

# Max Weber's Theory of the Modern State

Origins, Structure and Significance

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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.<sup>1</sup> While the second German edition remained almost unchanged, the present English

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<sup>1</sup> 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.

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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.”<sup>1</sup> 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.<sup>2</sup> The question “What is a ‘state’?” opens his programmatic speech, “Politics as a Vocation,”<sup>3</sup> and the definition of the state closes his “Basic Sociological Concepts.”<sup>4</sup> 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

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

<sup>2</sup> 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).

<sup>3</sup> 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.

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

unfulfilled.<sup>5</sup> 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.<sup>6</sup> 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."<sup>7</sup> 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,"<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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

<sup>5</sup> 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.

<sup>6</sup> Max Weber, *Staatssoziologie*, ed. Johannes Winckelmann, Duncker & Humblot, Berlin 1966.

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

<sup>8</sup> Winckelmann's own terms in his "Vorwort," *ibid.*

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

<sup>10</sup> 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."<sup>11</sup> 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."<sup>12</sup> 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*,"<sup>13</sup> 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

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

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

<sup>13</sup> 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,"<sup>14</sup> but even in 1990 Stefan Breuer concluded that "a convincing account of Weber's theory of the state has yet to be made."<sup>15</sup> 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,<sup>16</sup> historical<sup>17</sup> or concerning the evolution of his writing<sup>18</sup> or the history of ideas.<sup>19</sup>

<sup>14</sup> 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.

<sup>15</sup> Stefan Breuer, "Neue Max Weber-Literatur," *Neue Politische Literatur* Jg. 35 (1990) p. 14.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> Breuer, "Max Webers Staatssoziologie," op. cit. This essay represents an instructive discussion of Weber's sociology of the state.

<sup>19</sup> 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.

4). Michael Zängle's *Max Webers Staatstheorie im Kontext seines Werkes*<sup>20</sup> 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.”<sup>21</sup> 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.<sup>22</sup>

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.”<sup>23</sup> 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.”<sup>24</sup> Martin Riesebrodt has also noted that “Weber did

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

<sup>21</sup> Breuer, “Neue Max Weber-Literatur,” op. cit. p. 14.

<sup>22</sup> 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)

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

<sup>24</sup> 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."<sup>25</sup>

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,"<sup>26</sup> 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*,"<sup>27</sup> 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."<sup>28</sup> So it has occasionally been maintained that "determination of their exact relationship"<sup>29</sup> would be desirable. Some

<sup>25</sup> 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.

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

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> 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.”<sup>30</sup> 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,<sup>31</sup> 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 crisis<sup>32</sup> and was during the 1960s and 1970s

<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup> It is to this insight that this present book is addressed.

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<sup>33</sup> 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.

<sup>34</sup> 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"<sup>1</sup> 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."<sup>2</sup> Kant came to the conclusion that the state was beyond "direct intuition."<sup>3</sup> For Joseph von Held the state was "an abstract entity,"<sup>4</sup> and even for Fichte it is no more than "an abstract concept."<sup>5</sup> 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

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<sup>1</sup> Weber, "The 'Objectivity' of Knowledge in Social Science and Social Policy," in Sam Whimster (ed.) *The Essential Weber*, Routledge, London 2004 p. 394.

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

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

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

<sup>5</sup> 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."<sup>6</sup> 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."<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> For political science, it then temporarily disappeared from view,<sup>11</sup> being regarded as an obsolete and old-fashioned concept.<sup>12</sup> 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.<sup>13</sup>

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

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

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

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

<sup>9</sup> 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.

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

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

<sup>12</sup> 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."

<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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,"<sup>16</sup> 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<sup>17</sup> in the execution of its orders." 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

<sup>14</sup> 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 staatstheoretische 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.

<sup>15</sup> Luhmann, *Social Systems* op. cit. p. 463.

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

<sup>17</sup> *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.]

<sup>18</sup> 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.<sup>19</sup> 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,"<sup>20</sup> 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.<sup>21</sup> 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."<sup>22</sup>

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

<sup>19</sup> Ibid. p. 357.

<sup>20</sup> 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]

<sup>21</sup> Weber, "Basic Sociological Concepts," op. cit. pp. 357, 356.

<sup>22</sup> 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."<sup>23</sup> 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"<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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

<sup>23</sup> 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.;

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

<sup>25</sup> *Ibid.* pp. 34–5, 36.

<sup>26</sup> *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*)."<sup>27</sup> 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.<sup>28</sup> 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

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

<sup>28</sup> Jellinek, *Allgemeine Staatslehre*, op. cit. p. 40. By contrast, Hermann Heller was considerably less gracious and presented Weber's method as a simple plagiarist 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,<sup>29</sup> an approach disowned by the literature dealing with state and politics.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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*.<sup>33</sup> 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."<sup>34</sup> The antipacifist text "Between Two Laws" does not by

<sup>29</sup> Jellinek, *Allgemeine Staatslehre*, op. cit. espec. pp. 174ff.

<sup>30</sup> 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.

<sup>31</sup> *Wirtschaft und Gesellschaft* Part I Ch. 1 §17.2.

<sup>32</sup> "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.

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

<sup>34</sup> Hug, *Die Theorien vom Staatszweck*, p. 18.

any stretch of the imagination express anything like this,<sup>35</sup> 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,<sup>36</sup> 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"<sup>37</sup> 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."<sup>38</sup>

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"<sup>39</sup> 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'."<sup>40</sup> This

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

<sup>36</sup> Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 §17.

<sup>37</sup> 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.

<sup>38</sup> 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.

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

<sup>40</sup> 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 judgement<sup>41</sup> – 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"<sup>42</sup> 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 ideal-typical 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

<sup>41</sup> Weber, "On the Situation of Constitutional Democracy in Russia," in his *Political Writings*, op. cit. p. 45.

<sup>42</sup> 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.<sup>43</sup> 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."<sup>44</sup> During the nineteenth century, the question of the purpose of the state became a topic of controversy in German political thought,<sup>45</sup> so that Franz von Holtzendorff concludes that "the notion of the state's purposes, like other topics of speculative thinking, remains an unresolved question."<sup>46</sup>

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."<sup>47</sup> 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."<sup>48</sup> 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.<sup>49</sup>

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

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

<sup>45</sup> 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.

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

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

<sup>48</sup> "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.

<sup>49</sup> See Tibor Süle's detailed and solidly-based work *Preußische Bürokratietradition. Zur Entwicklung von Verwaltung und Beamtenschaft 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 Müller<sup>50</sup> or Georg Waitz,<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup> 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."<sup>54</sup> 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

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

<sup>51</sup> Georg Waitz, *Grundzüge der Politik*, Homann, Kiel 1862 p. 11.

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

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

<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

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.<sup>57</sup> 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."<sup>58</sup> Hermann Heller thought that Weber's "agnosticism" on this point ended up with the "desolate view" that the state be defined by its means.<sup>59</sup> Feelings

<sup>55</sup> 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).

<sup>56</sup> 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).

<sup>57</sup> 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).

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

<sup>59</sup> 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.<sup>60</sup> 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."<sup>61</sup>

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

<sup>60</sup> 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.

<sup>61</sup> 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,"<sup>62</sup> the questions of the purposes of the state has for a long time been "not a matter of scientific debate,"<sup>63</sup> 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.<sup>64</sup>

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."<sup>65</sup> 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 Stuart, 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."<sup>66</sup> 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.<sup>67</sup>

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,"<sup>68</sup> to the statist-decisionist position

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

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

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

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

<sup>66</sup> *Ibid.* p. 31.

<sup>67</sup> 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.

<sup>68</sup> 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.<sup>69</sup> 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.'"<sup>70</sup> 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).<sup>71</sup>

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

<sup>69</sup> Herbert Krüger, *Allgemeine Staatslehre*, Kohlhammer, Stuttgart 1964 p. 760.

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

<sup>71</sup> 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,<sup>72</sup> 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.<sup>73</sup>

Given 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.<sup>74</sup> 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."<sup>75</sup> 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

<sup>72</sup> Jellinek, *Allgemeine Staatslehre*, op. cit. pp. 230ff.

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

<sup>74</sup> Kriele, *Einführung in die Staatslehre*, op. cit. p. 54.

<sup>75</sup> *Ibid.* p. 53.

challenged" so long as a political body is not recognised to be a state.<sup>76</sup> 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.<sup>77</sup> 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.<sup>78</sup>

### 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.<sup>79</sup>

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."<sup>80</sup>

<sup>76</sup> Ibid. p. 54.

<sup>77</sup> Weber, "Basic Sociological Concepts," op. cit. p. 357.

<sup>78</sup> Weber, "Objectivity," op. cit. p. 398.

<sup>79</sup> See fn. 18 above.

<sup>80</sup> 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.<sup>81</sup>

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,<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup> 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.<sup>85</sup> Despite gradual differentiation, all political groupings have this common feature: every community has resorted to physical force to protect its interests.<sup>86</sup> Weber has in view two perspectives: force directed outward and that directed inward, the latter

<sup>81</sup> Ibid. p. 356.

<sup>82</sup> 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).

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

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

<sup>85</sup> Ibid., pp. 223f. (WuG 520).

<sup>86</sup> Ibid., pp. 208f. (WuG 516).

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

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 expansion<sup>88</sup> 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,"<sup>89</sup> 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."<sup>90</sup>

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."<sup>91</sup> 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.<sup>92</sup>

<sup>87</sup> *Ibid.*, p. 208 (WuG 515).

<sup>88</sup> *Ibid.*, pp. 228ff. (WuG 524ff.).

<sup>89</sup> *Ibid.*, p. 209 (WuG 516).

<sup>90</sup> *Ibid.* p. 208.

<sup>91</sup> Weber, "Suffrage and Democracy in Germany," in his *Political Writings*, op. cit. p. 101.

<sup>92</sup> 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.<sup>93</sup> 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."<sup>94</sup> Monopoly of force and sovereignty are terms that he does not distinguish conceptually<sup>95</sup> 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,<sup>96</sup> and it has for three hundred years, since

<sup>93</sup> 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.

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

<sup>95</sup> 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*).

<sup>96</sup> "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,<sup>97</sup> 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.<sup>98</sup> 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, Kant<sup>99</sup> and Schopenhauer<sup>100</sup> was first formulated not by Max Weber, but by Rudolf von Ihering, who defined "coercive force" as the "*absolute monopoly of the State*."<sup>101</sup> 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."<sup>102</sup> 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."<sup>103</sup> Weber's

<sup>97</sup> 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.

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

<sup>99</sup> 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.

<sup>100</sup> 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).

<sup>101</sup> 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).

<sup>102</sup> Lasson, *System der Rechtsphilosophie*, op. cit. pp. 283, 293.

<sup>103</sup> *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,<sup>104</sup> 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."<sup>105</sup> 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."<sup>106</sup> 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."<sup>107</sup> According to Ulrich Matz, Weber's renowned theory of the state gives the clearest guidance on the relationship of state and violence.<sup>108</sup> 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.<sup>109</sup>

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

<sup>105</sup> 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.

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

<sup>107</sup> Popitz, *Phänomene der Macht*, op. cit. p. 258.

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

<sup>109</sup> 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;<sup>110</sup> 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;<sup>111</sup> even at the beginning of the 1970s, Roman Herzog vigorously rejected Weber's definition of the state.<sup>112</sup> 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."<sup>113</sup> 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"<sup>114</sup> 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

<sup>110</sup> Heller, *Staatslehre*, op. cit. p. 203.

<sup>111</sup> Wilhelm Hennis, "Aufgaben einer modernen Regierungslehre," *Politische Vierteljahresschrift* Bd. 6 (1965) p. 431.

<sup>112</sup> Roman Herzog, *Allgemeine Staatslehre*, Athenäum, Frankfurt a. M. 1971 p. 155.

<sup>113</sup> Bull, *Die Staatsaufgaben* op. cit. p. 71.

<sup>114</sup> 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.<sup>115</sup> 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.<sup>116</sup> 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."<sup>117</sup> 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

<sup>115</sup> 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.

<sup>116</sup> Offe, "Staatstheorie," op. cit. p. 313.

<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup>

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.

<sup>118</sup> 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.

<sup>119</sup> 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."<sup>120</sup> 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.<sup>121</sup> 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.<sup>122</sup>

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.

<sup>120</sup> Willoweit, "Die Herausbildung des staatlichen Gewaltmonopols," op. cit. p. 321.

<sup>121</sup> 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 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.

<sup>122</sup> 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.<sup>123</sup> He seeks to sharpen apprehension of the latent presence in the state of violence.<sup>124</sup> 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"<sup>125</sup> 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,"<sup>126</sup> 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.<sup>127</sup>

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

<sup>124</sup> *Ibid.* p. 244.

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

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

<sup>127</sup> 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 institution<sup>128</sup>

An important aspect of the constancy and stability of the state is its sociological nature as an *institutional enterprise*.<sup>129</sup> 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."<sup>130</sup> 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."<sup>131</sup>

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."<sup>132</sup> 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,"<sup>133</sup> 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."<sup>134</sup> Based as it is on a sociology of rulership,

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

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

<sup>130</sup> Weber, *Wirtschaft und Gesellschaft* Part I Ch. 1 §15.

<sup>131</sup> Weber, *Wirtschaft und Gesellschaft* Part I Ch. 1 §15.2.

<sup>132</sup> See Ch. V.5 for a discussion of this.

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

<sup>134</sup> *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."<sup>135</sup> 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."<sup>136</sup> 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."<sup>137</sup> 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."<sup>138</sup> 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,<sup>139</sup> but

<sup>135</sup> 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).

<sup>136</sup> 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.

<sup>137</sup> David Hume, "Of the Original Contract," in his *Political Essays*, ed. Knud Haakonssen, 5th ed. Cambridge University Press, Cambridge 2006 pp. 189–90.

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

<sup>139</sup> 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."<sup>140</sup>

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*."<sup>141</sup> Treitschke saw the state as an institution for the protection of order,<sup>142</sup> and for Constantin Frantz, who understood the state to be an "institution,"<sup>143</sup> 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."<sup>144</sup>

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

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

<sup>141</sup> 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.

<sup>142</sup> Heinrich von Treitschke, *Die Gesellschaftswissenschaft*, Hirzel, Leipzig 1859 p. 10.

<sup>143</sup> Frantz, *Die Naturlehre des Staates* op. cit. p. 54.

<sup>144</sup> 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.<sup>145</sup> 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,"<sup>146</sup> 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."<sup>147</sup>

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."<sup>148</sup> 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,<sup>149</sup> 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*<sup>150</sup> 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

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

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid.* p. 207.

<sup>148</sup> Hennis, "Legitimacy," *op. cit.* p. 89.

<sup>149</sup> *Ibid.*

<sup>150</sup> The single German term *Politik* translates into English as both "politics" and "policy" [trans.].

within a single state."<sup>151</sup> 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."<sup>152</sup> 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."<sup>153</sup> 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."<sup>154</sup> We can detect exactly this understanding in Weber, since his definition of *Politik* is preceded by a definition of the state.<sup>155</sup> 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.<sup>156</sup> Set in this context his famous phrasing<sup>157</sup> 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

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

<sup>152</sup> 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).

<sup>153</sup> Jellinek, *Allgemeine Staatslehre*, op. cit. p. 180.

<sup>154</sup> Schäffle, "Über den wissenschaftlichen Begriff der Politik," op. cit. p. 586.

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

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

<sup>157</sup> "The concept of the state presupposes the concept of the political," *ibid.* p. 20.

formulation of the distinction of friend and enemy<sup>158</sup> 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.<sup>159</sup> 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,<sup>160</sup> secondly as influence over the distribution of *power* in the state;<sup>161</sup> thirdly his political writings are shot through with the short and simple assertion that "politics" always means "struggle."<sup>162</sup> 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.<sup>163</sup> Here also we can

<sup>158</sup> Ibid. p. 26. This is borrowed almost word-for-word from the Spanish Tacitist Baltasar Álamos de Barrientos: "lo politico es la discinción 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.

<sup>159</sup> 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).

<sup>160</sup> Weber, "The Profession and Vocation of Politics," op. cit. p. 309.

<sup>161</sup> Ibid. p. 311.

<sup>162</sup> "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.

<sup>163</sup> 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.<sup>164</sup>

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.<sup>165</sup>

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;<sup>166</sup> 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

<sup>164</sup> Jellinek, *Allgemeine Staatslehre*, op. cit. p. 17.

<sup>165</sup> Schäffle, "Über den wissenschaftlichen Begriff der Politik," op. cit. p. 579.

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

this conception that became so dominant in Anglo-American<sup>167</sup> and in German<sup>168</sup> 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."<sup>169</sup> 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.<sup>170</sup> 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.<sup>171</sup>

<sup>167</sup> 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).

<sup>168</sup> 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.).

<sup>169</sup> Kurt Sontheimer, "Zum Begriff der Macht als Grundkategorie der politischen Wissenschaft," *ibid.* pp. 198, 197.

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

<sup>171</sup> 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."<sup>172</sup>

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."<sup>173</sup> 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.<sup>174</sup> 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.

<sup>172</sup> 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.

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

<sup>174</sup> "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.<sup>175</sup> 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.

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<sup>175</sup> Niklas Luhmann, *Social Systems* op. cit. p. 462.