Loos, "Max Webers Wissenschaftslehre und die Rechtswissenschaft," *ibid.*, p. 170; Speer, *Herrschaft und Legitimität*, op. cit. pp. 40f., 76f.; Ott, *Der Rechtspositivismus*, op. cit. pp. 78f.; Fritz Loos, *Zur Wert- und Rechtslehre Max Webers*, J.C.B. Mohr (Paul Siebeck), Tübingen 1970 p. 124.

²³⁰ As far as Habermas is concerned, the existence of a "Weberian legal positivism" goes without saying (*The Theory of Communicative Action*, op. cit. p. 254).

²³¹ Wolfgang Schuchter, *Entscheidung für den sozialen Rechtsstaat. Hermann Heller und die staatsrechtliche Diskussion in der Weimarer Republik*, Kiepenheuer & Witsch, Cologne, Berlin 1968 p. 48.

distance from legal positivism, in whose system this category just does not exist. The reason for the incompatibility of his thinking about the state and about law with legal positivist principles runs as follows. Legal positivism conceives the state and the law in terms of existing law; Weber thinks of state and law in terms of history and rulership, economy and society. Legal positivism is concerned with the law “in itself”; Weber is interested in the historical, social, political and economic effects and presuppositions of the law. Legal positive thought seeks perfect consistency; Weber seeks explanation and understanding of contradiction. It is therefore a fundamental misapprehension to treat Weber as a legal positivist, and it is about time that this untenable supposition is finally abandoned.²³²

5 The rationalisation of the state

Max Weber’s sociological perspective upon the state, honed by his studies of the sociology of rulership and of law, turned upon a criterion that became increasingly clear in the course of his study of the state: rationality. As has already been outlined, this criterion is in fact contained in his concept of the state, where the state is described as an *Anstalt* which is in turn characterised by a “rationally” statutory order.²³³ He does not deal with this aspect of the rationality of the state in any detail until his final lecture course on economic history, which can be taken as the final version of his thinking in this area – later published as *Wirtschaftsgeschichte*. His discussion is begun with a striking statement that summarises the result of his investigations in comparative cultural history: “The state, as a *rational* state, has only ever existed in the Occident.”²³⁴

Weber also emphasises this historical and geographical singularity in other contexts. At the beginning of his sociology of religion he writes that “only the Occident” had a state “in the form of a political *Anstalt*, with a rationally-codified ‘constitution,’ rationally-codified law” and an administration oriented to “rational codified rules.”²³⁵ This perspective upon the modern state and its institutions is located within his narrative of the process of Occidental rationalisation. His famous “question” in the Preface to his sociology of religion – “what chain of circumstances” is responsible for the fact that specifically rational structures have emerged only in the

²³² First signs of revision were to be found in Weyma Lübke, who rightly points out that Weber’s conception of legitimacy by virtue of legality “is not a legal positivistic conception” (Lübke, *Legitimität kraft Legalität*, op. cit. p. 2), but who does not provide reasons for this view (pp. 61ff.).

²³³ Weber, *Economy and Society*, Ch. 1 § 15.2.

²³⁴ Weber, *Abriß der universalen Sozial- und Wirtschaftsgeschichte*, MWG III/6 p. 369 (WG 289).

²³⁵ Weber, “Vorbemerkung,” RS I pp. 3f.

Occident²³⁶ – applies equally to the modern state. In Weber's writings this is an elementary component, and also exemplifies the “specific kind of ‘rationalism’ of Occidental culture.”²³⁷

Since it is recognised that Weber approached his objects of investigation in differing contexts from the point of view of rationalisation, this has been repeatedly treated as the central thread of his writings. Although his work has long been forgotten, this interpretive tradition was initiated in 1922 by Albert Dietrich, who argued that Weber had tracked down the “Leviathan of rationalisation.”²³⁸ Siegfried Landshut was certainly the first to identify explicitly rationalisation as “Max Weber's research topic” and “problematic.”²³⁹ Since then, generations of exegetists have sought to demonstrate that it formed the axis of his work.²⁴⁰ Of course, Wilhelm Hennis has made some critical objections in seeking to qualify a perspective which is by no means irrelevant,²⁴¹ but Weber remains primarily conceived as a thinker whose work turns on the process of Occidental rationalisation,²⁴² a view which Wolfgang Schluchter supports with his argument that Weber was without doubt a “theoretician of rationalization.”²⁴³

²³⁶ Ibid., RS I p. 1.

²³⁷ Ibid., RS I p. 11.

²³⁸ Albert Dietrich, “Marx’ und Nietzsches Bedeutung für die deutsche Philosophie der Gegenwart,” *Die Dioskuren* 1 (1922) p. 369.

²³⁹ Siegfried Landshut, *Kritik der Soziologie*, Duncker & Humblot, Munich, Leipzig 1929 pp. 35ff.

²⁴⁰ See in particular the contributions in the rich collection of pieces in Sam Whimster, Scott Lash (eds) *Max Weber, Rationality and Modernity*, 2nd ed. Routledge, London 2006. See also Pier Paolo Portinaro, “Il dibattito sulla razionalizzazione nella recente letteratura weberiana,” *Teoria Politica* 1 (1985) pp. 131–156.

²⁴¹ See Hennis, *Max Weber's Central Question*, op. cit. passim.

²⁴² Summarised by Johannes Weiß in his introduction to *Max Weber heute*, Suhrkamp, Frankfurt a.M. 1989 p. 8.

²⁴³ Schluchter, *Rationalism, Religion, and Domination*, op. cit. p. 15. On rationality and rationalism in Weber see Pietro Rossi, *Max Weber. Una idea di Occidente*, Donzelli Editore, Roma 2007 pp. 115ff., 177ff; Roger Brubaker, *The Limits of Rationality: An Essay on the Social and Moral Thought of Max Weber*, 2nd ed. Routledge, London 2006; Guenther Roth, “Rationalization in Max Weber's Developmental History,” in Whimster, Lash (eds), *Max Weber, Rationality and Modernity*, op. cit. pp. 75–91; Martin Albrow, “The Application of the Weberian Concept of Rationalization to Contemporary Conditions,” ibid. pp. 164–182; Gianfranco Poggi, *Incontro con Max Weber*, Il Mulino, Bologna 2004 pp. 60ff.; Alan Sica, “Weber and the Meaning of Rationalization,” in his *Max Weber & the New Century*, Transaction Publishers, New Brunswick 2004, pp. 105–129; Wolfgang Schluchter, *Die Entstehung des modernen Rationalismus: Eine Analyse von Max Webers Entwicklungsgeschichte des Okzidents*, Suhrkamp, Frankfurt/M. 1998 pp. 239ff.; Martin Albrow, *Max Weber's Construction of Social Theory*, Macmillan Education, London 1990, pp. 114ff., 177ff.; Ann Swidler, “The Concept of Rationality in the Work of Max Weber,” *Sociological Inquiry* 43 (1973) pp. 35ff.

And so Weber's proposition about rationalisation – and here he shares the fate of many theorists – has all too often been circulated in a vulgarised form, as a kind of historical philosophy, or evolutionary theory. Decades ago, Dirk Käsler already insisted that the association of Weber with a theory of evolution is a fundamental misunderstanding,²⁴⁴ but misunderstandings have a long shelf-life, especially in commentary on Weber's work. Hennis complains that it is "one of the most incomprehensible features of contemporary Weber scholarship ... that minds as different as Friedrich Tenbruck, Wolfgang Schluchter and Jürgen Habermas cannot resist discovering *evolutionary* elements in Weber's work."²⁴⁵ One can only second that complaint. In no respect does Max Weber argue that there is a teleology inherent to the historical development of the Occident, one that necessarily leads in the direction of rationalisation. Here again, he is indebted to Nietzsche, who spurned the idea of a "naïve teleology"²⁴⁶ which, like a secular theology, "follows the old habit" of "a *history* with an immanent spirit."²⁴⁷

In no respect is Weber an unconditional apologist for Occidental rationalism, he is instead interested in the *sociological analysis* of this phenomenon, together with the structural form and functioning of state institutions. But all the same, there is in his fragmentary treatment of the relationship of state and rationality what we might call a self-conscious Occidentalism which is constantly seeking to demonstrate that the rational state is an achievement of European early modernity.²⁴⁸ In Max Weber's concept of the state the criterion of the rational is not explicitly stated, but it is lent such emphasis, in the sociology of religion and in his later lectures, that it can claim the status of an elementary feature of the state.

Recognition that the modern state is a specifically rational form of political rule has since become a solid and undisputed part of any modern theory of the state, whether a direct reference is made to Weber or not. Gianfranco Poggi emphasises that rationality "characterises primarily the state's mode of operation";²⁴⁹ for Martin Kriele the state has a rational foundation in

²⁴⁴ Käsler, *Revolution und Veralltäglicung*, op. cit. p. 204.

²⁴⁵ Hennis, *Max Weber's Central Question*, op. cit. pp. 180–181.

²⁴⁶ Nietzsche, *The Will to Power*, transl. Walter Kaufmann, R. J. Hollingdale, Vintage, New York 1968 p. 463.

²⁴⁷ *Ibid.*, pp. 16f.

²⁴⁸ By tying the state to the criterion of rationality Weber stands in the tradition established by Jean Bodin, who notes this feature in the concept of the state elaborated in the Latin edition of his *Six Livres*: "Respublica est familiarum rerumque inter ipsas communium summa potestate ac ratione moderata multitudo." In the original French edition of 1576 the rational elements was still absent: "Republique est un droit gouvernement de plusieurs mesnages, et de ce qui leur est commun, avec puissance souveraine." (Jean Bodin, *Les six livres de la République*, Fayard, Paris 1986 p. 27)

²⁴⁹ Gianfranco Poggi, *The State. Its Nature, Development and Prospects*, 4th ed., Polity Press, Cambridge 2010 p. 183.

legitimacy;²⁵⁰ Konrad Hesse emphasises the rational of the state based upon the rule of law;²⁵¹ while Carl Schmitt state most clearly of all that “the inner wisdom of the word state” consists in its “connection with *ratio*.”²⁵² What can be said about recent theories of the state can also be said of the social sciences: Sociologists who appeal to the theory of Max Weber consider the state to be the “result of the slow rationalization” which is expressed in particular in the work of an objective administration following statutory rules.²⁵³ Not least, Norbert Elias confirmed Weber’s proposition in his detailed investigation of the process of rationalisation of state institutions.²⁵⁴

The emergence of the modern state is not for Weber a linear process but a progression involving monopolisation, rationalisation and the reduction of the exercise of rule to fixed routine. The provisional end point of this development, the “cosmos of the rational institutional state (*Staatsanstalt*)” is marked by the rule of impersonal laws and regulations within whose framework the “modern order of force” is executed. If he talks of the rationalisation of state rule, he also talks of the corresponding objectification and juridification of rule; and in reference to this interdependence he states that internal political force is increasingly objectified as a “*Rechtsstaatsordnung*.”²⁵⁵ The rationality that Weber has in mind is formal rationality;²⁵⁶ that is the kind of rationality at stake when he deals with the rationality of the state, of administration, bureaucracy and the law. He considers this to be not only a decisive criterion but the heart of the modern state.²⁵⁷ Hence he sees the emergence of the modern state as “characterised by a process of formal rationalisation,” as Norberto Bobbio states.²⁵⁸

²⁵⁰ Martin Kriele, *Einführung in die Staatslehre. Die geschichtlichen Legitimitätsgrundlagen des demokratischen Verfassungsstaates*, 6th ed., Kohlhammer, Stuttgart 2003 p. 23).

²⁵¹ Konrad Hesse, “Der Rechtsstaat im Verfassungssystem des Grundgesetzes,” in Hesse et al. (eds) *Staatsverfassung und Kirchenordnung*, op. cit. pp. 83f.

²⁵² Carl Schmitt, *Glossarium. Aufzeichnungen der Jahre 1947–1951*, ed. Eberhard Freiherr von Medem, Duncker & Humblot, Berlin 1991 p. 139.

²⁵³ Georges Balandier, *Political Anthropology*, op. cit. p. 143.

²⁵⁴ Norbert Elias, *The Civilizing Process*, vol. 2, transl. Edmund Jephcott, revised ed., Blackwell, Oxford 2000 pp. 379ff.

²⁵⁵ Weber, *Religiöse Gemeinschaften*, MWG I/22-2 p. 401 (WuG 361).

²⁵⁶ On the relation of formal and material rationality see Kennedy, “The Disenchantment of Logically Formal Legal Rationality,” op. cit. pp. 337ff.; Albrow, *Max Weber's Construction of Social Theory*, op. cit. pp. 178ff.; Kriele, *Einführung*, op. cit. pp. 22ff.; Schluchter, *The Rise of Western Rationalism. Max Weber's Developmental History*, University of California Press, Berkeley 1985 pp. 87ff.; Arnold Eisen, “The Meanings and Confusions of Weberian ‘Rationality’,” *British Journal of Sociology* 29 (1978) pp. 57–70 (61ff.).

²⁵⁷ This point is directed against Martin Kriele. He states that “material rationality” is not only “the motor that has driven along world history since early modernity,” but that it is also “the beating heart of the state” (Kriele, *Einführung*, op. cit. p. 24). This is quite expressly not so, at least from Weber’s point of view.

²⁵⁸ Bobbio, “Max Weber und Hans Kelsen,” op. cit. p. 125.

Weber also considers the reaction that the process of rationalisation provokes. First among these is the “flight into the irrationality of apolitical feeling,” or the flight into mysticism, a response to the “rationalisation of violence” which appears everywhere that the rational state begins to develop.²⁵⁹ Hence the rationalisation of political rule does not end up in a domain of absolutely rational rule but is always subject to mental resistance and irrationalities that constantly challenge it. As far as Weber is concerned, the state can only be as rational as the action and thought of the humans who staff it and with which it deals. Unlike Hegel, he could in no way consider the state to be “the rational in and for itself,”²⁶⁰ but only as a condition structured for rule which cannot *a priori* be rational, and certainly cannot necessarily be so. Of course, he could follow Hegel in arguing that the state “exists in the world, and hence in the sphere of arbitrariness, contingency, and error,”²⁶¹ and so in the sphere of contradiction and the irrational.

Since, in Weber’s view, rationalisation only bears upon one part of political and intellectual reality, then the commonly accepted version of his so called “theory” is untenable, since he is equally interested in the significance of the *irrational* motivations of human action. The emotionalisation and irrationalisation of political action plays a very major part in the dynamic of political processes. It is revealing that Weber only speaks of the irrationalities of *apolitical* feeling, not of those relating to *political* feeling. He does note that the “mass is always exposed to momentary, purely emotional and irrational influences” and is happy to go along with these,²⁶² but he does not link this to the greatest means of mobilising mass emotionalism and collective irrationality in the nineteenth and twentieth centuries: nationalism. This is certainly not least because the nation represents his ultimate value, and he does not wish to associate this with sheer irrationalism.²⁶³ But political rationalism and political irrationalism are very closely related. Political modernity is Janus-faced not least because its rational face is marked by irrational movements. Parallel to rationalisation there constantly emerge new elements of irrationality, above all in the extreme versions of modern nationalism.

Heinz O. Ziegler has consequently concluded that the process of rationalisation of society has unleashed the “new myth of the nation.”²⁶⁴ Quite clearly alluding to Weber, he opposes those doctrines that treat the process

²⁵⁹ Weber, *Religiöse Gemeinschaften*, MWG I/22-2 p. 402 (WuG 362).

²⁶⁰ Hegel, *Elements of the Philosophy of Right*, op. cit. p. 275 (§ 258).

²⁶¹ *Ibid.*, p. 279 (§ 258).

²⁶² Weber, “Parliament and Government,” op. cit. p. 230.

²⁶³ See for a discussion of Weber’s conception of irrationalism Kennedy, “The Disenchantment of Logically Formal Legal Rationality,” op. cit. pp. 324ff.; Alan Sica, *Weber, Irrationality, and Social Order*, University of California Press, Berkeley 1988.

²⁶⁴ Ziegler, *Die moderne Nation*, op. cit. p. 258.

of rationalisation as the core feature of modernity, and instead emphasises the simultaneous unravelling of a process of irrationalism. He dismisses as "quite inappropriate" the image of a society subject to ever more rationalisation, since rationalisation is accompanied by, and also brings about, the "emotionalisation of political behaviour" and promotes the creation of a mythical history.²⁶⁵ Ziegler provides a striking account of the entanglement of rationalism and irrationalism, but his conclusion that the process of rationalisation must be "qualified,"²⁶⁶ clearly a remark aimed at Max Weber, is misplaced. The historical relationship of political rationalisation and irrationalisation must instead be conceived as a dialectic of rationalisation. It is the objectification and rationalisation of the political in the cosmos of the rational State that creates the conditions for the modern irrationalities that have, since the early nineteenth century, developed in extreme forms of nationalism, and remain a living threat today. That does not mean that nationalism is always and everywhere irrational, but that it has the potential to be a decisive factor in the mobilisation of collective irrationality.

Max Weber could not neither ignore the fascination of non-rational developments, nor did he wish to. The events of August 1914 which so moved him was an instance of the important, but also consequential, irruption of such irrationality which instantaneously annihilated all rationality.

²⁶⁵ *Ibid.*, p. 231.

²⁶⁶ *Ibid.*, p. 259.

6

The State as Machine

The machine of itself teaches the mutual cooperation of hordes of men in operations where each man has to do only one thing: it provides the model for the party apparatus and the conduct of warfare. ... it makes of many *one* machine, and out of each individual an instrument to *one* end. Its most generalized effect is to teach the utility of centralization.

(Friedrich Nietzsche, *Human, All Too Human*)

If one considers the contexts in which Weber talks of the state and state institutions, then we encounter images and analogies that belong to a quite particular field of metaphor. The modern state appears to be a machine, mechanism, apparatus, enterprise or factory. Rational law can be predicted “like a machine”¹; the work done by judiciary and administration are calculable “like a machine,”² the bureaucracy works “like any machine,”³ its officials are links in an “unceasingly running machine”⁴ and political parties are nothing but “machines.”⁵

Max Weber certainly liked using metaphors. His most well-known turns of phrase involve metaphors that have long since passed into common parlance; one thinks for instance of the “disenchantment of the world.” When seeking to characterise the state and its institutions, he almost always reaches for technical images, mostly of the “machine,” so that the

¹ Weber, *Abriss der universalen Sozial- und Wirtschaftsgeschichte*, MWG III/6 p. 372 (WG 293).

² Weber, “Parliament and Government in Germany under a New Political Order,” in his *Political Writings*, ed. Peter Lassman, Ronald Speirs, 6th ed., Cambridge University Press, Cambridge 2008 pp. 147f.

³ Weber, “Die wirtschaftlichen Unternehmungen der Gemeinden” (1909), in his *Wirtschaft, Staat und Sozialpolitik*, MWG I/8 p. 362 (GASS 413).

⁴ Weber, *Herrschaft*, MWG I/22-4 p. 208 (WuG 570).

⁵ Weber, “The Profession and Vocation of Politics,” in his *Political Writings*, op. cit. p. 339.

impression is formed that a world has formed in which the state is pure machinery. Carl Schmitt is of the view that for every thinker there is a basic image which is "characteristic of his intellectual particularity."⁶ Is the machine this kind of basic image for Weber? There is almost complete unanimity on the point that he is a paradigmatic representative of a technicist conception of the state. Friedrich Meinecke complained that he only saw the "mechanical side" of the state,⁷ and Wilhelm Hennis notes that "Weber is accused of a purely 'technical' approach to all constitutional questions."⁸ At first sight, all these judgements seem entirely justified. But, conforming to established tradition in the reception of Weber's writing, all these judgements fail to take into account the context in which Weber talks of a machine; they even fail to identify an exact reference. If we are to form a view regarding Weber's conception of the state as a machine, then we need to trace the relevant textual context, assess it in relation to others and consider the conclusions that might be drawn for the way in which he conceives the state. In addition, we need to consider the metaphorical character of the machine analogy; so we must first of all deal with the domain of political metaphors in general.

1 The metaphor of the state as machine

Dispute over the use of metaphor has long been a pre-occupation not only of philologists but also of political thinkers. Thomas Hobbes was of the view that "The Light of human minds is perspicuous Words And on the contrary, Metaphors, and senseless and ambiguous words, are like *ignes fatui*, and reasoning upon them, is wandering among innumerable absurdities"⁹ But in making this condemnation he himself uses a simile, most probably an instance of Hobbes' ironic style.¹⁰ Even the title of his *Leviathan* – Carl Schmitt considered it to be "to be a semi-ironic, literary inspiration born of

⁶ Carl Schmitt, "Zu Friedrich Meineckes 'Idee der Staatsräson'" (1926) in his *Positionen und Begriffe im Kampf mit Weimar – Genf – Versailles*, Hanseatische Verlagsanstalt, Hamburg 1940 p. 49.

⁷ Friedrich Meinecke, "Drei Generationen deutscher Gelehrtenpolitik. Friedrich Theodor Vischer – Gustav Schmoller – Max Weber," in his *Staat und Persönlichkeit*, Mittler, Berlin 1933 p. 164.

⁸ Wilhelm Hennis, *Max Weber's Central Question*, Threshold Press, Newbury 2000 p. 191.

⁹ Thomas Hobbes, *Leviathan*, ed. Richard Tuck, Cambridge University Press, Cambridge 1996 p. 36.

¹⁰ Hobbes is in no respect the great rationalist foe of metaphor that is commonly found in the commentary. See for this James Willson-Quayle, "Resolving Hobbes's Metaphorical Contradiction," *Philosophy and Rhetoric* 29 (1996) pp. 15–32; Karen S. Feldman, "Conscience and the Concealments of Metaphor in Hobbes's *Leviathan*," *Philosophy and Rhetoric* 34 (2001) pp. 21–37.

good English humour"¹¹ – is itself a metaphor, and one of the most effective ones in political modernity. The history of political thought is always, at the same time, a history of the political metaphor. All the major theorists of the state have made use of particular images and analogies, and their success is based not least upon striking metaphors.

It is no accident that the state has always been talked about metaphorically. Kant argued that one could only imagine the state “symbolically,” since it was beyond direct perception, and gave as an example the fact that the state was referred to “as a mere machine.”¹² Reinhart Koselleck has written that “We live by naturally metaphorical expressions, and we are unable to escape from them, for the simple reason that time is not manifest and cannot be intuited.”¹³ Much the same can be said of the theory of the state and political science in general. As Shelley said, “language is vitally metaphorical.”¹⁴ As Harald Weinrich writes, “you can’t think without” metaphors.¹⁵ So even in the process of theory construction it has a central function, even when one appears to be dealing with “purely terminological statement.”¹⁶ This is also true of Max Weber. When considering his arguments concerning

¹¹ Carl Schmitt, “Der Staat als Mechanismus bei Hobbes und Descartes,” *Archiv für Rechts- und Sozialphilosophie* 30 (1936/37) p. 625. On this aspect of Schmitt’s interpretation of Hobbes see my “Das Lachen Carl Schmitts. Philologisch-ästhetische Aspekte seiner Schriften,” *Literaturmagazin* 33 (1994) pp. 154f.

¹² Kant, *Critique of the Power of Judgment*, ed. Paul Guyer, Cambridge University Press, Cambridge 2000 pp. 226. Kant’s remark was taken up both in the study of metaphor in general, as well as in the study of political metaphor. See Hans Blumenberg, *Paradigms for a Metaphorology*, Cornell University Press, Ithaca 2010 p. 4; Paul de Man, “Epistemology of Metaphor,” in his *Aesthetic Ideology*, 3rd ed., University of Minnesota Press, Minneapolis 2002 pp. 34–50, 46ff.; Barbara Stollberg-Rilinger, *Der Staat als Maschine. Zur politischen Metaphorik des absoluten Fürstenstaats*, Duncker & Humblot, Berlin 1986 p. 9.

¹³ Reinhart Koselleck, “On the Need for Theory in the Discipline of History,” in his *The Practice of Conceptual History*, Stanford University Press, Stanford 2002 p. 7.

¹⁴ Percy Bysshe Shelley, “A Defence of Poetry” (1821), in David H. Richter (ed.), *The Critical Tradition*, 3rd ed. St. Martin’s, New York 2006 pp. 346–363, 348. This judgement later found confirmation in a flood of studies on metaphor. See William Franke, “Metaphor and the Making of Sense: The Contemporary Metaphor Renaissance,” *Philosophy and Rhetoric* 33 (2000) pp. 137–153; for an overview, the contributions in Andrew Ortony (ed.), *Metaphor and Thought*, 2nd ed., Cambridge University Press, Cambridge 1993; Anselm Haverkamp (ed.), *Theorie der Metapher*, 2nd ed., Wissenschaftliche Buchgesellschaft, Darmstadt 1996.

¹⁵ Harald Weinrich, “The Linguistics of Lying,” in his *The Linguistics of Lying and Other Essays*, University of Washington Press, Seattle 2005 pp. 3–80 (41). It is worth noting that the word “metaphor” (from the Greek *metapherein* – transfer) is itself a metaphor. For etymological aspects of this see Paul de Man, “Epistemology of Metaphor,” op. cit. p. 38.

¹⁶ Blumenberg, *Paradigms for a Metaphorology*, op. cit. p. 10.

the machinery of state, one needs to remain aware of the role and function of metaphor. Metaphors seek to do more than be interesting comparisons; they seek to make arguments, even if that is sometimes disputed.¹⁷ Max Weber's view of the state as a machine is no mere analogy, but an identification which not only illuminates the character of the state but seeks to provide an empirical description.

This idea is apparent in the very first writers to use the metaphor of the state as a machine, so that Max Weber belongs to a long and honourable tradition. Francis Bacon was certainly the first to describe states as "great engines,"¹⁸ and in Hobbes the Leviathan is described as "a great machine,"¹⁹ but in the course of the eighteenth century, this became the metaphor *par excellence* in political thought.²⁰ During this period mechanical allusions became clichés, for example in Montesquieu,²¹ or in Rousseau, for whom the Lawgiver "is the mechanic who invents the machine."²² The unceasing

¹⁷ At its best in Walter Scott: "Metaphors are no arguments, my pretty maiden." (Scott, *The Fortunes of Nigel* (1822), Edinburgh University Press, Edinburgh 2004 p. 208).

¹⁸ Francis Bacon, *The Advancement of Learning* (1605), in *The Works of Francis Bacon*, Vol. III, Parry & McMillan, London 1859 p. 445.

¹⁹ Carl Schmitt, *Der Leviathan in der Staatslehre Thomas Hobbes. Sinn und Fehlschlag eines politischen Symbols*, Hanseatische Verlagsanstalt, Hamburg 1938 p. 48. While Schmitt considers this to be the "core of his theory" ("Der Staat als Mechanismus," op. cit. p. 624), Bernard Willms has in contrast emphasised that in Hobbes the metaphor of the state as a machine" does not enter into the systematic nature of his philosophical construction ("Die Angst, die Freiheit und der Leviathan," in Udo Bernbach, Klaus-M. Kodalle (eds), *Furcht und Freiheit. Leviathan Diskussion 300 Jahre nach Thomas Hobbes*, Westdeutscher Verlag, Opladen 1982 p. 88. As so often, the truth of the matter lies midway between these two extremes: Hobbes does talk at the beginning of Leviathan expressly of the state as a machine, but given the spirit of the book, the analogy of state and machine pervades the work, as Otto Mayr rightly said (*Uhrwerk und Waage. Autorität, Freiheit und technische Systeme in der frühen Neuzeit*, C.H. Beck, Munich 1987 p. 129).

²⁰ See on this the excellent study of Barbara Stollberg-Rilinger, whose judgement can be relied upon (*Der Staat als Maschine, op. cit.*). Further Alan Scott, "Modernity's Machine Metaphor," *British Journal of Sociology* 48 (1997) pp. 561–575; Stefan Smid, "Recht und Staat als 'Maschine'," *Der Staat* 27 (1988) pp. 325ff.; Mayr, *Uhrwerk und Waage*, op. cit. pp. 127ff.; Dietmar Peil, *Untersuchungen zur Staats- und Herrschaftsmetaphorik in literarischen Zeugnissen von der Antike bis zur Gegenwart*, Fink, Munich 1983 pp. 489ff., 563ff., 882ff.; Wilhelm Schmidt-Biggemann, "Maschine," in *Historisches Wörterbuch der Philosophie* Bd. 5, Schwabe, Basel 1980 col. 795f.; Alexander Demandt, *Metaphern für Geschichte*, C.H. Beck, Munich 1975 pp. 37ff.

²¹ See Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. pp. 152ff.

²² Jean-Jacques Rousseau, *Of the Social Contract*, in his *The Social Contract and other later Political Writings*, ed. Victor Gourevitch, Cambridge University Press, Cambridge 1997 p. 69. On Rousseau's mechanical metaphor see Mayr, *Uhrwerk und Waage*, op. cit. pp. 135f.; Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. pp. 107f.

“complete mechanisation of the idea of the state” in which the state eventually becomes simply a “great machine”²³ is conceived by Weber as an expression of the occidental process of rationalisation, which is articulated in the domain of the political metaphor.

The political theorists of German Cameralism made the “machine” the ultimate dynamic element of their construction of the state, and so became regular mechanical state theorists. Johann Heinrich Gottlob von Justi, in whose writings the “state machine” is ubiquitous, and which made the term a slogan throughout Germany,²⁴ made for the first time the claim that use of this term amounted to an empirical description of the state: “Nothing is more like a machine than a state with a well-organised and prudent government.”²⁵ This point of view runs all through the cameralistic literature, which betrays the beginnings of technological thinking.²⁶ The mechanisation of the theory of the state became a programmatic aim, as was expressed most clearly by August Ludwig Schlözer: “The most instructive way of approaching the theory of the state is when the state is treated as an artificial, compound *machine* which is directed to a particular purpose.”²⁷

The entire eighteenth century conception of the state was formed through the idea of the machine, the most “significant topos” of the era.²⁸ During the period of Enlightened Absolutism – which as Wilhelm Roscher noted “favoured the expression ‘state machine’”²⁹ – the ideal of the machine corresponded to the reality of a state which had already begun to assume mechanical and bureaucratic features. Prussia is here an especially clear example. Frederick the Great, one of whose favourite words were “the state machine,”³⁰ was also the first ruler of a full-blown state machine, “the first

²³ Schmitt, *Der Leviathan*, op. cit. pp. 53f.

²⁴ Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. p. 80.

²⁵ Johann H. G. von Justi, *Gesammelte Politische und Finanzschriften über wichtige Gegenstände der Staatskunst, der Kriegswissenschaften und des Cameral- und Finanzwesens*, Bd. I, Rothe, Copenhagen and Leipzig 1761 p. 102.

²⁶ This has been shown in particular by Ulrich Troitzsch, *Ansätze technologischen Denkens bei den Kameralisten des 17. und 18. Jahrhunderts*, Duncker & Humblot, Berlin 1966. This approach is typified by the work of Johann Beckmann, *Anleitung zur Technologie, oder zur Kenntniß der Handwerke, Fabriken und Manufacturen* (1777), 2nd ed. Vandenhoeck & Ruprecht, Göttingen 1780. In this book, whose title already declares a programme, there is *one* idea which of course cannot be left out: “And so the state is the most artificial machine that men have ever devised, in which a number of larger and smaller wheels and gears engage with each other.” (“Vorrede zur ersten Ausgabe,” n. p.)

²⁷ August L. Schlözer, *Allgemeines StatsRecht und StatsVerfassungslere*, Vandenhoeck & Ruprecht, Göttingen 1793 pp. 3ff.

²⁸ Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. p. 14.

²⁹ Wilhelm Roscher, *Geschichte der National-Oekonomik in Deutschland*, Munich 1874 p. 381.

³⁰ On the use of “state machine” in the writings of Frederick II see Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. pp. 65ff.

and greatest state mechanic that the world has seen" as Adam Müller critically noted.³¹ As Novalis said, no state was "run like a factory more than Prussia,"³² and which on the basis of its bureaucratic administrative structure has been treated as a paradigm of the state as machine, beginning with contemporary writing and running right up to the present day. For Karl Heinzen, an early anarchist critic, "the Prussian bureaucracy is the most organised machine in the world."³³

The machine about which Justi talks is certainly semantically different from the one with which Max Weber is concerned, and since the metaphor of the machine is, like any other, specific to a particular era and linked to the ideas of its time,³⁴ we cannot simply place Weber in a tradition that goes straight back to the Cameralists. All the same, one has to ask what parallels and affinities arise from use of this metaphor, one which lends insight into the way in which he thought about the state. If one defines the state as a machine, then one measures it by machine criteria: technical efficiency and functionality. Does Max Weber, like the Cameralists, project a technical ideal on to the state? Is his perspective underpinned by a technicist or mechanistic conception of the state? It seems obvious to respond positively to these questions, since he does after all emphasise often enough that he always deals with questions of state theory from a "technical" viewpoint.

Reading Max Weber, we come across his fascination with the machine at every turn. When he notices something machine-like, he immediately registers its great benefit – it is more rational, faster, more precise, more effective. This is most plain in his treatment of the bureaucracy. The decisive reason for its advance is its "technical superiority" to all non-bureaucratic organisational forms, to which it relates "exactly like a machine to non-mechanical forms of the production of goods."³⁵ This superiority is therefore not absolute, but only *technical*, since the machine does not embody what is rational or effective as such but is "only" more rational and effective by comparison with the non-mechanical. We constantly see this relativism in Weber. As he says, "There is nothing in the world, no machinery in the world, that works so precisely as this human machine does – and so cheaply!"³⁶ Even

³¹ Adam Müller, "Friedrich der Große und Preußen," in his *Schriften zur Staatsphilosophie*, ed. Rudolf Kohler, Theatiner Verlag, Munich n.d. [1923] p. 110.

³² Novalis, "Glauben und Liebe oder Der König und die Königin" (1798), in his *Schriften. Bd. 2: Das philosophische Werk I*, ed. Richard Samuel, Kohlhammer, Stuttgart 1981 pp. 485–498 (494).

³³ Karl Heinzen, *Die preußische Bürokratie*, Leske, Darmstadt 1845 p. 134.

³⁴ Hans Blumenberg has drawn attention to the historicity of the metaphor of the machine (*Paradigms for a Metaphorology*, op. cit. pp. 63ff.).

³⁵ Weber, *Herrschaft*, MWG I/22-4 p. 185 (WuG 561).

³⁶ Weber, "Die wirtschaftlichen Unternehmungen der Gemeinden" (1909), in his *Wirtschaft, Staat und Sozialpolitik*, MWG I/8 p. 361 (GASS p. 413).

his conception of democracy is oriented to the ideal of the machine, for he thinks only in terms of an alternative between “a leadership democracy with a ‘machine,’ and democracy without a leader.”³⁷

We can track this fascination with the machine back to his youth. If we can rely upon the judgement of his wife, then “all that ultimately remained from his military training” during his tour of duty in Strasbourg was “a great admiration for the ‘machine.’”³⁸ We can detect this admiration in his very first publications, praising Friedrich Naumann’s unreserved affirmation of technology and emphasising in particular a quotation from Naumann: “*God wants the machine.*”³⁹ Weber would not have consecrated the machine in quite this way, but in a secular form he shared much the same sentiment, in particular the idea of its incessant and ineluctable advance. That was especially true of the mechanisation of the state. And so at the Burg Lauenstein meeting in 1917 he countered Max Maurenbrecher’s vision of the supersession of “mechanisation” in an ideal state, arguing that this “mechanisation” was unstoppable, and insurmountable even for the most ideal and perfect state.⁴⁰

Max Weber’s view of the state as a machine, and his argument that its mechanisation was ineluctable, relate to his interpretation of the state as a component of the occidental process of rationalisation. He considered that the development of the state was closely related to technology, which left its mark on the state, while being shaped by the state itself. This perspective corresponds in detail with that of Walther Rathenau, whose *Kritik der Zeit* conjugated the “mechanisation of the world” in five chapters.⁴¹ He demonstrated that only in the Occident had mechanisation been pushed through “to the ultimate consequences of which we know,” which were “inescapable” since they commanded “the methods of production, the powers shaping life and the goals of life.”⁴² In the “century of rationalisation” the state itself was subject to “the principle of rationalisation,” so that in turn it had become “the model of all mechanical forms of organisation.”⁴³ Max Weber shared both Rathenau’s diagnosis of the interdependence of state and technical development and his argument that mechanisation was unavoidable.

³⁷ Weber, “The Profession and Vocation of Politics,” op. cit. p. 351.

³⁸ Marianne Weber, *Max Weber. A Biography*, 5th ed., Transaction, New Brunswick 2009 p. 78.

³⁹ Weber, “Was heißt Christlich-Sozial?” (1894), in his *Landarbeiterfrage, Nationalstaat und Volkswirtschaftspolitik*, MWG I/4 p. 351.

⁴⁰ Weber, “Vorträge während der Lauensteiner Kulturtagungen” (1917), MWG I/15 pp. 702, 706.

⁴¹ Walther Rathenau, *Zur Kritik der Zeit*, S. Fischer, Berlin 1912 pp. 45ff., 57ff., 65ff., 75ff., 86ff.

⁴² *Ibid.*, pp. 57, 135.

⁴³ *Ibid.*, pp. 70f.

We shall come back to the fact that he was also rather ambivalent about the positions advanced in Rathenau's *Kritik*.

2 The state as enterprise

Max Weber's conception of the state as a machine seems to contradict his "interpretative" framework, his decidedly "antisubstantialist" treatment of the state as a complex of actions. But the congruity of these two perspectives is shown by a remark that he makes in the "Basic Sociological Categories," where he argues that a machine "can only be interpreted and understood by reference to the meaning which human action of quite diverse kinds has lent, or has sought to lend, to its production and use."⁴⁴ If both the state and the machine are dealt with through the category of action this analogy is even more exact. The coherence of a conception of the state founded both upon the machine and action lead to consequences for the types of action in the machine state: in his essay on Stammler, Weber writes that the "joint action of the parts of a machine" works in the same way, following "rules laid down by humans," as do "human workers in a factory." Together, humans are embodied as a "total mechanism" by a "calculated 'psychic' compulsion," while in a machine this occurs through its "physical and chemical properties."⁴⁵ The enterprise appears here as the location of technically functioning action which can be calculated like the technical functioning of a machine. This perspective appears time and time again in Weber's sociological studies of rule and of the enterprise.

Weber is above all interested in the "consequences of mechanisation and discipline" in the enterprise – that the "psychophysical apparatus of man" are entirely adapted to the demands of the machine and "deliberately broken down into the functions of individual muscles and the creation of an optimal economic of motion, the conditions of work are endowed with a new rhythm."⁴⁶ The consequences of the mechanisation of action are in no way limited to the enterprise; they can also be found in the "state bureaucratic apparatus, which functions according to the same principles. Weber concludes that the "*large-scale economic enterprise*" is, together with the army, the "great inculcator of discipline."⁴⁷ The fact that he makes a functional analogy between the machine and action on the basis of a sociological treatment of *the enterprise* does not lead us away from a sociology of the state, but directly into it. From a social scientific point of view, the modern state is

⁴⁴ Weber, *Economy and Society*, Ch. 1 § 1.4.

⁴⁵ Weber, "R. Stammler's 'overcoming' of the materialist conception of history" (1907), in his *Collected methodological writings*, ed. Hans Henrik Bruun, Sam Whimster, Routledge, London 2012 pp. 185–226, 205 (WL 325).

⁴⁶ Weber, *Herrschaft*, MWG I/22-4 p. 558 (WuG 686).

⁴⁷ *Ibid.*, pp. 558, 556 (WuG 687, 686).

an enterprise “in just the same way as a factory; this is its specific historical character.”⁴⁸ This definition of the state as an enterprise extends and renders more precise Weber’s view of the state as a machine.

“Enterprise” is a precise concept. Weber defines it as “continuous *purposive* action of a particular kind,”⁴⁹ and so this is, like the state and the machine, conceived in terms of the category of action. If in addition to this he conceives it as a “*technical*” category, this is by analogy with his “technical” understanding of the state.⁵⁰ Since “the *corporate enterprise*,” defined as “the societised form of this action with a continuous and purposively acting administrative staff,” appears in the sequential logic of the “Basic Sociological Concepts” as a preliminary stage of the political organisation,⁵¹ this only renders the sociological affinity of state and enterprise more clear. It is entirely evident in the reasoning that Weber provides in developing his conception of the state as an enterprise. What is of decisive importance is that way in which rulership is “determined in a similar manner” in the state bureaucracy and in the economic enterprise. In both cases, the worker, or the official, is separated from the material means of production.⁵² This argument by analogy is therefore based of criteria relating to rulership and the sociology of the state. Like the metaphor of the machine, the concept of the enterprise, which is not so much a metaphor as precisely defined, lays claim to an empirical description of the reality of the state. This is true on the one hand of the type of purposive and technical action and, on the other, of the rational bureaucratic structure of rule. The state and the enterprise function according to the same principles. Weber’s argument by analogy depends on a sequence of equations that are only rarely made explicit, so that they only become recognisable through synoptic review.

Weber nowhere systematically develops the affinity of enterprise and state structures in a sociological framework; instead, he always touches upon it in passing. For example, he remarks that the specific character of the modern entrepreneur can be seen in the fact that “he operates as the ‘leading official’ of his enterprise, in the same way that the ruler of a specifically bureaucratic modern state calls himself its ‘prime servant.’”⁵³ This allusion to the famous comment by Frederick the Great is interesting on two counts. First, it shows

⁴⁸ Weber, “Parliament and Government in Germany,” op. cit. p. 146.

⁴⁹ Weber, *Economy and Society*, Ch. 1 § 15.

⁵⁰ Weber, WuG 53. The juridical dimension of this concept, which is of decisive significance for the delimitation of the domain in which commercial law holds sway (Weber, *Recht*, MWG I/22-3 p. 616, WuG 504), does not have an important role in this context. See Pierangelo Schiera, “Max Weber und die deutsche Rechtswissenschaft des 19. Jahrhunderts,” in Manfred Rehbinder, Klaus-Peter Tieck (eds) *Max Weber als Rechtssoziologe*, Duncker & Humblot, Berlin 1987 p. 167.

⁵¹ Weber, *Economy and Society*, Ch. 1 § 17.

⁵² Weber, “Parliament and Government in Germany,” op. cit. p. 147.

⁵³ Weber, *Herrschaft*, MWG I/22-4 p. 158 (WuG 522).

Weber's scepticism with regard to the self-description of enlightened absolutism. If one interprets the idea of being a "prime servant" in terms of Weber's concept of rule, then the "first servant" can only be its prime ruler if he both commands and obeys himself.⁵⁴ Second, the allusion points to a historical parallel between the manner in which rule is understood and the machine/enterprise character of the modern state, the prototype of which is Prussia. As Wilhelm Roscher remarked, the ruler of enlightened absolutism which claims "le roi c'est le premier serviteur de l'état" is at the same time the ruler "who is fond of the expression 'state machine.'"⁵⁵

Weber's interpretation of the state as a machine is however incoherent in at least one respect, since he states that bureaucratic principles are in the public domain constitutive of "ministerial authorities,"⁵⁶ and it is only in the private domain that they are constitutive of the "enterprise." But when characterising the state he talks not of authorities, but uses the economic conception of the enterprise – possibly because he thinks that this will lend his proposition more force. In fact, his association of the state with the business enterprise resonated throughout twentieth century political theory, even if it was taken up in many different ways. Only in Otto Hintze can we detect a positive response, who welcomed the argument as having revolutionary implications for the conception of the state, and who thought that the analogy of state and enterprise was entirely fitting because of the manner in which both domains were subject to rationalisation.⁵⁷ In the "light of the new objectivity" the state everywhere appeared to be an "institutional enterprise" (*Anstaltsbetrieb*), the "intensity and rationality of the enterprise" being "the characteristic signs of both the modern state and the modern economy."⁵⁸ In this unjustly neglected essay, Hintze places this argument quite precisely, in regard to intellectual and contemporary history. The moral and political collapse at the end of the First World War was needed "to destroy the old aura that the state had for us"; only since "the magnificence of our *Reich* was finished" had it been obvious to everyone that "our state is at root nothing but" an enterprise.⁵⁹

Nonetheless, this positive, and almost apologetic, stance contrasts with harsh and destructive criticism of Weber's argument. Chief among such critics was Otto Koellreutter, who seems to have missed the point altogether and accused Weber of "approaching an assessment of the problem of the

⁵⁴ And so the "master-slave" dialectic would give way to a master-slave identity.

⁵⁵ Roscher, *Geschichte der National-Oekonomik*, op. cit. pp. 380f.

⁵⁶ Weber, *Herrschaft*, MWG I/22-4 p. 157 (WuG 551).

⁵⁷ Otto Hintze, "Der Staat als Betrieb und die Verfassungsreform" (1927), in his *Soziologie und Geschichte*, ed. Gerhard Oestreich, 3rd ed., Vandenhoeck & Ruprecht, Göttingen 1982 p. 205.

⁵⁸ *Ibid.*, p. 207.

⁵⁹ *Ibid.*, p. 206.

state from economics," Weber therefore understanding nothing of the state.⁶⁰ Likewise Rudolf Smend, whose judgement was not always certain. He suggested that Weber's "basic thesis" was a case of "true German alienation from the state," dismissing Weber's thinking as "liberal, in the sense of a lack of inner engagement with the state" and who considered that his political writings were "ultimately the sterile 'reflections of a nonpolitical man.'"⁶¹ This bewildering criticism is nowhere supported with any evidence and is merely the outcome of a diffuse hostility to liberalism and etatism. It is entirely absurd to suggest that one of the most engaged political theorists and writers of the time was "nonpolitical" or that he was "alienated from the state," putting him on the same level as Thomas Mann's *Reflections of a Nonpolitical Man*, by no means his most engaging work.⁶²

It is significant that the reception of Weber's writings was limited to the 1920s, breaking off abruptly at the end of the decade. His attempt to decipher the state in terms of the enterprise for a short while prompted heated debate among German political theorists and then vanished, both from *Staatslehre* and social sciences. While German theorists of the 1920s were clearly somewhat repelled by the conception of the state as an enterprise, the idea had found broad acceptance in contemporary American political science.⁶³ Max Weber had paid attention to the development of American political science literature⁶⁴ and, as we have seen at various points, had drawn upon it in such a way that one could say that he was here more Anglo-American than German. His use of the metaphor of the machine did reflect ideas widespread at the time in German writing, but his introduction of the idea that the state was an enterprise was, in the German context, an isolated one.

Weber philology has more or less disregarded this entirely, and where it has taken notice, then it has misjudged it badly. Gerhard Hufnagel's view that Weber robs "the conception of the state of any ontological hypostatisation

⁶⁰ Otto Koellreutter, "Die staatspolitischen Anschauungen Max Webers und Oswald Spenglers," *Zeitschrift für Politik* 14 (1924/25) pp. 494f.

⁶¹ Rudolf Smend, "Verfassung und Verfassungsrecht" (1928), in his *Staatsrechtliche Abhandlungen und andere Aufsätze*, 3rd ed., Duncker & Humblot, Berlin 1994 p. 122.

⁶² This does not mean that there are no parallels between Thomas Mann's patriotic essay collection, written during the First World War, and Max Weber's political writings of this time. It would be interesting to look into their affinities and contrasts. See Thomas Mann, *Reflections of a Nonpolitical Man* (1918), trans. Walter D. Morris, Ungar, New York 1987.

⁶³ The idea of the state as an institution with its own apparatus run "like an enterprise" was widespread in the USA. See, for example, Arthur F. Bentley, *The Process of Government. A Study of Social Pressures*, Chicago University Press, Chicago 1908.

⁶⁴ Stimulated by Georg Jellinek, Weber had during his period in Heidelberg pursued "intensive study of the new Anglo-American *Political Science*" (Johannes Winckelmann, *Erläuterungsband* WuG, 5th ed., J.C.B. Mohr (Paul Siebeck), Tübingen 1976 p. 236.

or metaphysical legitimation, since the conceptual framework of the 'enterprise' is incapable of this"⁶⁵ misses the point entirely, since at issue is not a critique of ideology, but the demonstration of specific and analogous *forms of rule* between the state and the business enterprise. The decisive impulse comes naturally from his own sociological study of enterprises, structure of rule and agrarian structures, for these gave him not only his empirical material but also his theoretical and conceptual instrumentarium for a theory of the state as enterprise. He was possibly more familiar with the reality of business organisation than any other social scientist of his time and made use of this in constructing his theory of the state.

3 Max Weber's ambivalence

To answer the question whether Weber measures the state against the ideal of a machine in the same way that Cameralists did, we need to consider the conclusions that he draws from his observation that mechanisation is unstoppable. He states that mechanisation leads to the adaptation of human action to the machine and to the inculcation of discipline, and he asks about the "characterological" consequences of the mechanised organisation of the enterprise, whether that of the state or that of the economy.⁶⁶ He establishes that the apparatus "had changed, and would continue to change, the spiritual face of the human race almost out of all recognition,"⁶⁷ and he referred to the curse of "authoritarian sensibility, of being regimented, commanded, constrained which today's state and today's organisation of labour" brought with it.⁶⁸ As a result of the unstoppable nature of the mechanisation of state and business enterprise, he foresaw the emergence of a type of human being "who needed order, and nothing but order."⁶⁹ None of that sounds very apologetic. On the contrary, his anthropological perspective demonstrates that, for him, the machine was anything but ideal

⁶⁵ Gerhard Hufnagel, *Kritik als Beruf. Der kritische Gehalt im Werk Max Webers*, Propyläen, Frankfurt a.M. 1971 p. 179.

⁶⁶ Weber, "Erhebungen über Auslese und Anpassung (Berufswahl und Berufsschicksal) der Arbeiterschaft der geschlossenen Großindustrie" (1908), in his *Zur Psychophysik der industriellen Arbeit*, MWG I/11 pp. 78–149, 95 (GASS 14).

⁶⁷ *Ibid.*, p. 149 (GASS 60).

⁶⁸ Weber, "Das Arbeitsverhältnis in den privaten Riesenbetrieben" (1905) in his *Wirtschaft, Staat und Sozialpolitik*, MWG I/8 p. 253 (GASS 396).

⁶⁹ Weber, "Die wirtschaftlichen Unternehmungen der Gemeinden" (1909), *ibid.*, p. 363 (GASS 414). Robert Musil was another acute analyst of the soul, and in 1919 he noted that even when dreaming "the average German, even in his dreams, still has the functionally efficient machinery of the state clattering and rattling in his ear" (Musil, "Anschluss with Germany" (1919), in his *Precision and Soul. Essays and Addresses*, ed. Burton Pike, David S. Luft, University of Chicago Press, Chicago 1990 pp. 90–98, 91).

and in no respect a positive model for the state, since he treated it above all in terms of its negative effects.

This becomes quite plain when Weber poses his “central” question, which does not involve the way in which one might develop the most perfect state machine, but instead “what we have that can be *set against* this machinery.”⁷⁰ In almost all the contexts in which he asks after the consequences of mechanisation and machinery for the human being he sees calamitous tendencies at work, and his analysis is always dominated by pessimism and fatalism. For him, mechanisation is equivalent to the loss of freedom and individuality, with authoritarianism and a craving for order. That the machine stands for everything that is rigid, lifeless and uniform is never more clearly expressed than in his aphoristic and metaphorical remark about the “lifeless machine” that worked together with the living to create “the housing of that future serfdom.”⁷¹

While the machine was still a Utopian ideal for the Cameralists of the eighteenth century, for Max Weber it has long become an ominous reality. Schlözer could still maintain that men “cannot be treated like machines”⁷²; for Weber is clear that human action functions like the “parts of a machine,”⁷³ and that the psycho-physical apparatus of the human being” is adapted to the machine and set to work according to its rhythm.⁷⁴ And so it is very possible to “treat men like machines.” Human beings do invent the apparatus and set it in motion, but they are in turn formed and marked by the apparatus, and this is in no way a positive experience. *Empirically*, therefore, Weber stands in the tradition of the Cameralists in his use of the analogy; but his *assessment* lies in a quite different tradition, that of the vehement criticism that began to emerge at the height of the euphoria for the state machine. The metaphor of the state machine had from the very first a highly polarising impact, and even at its height it was disputed. Herder, for example, mocked the way that state theory idealised the ideal of the machine: “since all teachers of state law say that any well-organised state has to be a machine, they are all governed by the one idea: what greater happiness could there be than to serve as an unthinking part of this machine?”⁷⁵ In an earlier draft of his *Ideen* he drew almost anti-etatist

⁷⁰ Weber, “Die wirtschaftlichen Unternehmungen der Gemeinden,” op. cit. p. 363 (GASS 414).

⁷¹ Weber, “Parliament and Government in Germany,” op. cit. p. 158 (PS 332).

⁷² Schlözer, *Allgemeines StatsRecht*, op. cit. p. 157.

⁷³ Weber, “R. Stammler’s ‘overcoming’ of the materialist conception of history,” op. cit. pp. 204f. (WL 325).

⁷⁴ Weber, *Herrschaft*, MWG I/22-4 p. 558 (WuG 686).

⁷⁵ Johann Gottfried Herder, *Ideen zur Philosophie der Geschichte der Menschheit* (1784/85), *Werke in zehn Bänden*, ed. Martin Bollacher, vol. 6, Deutscher Klassiker Verlag, Frankfurt a.M. 1989 p. 334.

conclusions from the machine-like character of the state: "Every state is as such a machine, and no machine possesses reason, however rationally it might have been constructed."⁷⁶

One hundred years after this "critique of pure machine reason" Max Weber faced a perfected state machine. He shared not only Herder's insight into the machine-like character of the state but also his view of the consequences for human behaviour: the loss of individual freedom of movement and the danger of becoming but one part of a machine. The critique of the machine state that followed on from Herder polemicalised against the idealisation of the machine – the credo of enlightened absolutism. Interestingly, even the most decided critics of the state rarely disputed that mechanical principles were necessary to organise state order. But this only increased the sense of the ensuing fatal consequences, which Novalis incisively expressed:

"However necessary perhaps such machine-like administration might be for the health, strength and vigilance of the state, if the state is solely treated as such, then it is essentially ruined by this."⁷⁷

Novalis's position is much more sophisticated than that of Adam Müller, for instance, whose polemics against the machine reached the limits of sheer redundancy and repetition.⁷⁸ The protagonists of Romanticism, who as a whole rejected mechanical ideas and favoured an organic conception of the state, replaced the "machine" with the "organism." This gave rise to the great dichotomy of nineteenth century political metaphor, between the mechanical and the organic, a battle of metaphors behind which there stood a struggle between irreconcilable conceptions of the state.

This dichotomy was linked to a particular era. In later theory, it was relativised.⁷⁹ The organic metaphor did have a very tradition in political philosophy. But an organic theory of the state, whose leading proponent was Otto von

⁷⁶ Herder, *Ideen zur Philosophie der Geschichte der Menschheit*, Sämtliche Werke, Bd. 13, Weidmann, Berlin 1887 p. 340. On Herder's critique of the machine see Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. pp. 209ff.

⁷⁷ Novalis, "Glauben und Liebe," op. cit. p. 494.

⁷⁸ Adam Müller, *Die Elemente der Staatskunst*, Bd. I, Sander, Berlin 1809 pp. 38f., 168f.

⁷⁹ See Andreas Anter, "Verwaltung und Verwaltungsmetaphorik," in Peter Collin, Klaus-Gert Lutterbeck (eds), *Eine intelligente Maschine? Handlungsorientierungen moderner Verwaltung*, Nomos, Baden-Baden 2009, pp. 25–46, 32ff.; Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. pp. 202ff.; Gareth Morgan, "Paradigms, Metaphors, and Puzzle Solving in Organization Theory," *Administrative Science Quarterly* 25 (1980) pp. 605–622, 613ff.; Ahlrich Meyer, "Mechanische und organische Metaphorik politischer Philosophie," *Archiv für Begriffsgeschichte* 14 (1969) pp. 128–199.

Gierke, was formed only in the nineteenth century.⁸⁰ Max Weber did share this criticism of the negative consequences of the machine, but was never ever tempted to counter the ideal of an organism to the machine. He referred to von Gierke's "organic theory of the state" with explicit irony,⁸¹ and he had no time for biological metaphors: "All analogies with the 'organism' and similar biological concepts are doomed to remain sterile."⁸² Instead, he expressly admitted a reality which he experienced as mechanical, and which he brought to life with concepts and metaphors. He is an advocate of looking facts in the face who, at the same time, criticises these facts.

Weber's view of the machine phenomenon and its anthropological consequences relates not only to Herder, but rather more to Nietzsche's "reaction against machine-culture." Here Herder's critique of "unthinking humans" undergoes a radicalisation: "The machine, itself a product of the highest intellectual energies, sets in motion in those who serve it almost nothing but the lower, non-intellectual energies."⁸³ Nietzsche accentuated essential elements that were also very important for Weber. That is especially true of the anthropological consequences of machine organisation: just as Weber describes the mechanisation of "psychophysics," so does Nietzsche talk of the way in which the machine "makes of many *one* machine and of every individual an instrument to *one* end," and that its most general effect is "to teach the utility of centralization."⁸⁴ It is exactly this idea of centralisation that Weber places alongside rationalisation as the consequence of mechanisation.⁸⁵ He treats the business enterprise as the "inculcator of discipline,"⁸⁶ just as Nietzsche conceives the "machine as teacher" who gives instruction

⁸⁰ See Otto von Gierke, *Das deutsche Genossenschaftsrecht*, espec. vol. 3 and 4, Weidmann, Berlin 1881, 1913. Also Erich Kaufmann, "Über den Begriff des Organismus in der Staatslehre des 19. Jahrhunderts," in his *Gesammelte Schriften*, vol. 3, Schwartz, Göttingen 1960 pp. 46ff. For the present discussion see Albrecht Koschorke et al., *Der fiktive Staat. Konstruktionen des politischen Körpers in der Geschichte Europas*, S. Fischer, Frankfurt a.M. 2007 pp. 356ff.; Peter J. Steinberger, *The Idea of the State*, Cambridge University Press, Cambridge 2006 pp. 282ff.; Phillip Goggans, "Political Freedom and Organic Theories of States," *Journal of Value Inquiry* 38 (2004) pp. 531–543; Sandrine Baume, "Penser l'état organique". Enjeux critiques d'une analogie," *Revue européenne des sciences sociales* XL (2002) pp. 119–139; Maël Lemoine, "Remarques sur la métaphore de l'organisme en politique," *Les études philosophiques* 59 (2001) pp. 479–497.

⁸¹ Weber, "Roscher and Knies and the logical problems of historical economics," in his *Collected methodological writings*, op. cit. pp. 3–94, 24 (WL 35).

⁸² Weber, "On some categories of interpretive sociology" (1913), in his *Collected methodological writings*, op. cit. pp. 273–301, 289 (WL 454). The involuntary irony of this argument is of course that Weber, in denouncing biological metaphors, in fact here uses one.

⁸³ Nietzsche, *Human, All Too Human* (1878), trans. R. J. Hollingdale, Penguin, London 1994 p. 366.

⁸⁴ *Ibid.*

⁸⁵ Weber, *Herrschaft*, MWG I/22-4 p. 558 (WuG 687).

⁸⁶ *Ibid.*, p. 556 (WuG 686).

on "the mutual cooperation of hordes of men."⁸⁷ That he here has state institutions in mind is shown by his remark on the machine as "the model for the party apparatus,"⁸⁸ a view shared by Weber, for whom modern parties are exclusively "machines."⁸⁹ In both thinkers we find a lucid comprehension of the impact of the machine upon human action and state institutions, together with criticism of the consequences in uniformity and lack of freedom. In the same way that Weber sees the rise of "the housing of that future serfdom," Nietzsche realises that the "tremendous machine of the *state* overpowers the individual."⁹⁰ And he comes to the conclusion that today "we seem to live in the midst of nothing but an anonymous and impersonal slavery."⁹¹

The property of being impersonal that Nietzsche attributes to the machine also plays a central role in Weber's interpretation of the modern state. Since for him impersonal rule is a fundamental aspect not only of the modern state but also of the modern enterprise, we yet again see the sociological equivalence of state and enterprise. Even as early as his studies of East Elbian labour, he wrote of the tendency for agrarian enterprises to develop an "independence from personal rule."⁹² He sees the same thing in modern large-scale enterprises, whose characteristic modern development takes the form of the "decay of *personal relationships of rule*," being increasingly replaced by "*impersonal rule*." He does not however consider this to be a positive development, because impersonal rule involves an "invisible and

⁸⁷ Nietzsche, *Human, All Too Human*, op. cit. p. 366. For Weber's relationship with Nietzsche see Bryan S. Turner, "Max Weber and the spirit of resentment: The Nietzsche legacy," in *Journal of Classical Sociology* 11 (2011) pp. 75–92; Laurent Fleury, "Nietzsche, Weber et le politique: d'une pensée philosophique à un regard sociologique," in Hinnerk Bruhns, Patrice Duran (eds), *Max Weber et le politique*, Fondation Maison des Sciences de l'Homme, Paris 2009 pp. 163–180; Franz Graf zu Solms-Laubach, *Nietzsche and Early German and Austrian Sociology*, Berlin, New York 2007 pp. 13ff., 77ff.; Ralph Schroeder, "Nietzsche and Weber. Two 'Prophets' of the Modern World," in Sam Whimster, Scott Lash (eds), *Max Weber, Rationality and Modernity*, 2nd ed. Routledge, London 2006 pp. 207–221; Eugène Fleischmann, "De Weber à Nietzsche," in *European Journal of Sociology* 42 (2001) pp. 243–292 (reprint); Wilhelm Hennis, "The traces of Nietzsche in the works of Max Weber," in his *Max Weber's Central Question*, trans. Keith Tribe, Threshold Press, Newbury 2000 pp. 146–241; Robert Eden, *Political Leadership and Nihilism. A Study of Weber and Nietzsche*, University Press of Florida, Tampa 1983.

⁸⁸ Nietzsche, *Human, All Too Human*, op. cit. p. 366.

⁸⁹ Weber, "The Profession and Vocation of Politics," op. cit. pp. 350–351, for example.

⁹⁰ Nietzsche, *The Will to Power*, trans. Walter Kaufmann, R. J. Hollingdale, Vintage, New York 1968 p. 383.

⁹¹ Nietzsche, *Human, All Too Human*, op. cit. p. 411. With the publication in 1877 of Ernst Kapp's *Grundlinien einer Philosophie der Technik* there developed in Germany a philosophical investigation of technology which was oriented both to an "anthropological standard" (pp. 1ff.) as well as that of the state (pp. 307ff.). In respect of these standards there is here a great affinity to the writing of Herder, Nietzsche and Weber. Kapp was of the view that "machinelike" meant "for the most part only a higher degree of thoughtlessness and routinisation." (p. 344)

⁹² Weber, *Die Lage der Landarbeiter im ostelbischen Deutschland 1892*, MWG I/3 p. 919.

intangible power," so that the "relation of the ruler to the ruled" can no longer be comprehended in terms of ethics.⁹³

Besides this characterological perspective and that related to the sociology of rulership, there is also an ethical perspective embedded in Weber's studies of agrarian organisation and of the business enterprise. His recognisable diffidence with regard to impersonal rule follows from the fact that he deals with rule from an institutional perspective in which personal rule is considered the better form of order because ethical demands can be made of it. So it is not the liberty of the ruled that concerns him in the first instance, something that can be seen for example in his scorn for the "magic of liberty"⁹⁴ which the detachment of the rural labourer from personal forms of rule might promise. The analogy he draws between state and enterprise rests not least upon the empirical material of his earlier studies. Here he developed questions and perspectives which run like a *leitmotiv* throughout his writing, and without which the positions he takes on the theory of the state are inconceivable.

Max Weber's uneasiness with respect to the impersonal is widespread in twentieth century philosophy of technology. For example, Nikolai Berdyaev conceived modernity as "the empire of the machine" and considered technological civilisation to be "in essence *impersonal*,"⁹⁵ but he came to the following pessimistic conclusion: "The massified technological organisation of being destroys all individuality, all uniqueness and originality, and stamps everything with the mark of impersonality and facelessness. All production assumes an anonymous character and becomes soulless drifting."⁹⁶ Although he does not refer to Weber, and quite probably did not know of his work at all, his diagnosis reads like a paraphrase of Weber's own position. And this impression is reinforced when Berdyaev comes to talk of technology and rationalisation: "The organic and the irrational is driven out of technology by the mechanical and the rational. ... The machine, made by man, begins to reshape man in its own image. ... The machine compels men to become machines, and to assume their form."⁹⁷ It is surprising how far Weber anticipates the findings of later studies,⁹⁸ as for example in Lewis Mumford's

⁹³ Weber, "Was heißt Christlich-Sozial?" (1894), in his *Landarbeiterfrage, Nationalstaat und Volkswirtschaftspolitik*, MWG I/4 p. 357.

⁹⁴ Weber, *Die Lage der Landarbeiter*, op. cit. p. 920.

⁹⁵ Nikolai Berdyaev, *Der Mensch und die Technik*, Vita Nova, Lucerne 1943 pp. 17, 33.

⁹⁶ *Ibid.*, p. 24.

⁹⁷ *Ibid.*, p. 15.

⁹⁸ For instance Siegfried Giedion, *Mechanization Takes Command: A contribution to anonymous history*, Oxford University Press, New York 1948; Lewis Mumford, *Myth of the Machine. Technics and Human Development*, Harcourt, New York 1967; Heinrich Popitz, *Der Aufbruch zur Artifizialen Gesellschaft. Zur Anthropologie der Technik*, J.C.B. Mohr (Paul Siebeck), Tübingen 1995 pp. 29ff.; id., *Phänomene der Macht*, 2nd ed., J.C.B. Mohr (Paul Siebeck), Tübingen 1992 pp. 163ff.; Otto Ullrich, *Technik und Herrschaft*, Suhrkamp, Frankfurt a.M. 1982; Arno Baruzzi, *Mensch und Maschine. Das Denken sub specie machinae*, Fink, Munich 1973.

writing, which provides a detailed analysis of the role of the machine as an instrument of rule and which describes the “megamachine” as “impersonal, if not dehumanised.”⁹⁹ Weber laid the foundation stone for the twentieth century sociology of the machine and philosophy of technology, a foundation which has hitherto attracted scant attention.

The specifically impersonal character of the state machine was in some respects already inscribed in the political thought of modernity from the very beginning. In Hobbes we can read of the impersonal rule of law as a mode of functioning of the state machine,¹⁰⁰ while Weber writes that the machine-like functioning of the state corresponds to “legal, statutory and objective *impersonal order*.”¹⁰¹ To this extent the “theory of the machine state” reconstructed here represents an elementary component of his sociology of state and of rulership. Moreover, if we adopt a conceptual and sociological perspective, it can be seen that Weber’s ambivalence with regard to the (state) machine – the tension between admiration for its efficiency and the critique of its negative effects – corresponds to a historical ambiguity that has always been a property of the metaphor of the machine. Even with the Cameralists it was Janus-faced, legitimising the comprehensive claim to power by the bureaucratic dukedom on the grounds of its functionality and efficiency, while also dictating that this state had to be administered according to particular rules, according to statutes. This directs our attention in two different directions, to the *intensification* of state rule and to its *limitation*.¹⁰²

In the different circumstances of the twentieth century this Janus-faced stance is reflected by Weber. His ambivalence corresponds in detail with that of the leading contemporary thinker on mechanisation: Walther Rathenau, capitalist anti-capitalist, a cosmopolitan patriot, a leading intellectual of big business – the embodiment of ambivalence. On the one hand he admires the achievements of “mechanisation” and “rationalisation” of the state and sees the machine as “inescapable,”¹⁰³ and on the other, he is a sharp critic of the kind of mechanisation that “even today caused hearts to expire.”¹⁰⁴ His

⁹⁹ Mumford, *Myth of the Machine*, op. cit. pp. 302f.

¹⁰⁰ As Carl Schmitt has shown in exemplary fashion (*Der Leviathan*, op. cit. pp. 99ff.).

¹⁰¹ Weber, WuG 124.

¹⁰² In the eighteenth century theoretical discussion of the machine ideal had the function not only of legitimating the monarchy as the most efficient state form, but also the monopolisation of violence and of the means of administration by the prince. Stollberg-Rilinger, *Der Staat als Maschine*, op. cit. pp. 125, espec. pp. 136, highlights the real ambivalence in the machine metaphor.

¹⁰³ Rathenau, *Zur Kritik der Zeit*, op. cit. pp. 45f., 70, 71f., 135. He sees Germany as “the leading country of European mechanisation, the widely feared and widely admired land of technology” (p. 132).

¹⁰⁴ *Ibid.*, p. 135: “For at the root of its consciousness this world is becoming uniform and grey by itself; its innermost stirrings accuse it, and struggle for liberation from the chain of unceasing thoughts of instrumentalisation.”

question, “where the counterweight to mechanisation is to be found,”¹⁰⁵ is the same one as Max Weber’s. It is significant that neither of the two thinkers have an answer. The state of affairs is symptomatic of the intellectual situation of the time, in which “mechanisation” became a favourite slogan, but one which was used primarily for social and cultural criticism.

As happened one hundred years earlier, when Cameralist enthusiasts for the machine state jostled with their critics, there was in Max Weber’s time a widespread conception of an “organic theory of the state” that stood in contrast to mechanical ideas. For instance, Paul Laband compared the state to a “machine,” and its legal principles to the “rules of mechanics.”¹⁰⁶ Josef Olszewski thought himself to be “shackled by the bonds of the growing state machine.”¹⁰⁷ Even Othmar Spann, who promoted the organic perspective, perceived economy and society as a mechanism “of enmeshed parts, like that of a machine.”¹⁰⁸ So it cannot be said that the critics of enlightened absolutism brought an end to the metaphor of the machine, nor that this was “merely a brief episode on the margins of the history of political imagery.”¹⁰⁹ The idea that during the nineteenth century “the mechanical imagery of the state was replaced by the organic,”¹¹⁰ is badly in need of revision. Quite how untenable it is can be seen by a glance at the work of Max Weber.

The image of the machine is no less present today than it was in the era of Cameralism. But technical and political developments imply quite different problems in the *evaluation* of mechanical analogies.¹¹¹ The historical irony of the machine metaphor is that it emerged as a utopian ideal in a world undergoing the initial stages of technical change, which ideal was overtaken by the actuality of a world gripped by technical advance. The interpretation of the state as a machine can be traced from Weber widely into the twentieth

¹⁰⁵ *Ibid.*, p. 139.

¹⁰⁶ Paul Laband, *Das Staatsrecht des Deutschen Reiches*, Bd. 2, J.C.B. Mohr (Paul Siebeck), Tübingen 1878 p. 199.

¹⁰⁷ Josef Olszewski, *Bureaukratie*, Stubers, Würzburg 1904 p. 56.

¹⁰⁸ Othmar Spann, *Kurzgefaßtes System der Gesellschaftslehre*, Quelle & Meyer, Leipzig 1914 p. 104.

¹⁰⁹ This is the view of Peil, *Untersuchungen*, op. cit. pp. 594, 590, demonstrating his lack of familiarity with the political literature of the nineteenth and twentieth centuries.

¹¹⁰ Joachim Radkau, *Technik in Deutschland. Vom 18. Jahrhundert bis heute*, Campus, Frankfurt a.M., New York 2008 p. 119.

¹¹¹ See Eckhard Schröter, Hellmut Wollmann, “New Public Management,” in Bernhard Blanke et al. (eds), *Handbuch zur Verwaltungsreform*, 4th ed., VS Verlag, Wiesbaden 2011 pp. 63–73; Werner Jann et al. (eds), *Public Management*, Edition Sigma, Berlin 2006; Christopher Pollitt, Geert Bouckaert, *Public Management Reform*, 2nd ed., Oxford University Press, Oxford 2004; Hindy Lauer Schachter, “Administrative Culture and Metaphor Change,” *International Review of Sociology* 12 (2002) pp. 89–92; Alan Minc, *La machine égalitaire*, Grasset, Paris 1987.

century. Siegfried Landshut, for instance, who sees in the state “a relatively exact analogue of the machine,” has a benign understanding of the “state machine” that borders on that of the Cameralists.¹¹² Helmut Schelsky has a rather more complex analysis, conceives the state as a “universal technological body,” a “fusion” of state and technology, as a result of which the state becomes increasingly a “technological state,” while technology in turn becomes state technology.¹¹³ Like Weber, Schelsky is also ambivalent, being a great admirer of technology but fearing the emergence of a technocracy, in which not only did rule become anonymous, but democracy “became increasingly an illusion.”¹¹⁴ One cannot miss the Weberian tenor of his analysis, which quickly became a common complaint. Of course, Schelsky’s argument about the “technological state” goes little further than Weber, but it does demonstrate the existence of a continuous line of development regarding the state as machine, starting in the eighteenth century but becoming more relevant than ever in a modern industrial society.

Here Weber’s position is, mechanically speaking, rather like a turntable. Two traditions of thinking on the state come together in his work: the etatist tradition which is concerned with the functionality and efficiency of the state; and an anti-etatist tradition, oriented to individuality and the characterological make-up of the individual. Weber unites both perspectives in his writing. On the one hand, he is oriented to the functionality and efficiency of the state, and is fascinated by the machine and convinced of its ineluctable nature. On the other hand, he is concerned about the consequences of mechanisation for human beings and sharply criticises increasing uniformity, lack of freedom and depersonalisation.

His position is not without contradiction and ambiguity. In nearly all contexts his specific ambivalence about the machine shows in the form of a tension between fascination and criticism – this often happens within the same sentence. Both the antagonism between the two traditions, as well as the historical duality of the machine metaphor, recur in his work. He does not present a synthesis, since these elements remain alongside each other. This ambivalence has never been properly appreciated in commentary upon his analysis of the state; but it is not only the most obvious feature of his

¹¹² Siegfried Landshut, “Über einige Grundbegriffe der Politik” (1925), in his *Kritik der Soziologie*, Luchterhand, Neuwied, Berlin 1969 p. 299. “The power of the state is the force that sets this machine in motion, the steam that drives it onward.”

¹¹³ Helmut Schelsky, “Der Mensch in der wissenschaftlichen Zivilisation,” in his *Auf der Suche nach Wirklichkeit. Gesammelte Aufsätze*, Diederichs, Düsseldorf 1965 pp. 455, 453. This idea of the “technological state,” developed in this classic essay, had a lasting influence on social science discussion in the 1960s and 1970s.

¹¹⁴ *Ibid.*, p. 459. Since the state only administers constraints that are no longer open to disposition, technical decision-making is no longer subject to democratic process; hence the state “without being anti-democratic, robs democracy of its substance.” (*Ibid.*)

idea of the machine state, but also an expression of a general ambivalence that marks his entire political thought. In either case, the accepted view that he was a paradigmatic representative of a technological conception of the state has to be fundamentally revised.

Weber's argument that the mentalities and the types of behaviour that are formed by the functioning of the machine and the structure of the enterprise, an orientation to "order" and "discipline," has quite decisive relevance for political action and state structures. His interpretation of the state as a machine and as an enterprise also has relevance for political science. In his programmatic essay on "The Science of Politics in a Democracy," Franz Neumann raised the "suspicion that the factory was the most important institution for the inculcation of obedience, discipline and authority," since its task lay in "training people, placing them in an order in which they learned to be obedient," and since this fact was not without consequences for political action within the state, it had to be a pre-eminent issue for political science.¹¹⁵ Neumann's "suspicion" was already a certainty for Weber. He showed what the consequences of machine and enterprise were for political action and state structures, and in so doing posed an elementary question for the science which is called "political." Weber's treatment of the machine, drawing together perspectives from sociology, anthropology and politics, provides a fundamental contribution to the diagnosis of mental dispositions and state institutions in a mechanised and rationalised modernity.

¹¹⁵ Franz L. Neumann, "Die Wissenschaft der Politik in der Demokratie" (1950), in his *Wirtschaft, Staat, Demokratie*, ed. Alfons Söllner, Suhrkamp, Frankfurt a.M. 1978 p. 384.

Conclusion

Weber's theory of the state is neither coherent nor finished, and is really no system. If "cultural scientific knowledge in our sense is thus *tied* to 'subjective' presuppositions," is only concerned with those components of reality connected in some way "to events to which we attribute cultural *significance*,"¹ then Weber was himself only concerned with those aspects of *state* reality to which he ascribed such significance. If we do seek to review systematically the scattered remarks in his work, we discover the framework of a complex and many-sided conception of the state which provides a conceptual foundation for the analysis of the modern state. This is true both of the epistemological foundations and of the aspects of the monopoly of force, legitimacy, the law and bureaucracy.

If a theory of the state has to provide a framework for theoretical orientation, then Weber's fragments live up to this task. The structure of his theory of the state outlined in this study offers just that, which has been demanded by the present discussion: a broadly based approach, which deals with the state from historical, political, legal, sociological and epistemological perspectives. By taking this approach, it is possible to avoid the restriction of the statal perspective which is in particular characteristic of the legal conception of the state. Today we need a theory of the state which embraces multidimensionality, while at the same time taking account of Weber's own diverse problematic – ethical, anthropological and political.

Neither in Weber's time, nor today, has there been any consensus on the question of what a "theory of the state" might be. Mostly this seems a kind of conglomeration of various disciplines, including sociology, political science,

¹ Weber, "The 'Objectivity' of Knowledge in Social Science and Social Policy," in Sam Whimster (ed.), *The Essential Weber*, Routledge, London 2004 p. 382.

law and history.² Necessity can also become a virtue. The interdisciplinarity that a theory of the state requires is rooted in its complex nature, and if one is to do it justice it has to be approached from different perspectives. This is exactly what Max Weber does, and deals with the state in a more sophisticated way than any other twentieth century theorist. This is one of the extraordinary advantages of his doctrine, representing its superiority to all monocular visions.

The conclusion reached here – that Weber did not create a systematic theory of the state – accords with the fact that he was no kind of systematic thinker and nowhere sought to develop large-scale theoretical constructs. The fragmentary nature of all of his work, which is reflected in the fragmentary nature of his approach to the state, cannot be deemed a deficiency; it is rather an advantage. As Ralf Dahrendorf has said, modern Weberians are “happy epigones,” since Weber never developed a closed and finished system;³ no-one is unconditionally obliged to follow any one particular line. Wilhelm Hennis has stated that there is “no direct and self-evident indication of what we could call the core of the work, its systematic perspective.”⁴ Nonetheless, this study provides a cross-section across almost all the different parts of Weber’s work. His political and historical thought, his sociology of rulership and of law, his theory of action and of epistemology, and his ethics are here directly related. One can certainly not claim that his theory of the state is in some way the core of his work, but it certainly provides a perspective that draws all other parts together. And it is not without irony that among all the important parts of his writing, it is the state which is the least systematically treated.

It can however be said that the state is central to his *political* thinking. In this regard Weber is an ideal-typical representative of German political thought, which has for the last two hundred years been dominated by the reference point of the state like nothing else. Weber’s assessment of parliament and democracy, order and freedom, ethics and politics, liberalism and

² See Gianfranco Poggi, *The State. Its Nature, Development and Prospects*, 4th ed., Polity, Cambridge 2010; Mark Bevir, R.A.W. Rhodes, *The State as Cultural Practice*, Oxford University Press, Oxford 2010; Martin Loughlin, “In Defence of *Staatslehre*,” *Der Staat* 48 (2009) pp. 1–27; Colin Hay et al. (eds), *The State: Theories and Issues*, Palgrave Macmillan, Basingstoke 2006; Peter J. Steinberger, *The Idea of the State*, Cambridge University Press, Cambridge 2006; Martin Kriele, *Einführung in die Staatslehre*, 6th ed., Kohlhammer, Stuttgart 2003; Udo Di Fabio, *Die Staatsrechtslehre und der Staat*, Schönningh, Paderborn 2003; Wolfgang Reinhard, *Geschichte der Staatsgewalt*, 3rd ed., C.H. Beck, München 2003.

³ Ralf Dahrendorf, “Max Weber and Modern Social Science,” in Wolfgang J. Mommsen, Jürgen Osterhammel (eds), *Max Weber and His Contemporaries*, 2nd ed., Routledge, London 2010 pp. 574–580, 574.

⁴ Wilhelm Hennis, *Max Weber’s Science of Man. New Studies for a Biography of the Work*, transl. Keith Tribe, Threshold Press, Newbury 2000 p. 90.

nation, war and peace – these are all decisively influenced by his conception of the state. Here we find crystallised not only the aspects of his political thinking, but also his ambivalence: the “tensions” and “value collisions” between authority and freedom, personality and life orders, individualism and reason of state. Weber is all the more typical as a thinker of his time and ours because these antinomies of political modernity remain valid today.

The attempt made in this study to investigate the historical framework and theoretical origin of Weber's conception of the state has shown that this grew out of contemporary discussion – out of the legal, sociological and philosophical work of the time. For the most part it represents prevailing opinion and deviates from it only here and there. Weber's definition of the state as the monopoly of violence was first formulated by Rudolph Sohm and Rudolf von Ihering; the question of the purpose of the state by Hugo Preuß and Georg Jellinek; the conception of the state as a form of rule by Nietzsche, Gerber, Laband and Jellinek; the connection of state, legality and legitimacy by Josef von Held; the action-oriented conception of the state by Friedrich Gottl and then again by Jellinek; the relation of state to nation by Hugo Preuß and Heinrich von Treitschke; the connection of the state to bureaucracy by Josef Olszewski, and the relation of state, law and rationalisation once again by Jellinek.

The fact that there's hardly anything in Weber's thinking that was not already part and parcel of contemporary thinking does not, however, mean that he was a mere compiler of other people's ideas. Instead, he took up existing positions, reworked them, modified them and lent them different emphases, so that in the framework of his science they assumed a new form and force. The work of his contemporaries remains only of interest to intellectual historians. Max Weber's theory of the state has however become the indispensable foundation for the analysis of statehood, past and present.

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