Max Weber's Theory of the Modern State

Origins, Structure and Significance

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State and Rulership

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

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

Rulership, the central "phenomenon of everything social,"[4] is a fundamental concept of Max Weber's. And his sociology of rulership, which has

[1] Weber, "The Profession and Vocation of Politics," in his *Political Writings*, ed. Peter Lassman, Ronald Speirs, 6th ed. Cambridge University Press, Cambridge 2008 pp. 309–369 (310).
[2] Weber, *Herrschaft*, MWG I/22-4 p. 127 (WuG 541).
[3] Ibid.
[4] Weber, *Gemeinschaften*, MWG I/22-1 p. 270 (WuG 539).

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

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[5] Dolf Sternberger, "Das Wort 'Politik' und der Begriff des Politischen," *Politische Vierteljahresschrift* Bd. 24 (1983) pp. 6–14 (7f.).

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

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

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

[9] Ibid., p. 252.

[10] Ibid., p. 260.

[11] Ibid., pp. 245f.

[12] Ibid., pp. 246.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[28] Ibid.

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

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

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

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

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

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

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

But a glance at the development of the theory of the state since the 1920s reveals that rulership as an element central to the definition of the state is by no means obsolete. For Hermann Heller the state is an order based on rulership[38]; Wilhelm Hennis thinks it perfectly obvious that the execution of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

rule is an aspect of the state[39]; Roman Herzog thinks rule is a characteristic of the state[40] and for Stefan Breuer it is naive to believe in a disappearance of rule in future state practice.[41] All of these positions demonstrate that rulership remains central to understanding of the state and that the line of development in which Weber stands reaches almost unbroken into the present. Discussion of "freedom from domination" turned out to be a short-lived intermezzo. The idea of freedom from rule is no more on the radar than that of freedom from the state. Of course, in contemporary literature no-one writes about "command and compliance" any more; instead, another category that Weber linked indissolubly with rule has come to the fore: legitimacy.

1 State and legitimacy

> Legitimacy, however, is an absolutely unromantic category. (Carl Schmitt, *Political Romanticism*)
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> Nonetheless, great souls have need of legitimacy. One senses in noble hours the upstanding rigour of outer space. (Robert Musil, *The Man without Qualities*)

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

[39] Wilhelm Hennis, "Legitimacy. On a Category of Civil Society" in his *Politics as a Practical Science*, Palgrave Macmillan, Basingstoke 2009 pp. 77–120 (81).
[40] Roman Herzog, *Allgemeine Staatslehre*, Athenäum, Frankfurt a. M. 1971 p. 102.
[41] Stefan Breuer, *"Herrschaft" in der Soziologie Max Webers*, op. cit. p. 240. See also Maurizio Bach, "Europa als bürokratische Herrschaft," in Gunnar Folke Schuppert et al. (eds), *Europawissenschaft*, Nomos, Baden-Baden 2005 pp. 575–607.
[42] Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 1 § 5.
[43] Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 1.

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

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

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

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

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

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

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

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

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

[53] Hennis, "Legitimacy," op. cit. p. 81.

[54] Hennis, "Legitimacy," op. cit. p. 89.

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

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

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

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

The problem of legitimacy is rendered transparent when state orders collapse, a problem that during times of crisis is ever-present and virulent. The history of the twentieth century has shown that when a belief in legitimacy is disturbed the structure of state rule is shaken, as in 1956 in Hungary and 1968 in Paris; or it can even collapse, as in 1918 in Germany, 1979 in Teheran and 1989/1990 in the states of the Eastern Bloc. But there have also been storms in teacups. For instance, the bitter controversies over the "legitimation crisis" that during the mid-1970s dogged the social sciences and unsettled political science conferences[61] certainly had far less to do with

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[57] Rotteck, "Legitimität," op. cit. p. 476.
[58] Weber, WuG 155.
[59] Weber, "Deutschlands künftige Staatsform" (1918), in his *Zur Neuordnung Deutschlands*, MWG I/16, pp. 91–146 (103).
[60] Ibid., p. 105.
[61] Participants in the German Political Science Association's Conference of 1975 in Duisburg reported vehement polemical arguments. See Wilhelm Hennis's contribution to this: "Legitimacy. On a Category of Civil Society" in his *Politics as a Practical Science*, op. cit. pp. 77–120.

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

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

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

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

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

[64] Hennis, "Legitimacy," op. cit. p. 77.

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

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

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

rule, since to function it requires "powers of command."[68] In state rule this interdependence is closer, and even assumes the form of an identity: state rule *is* administration. Hence the concept of "administrative state" which Carl Schmitt introduced with such great effect in twentieth century political theory[69] is for Weber, strictly speaking, just a tautology.

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

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

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

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

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

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

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

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

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

Weber's arguments concerning legal rule show what the modern state rests upon: "on a belief in the legality of statutory orders."[75] State rule is "rule by virtue of 'legality', by virtue of belief in the validity of legal *statute* and the appropriate juridical 'competence' founded upon rationally devised rules."[76] It rests upon the belief that all law is rationally formed[77] and that "the legitimacy of rule becomes the legality of a general *rule*, purposively conceived, formally correct in its construction and promulgation."[78] Since rule rests upon "command and compliance," state rule is characterised by a particular kind of compliance: it is "the law," which is obeyed – an "impersonal order" to which state bodies are themselves subordinate.[79]

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

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[74] Weber, *Herrschaft*, MWG I/22-4, p. 727.
[75] Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 2.
[76] Weber, "The Profession and Vocation of Politics," in his *Political Writings*, op. cit. pp. 309–369 (312).
[77] Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 3.1.
[78] Weber, "Einleitung in die Wirtschaftsethik der Weltreligionen," in *Gesammelte Aufsätze zur Religionssoziologie* Bd. I, J. C. B. Mohr (Paul Siebeck), Tübingen 1920 p. 273.
[79] Weber, *Wirtschaft und Gesellschaft* Part I Ch. 3 § 3.1.
[80] Weber, *Herrschaft*, MWG I/22-4 p. 726 (WL 475).
[81] Weber, *Recht*, MWG I/22-3, p. 639 (WuG 513).
[82] Fritz Loos, *Zur Wert- und Rechtslehre Max Webers*, J. C. B. Mohr (Paul Siebeck), Tübingen 1970 p. 124. Heino Speer shares this view that the concept of legal rule is based upon legal positivism (*Herrschaft und Legitimität*, Duncker & Humblot, Berlin 1978 pp. 76f.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[94] Breuer, "Rational Domination," op. cit. p. 115 (with further examples).

[95] Weyma Lübbe, *Legitimität kraft Legalität*, op. cit. p. 16.

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

[97] Breuer, "Rational Domination," op. cit. p. 97.

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

by the National Socialists[99] that showed that both the ruled and the state's administrative staff were extremely open to manipulation and that a new order can count on a greater probability of conformity if it is created in a "legal" and "formally correct" manner. That certainly has less to do with the idea that the Germans are a people with a touching faith in legality[100] than with more general sociological conditions. The Milgram experiment and studies on the authoritarian personality have shown "how realistic Weber's diagnosis was (and, incidentally, by no means confined to typically German traits)."[101]

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

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

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

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

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

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

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

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

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

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

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

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

3 Charismatic rule in the modern state?

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

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

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

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

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

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

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

After all that has so far been said about the concept, nature and structure of the modern state, charismatic legitimacy can only have marginal relevance here – for charismatic rule sits ill with a structure characterised by rational, institutionalised and impersonal criteria. Charismatic rule rests upon "exceptional dedication to the saintliness of the heroic qualities or the exemplary nature of a person, and the orders which that persons opens up or creates."[112] It is "typically unpredictable," for it is constantly in danger of becoming "routinised" by tradition, legalisation or rationalisation, through which the type then reverts to one of the other two types.[113] No state can be based upon such an unstable and unpredictable form of rule. The properties of constancy, stability and rationality that characterise the state are certainly not those that Weber ascribes to charismatic rule. Nowhere does he discuss this question of incompatibility, but his discussion of the "reconstruction" and "objectification" of charisma[114] offers the possibility of finding some kind of answer to this problem.

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

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

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

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

[115] Ibid., p. 489 (WuG 661).

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

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

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

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

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[116] Ibid., pp. 526f. (WuG 674f.).
[117] Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 13.
[118] Weber, *Herrschaft*, p. 489 (WuG 661).
[119] Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 10.
[120] Weber, *Herrschaft*, MWG I/22-4 p. 559 (WuG 679f.).
[121] Ibid., pp. 561f. (WuG 680).

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

Weber's sober assessment of the sociology of rule is wilfully at odds with the *values* he expressed with respect to the monarchy in his 1904 St. Louis address.[122] Even in October 1918, he confessed to be a "sincere supporter of monarchical institutions, even if limited by parliament – and of the German dynasty in particular."[123] On the basis of personal knowledge Theodor Heuss judged that he was "as far as the German state is concerned a monarchist,"[124] even "at heart a convinced supporter of the monarchy," as Weber's student Karl Loewenstein confirmed.[125] In this positive evaluation of the monarchy, it was not only feelings that played an important role (even if he often enough set them firmly aside), but also "technical state" aspects that he always sought to highlight: the monarchy is in a position, like no other state form, of arousing and strengthening belief in the legitimacy of state order, added to which they have the incalculable advantage that the "supreme position in the state is once and for all occupied," ruling out any struggles for power aimed at achieving this position.[126] Both claims have long been among the favourite arguments of monarchists and can be found in statements of such divergent thinkers as Talleyrand,[127] Richard Wagner[128] or Treitschke.[129]

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[122] Peter Ghosh, "Max Weber on 'The Rural Community': A critical edition of the English text," *History of European Ideas* Vol. 31 (2005) p. 334.

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

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

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

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

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

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

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

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

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

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

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

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

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

[132] Breuer, "Rational Domination," op. cit. p. 105.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[148] Ibid., p. 210.

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

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

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

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

It was an everyday experience that "when the master issued a command, he did so *in the common interest of all*, including those who obeyed."[152] If one places this type of compliance in Weber's typology of rule, then it is not an "objectively *impersonal* order" that is obeyed[153] but rather the *personal* command of the "master." The legitimacy of this order rests not on a belief in the legality of the order but instead on a belief that the command is for the common good.

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

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

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

[152] Ibid., pp. 915f.

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

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

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

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

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

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

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

[157] Ibid., p. 919.

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

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

[160] Ibid., p. 928.

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

5 Democracy and bureaucracy in the modern state

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

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

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

[162] Ibid., p. 196 (WuG 565).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[170] Hermann Heller, *Die Souveränität*, De Gruyter, Berlin, Leipzig 1927 p. 64.
[171] Walther Rathenau, *Von kommenden Dingen*, S. Fischer, Berlin 1917 p. 296.
[172] Treitschke, *Politik*, Bd. 2 op. cit. p. 15.
[173] Weber, "Parliament and Government," op. cit. p. 222.
[174] Nietzsche, *On the Genealogy of Morality*, op. cit. p. 52, trans. revised.
[175] Nietzsche, *Human, All Too Human* (1878), trans. R. J. Hollingdale, Penguin, London 1994 p. 173.
[176] Nietzsche, *Beyond Good and Evil*, trans. R. J. Hollingdale, Penguin, London 2003 p. 82.
[177] Nietzsche, *Human, All Too Human*, op. cit. p. 169.
[178] Rousseau, *The Social Contract*, op. cit. p. 91. Montesquieu also took exactly this position, believing the rule of the people to be "impossible dans les grandes États" (*De l'Esprit des Lois*, XI/6, Garnier, Paris 1956 p. 116).

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

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

Max Weber is indeed a democrat of a quite particular kind.[182] He is the partisan of a constitutional parliamentary state and one of the intellectual mentors of German democracy; he counts democracy among his "political values"[183] and, after the November Revolution, confesses that he wishes "to help make permanent democratic achievements."[184] Like Tocqueville[185] he is a hesitant democrat who made a late transition from convinced monarchist to democrat, but in so doing never learns to truly love democracy. Max Weber does not love democracy; he loves Marianne, and Else. And, of course, his nation. He admits that for him democracy was "never an end in itself," that he was only "interested in the possibility of an objective

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

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

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

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

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

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

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

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

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

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

[187] Weber, "Parliament and Government," op. cit. p. 266.

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

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

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

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

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

[193] Ibid., p. 320: "the differences between governments are ... strictly differences of technique."

Max Weber's approach to democracy from the point of view of rulership cannot be separated from another sociological magnitude: the bureaucracy. When he talks of democracy then bureaucracy appears as its almost unavoidable shadow, at once twin sister and antagonist. Since in the modern state "genuine rule" lies in the hands of the bureaucracy,[194] hence not under the control of the "people's will," then at least in principle democracy and bureaucracy are natural foes. In fact, from a historical and empirical perspective the opposite is the case: bureaucracy is "the unavoidable accompaniment to modern mass democracy."[195] They emerge together and mutually condition each other. Since the process of democratisation and the implementation of the social state increase the demands on state administration, necessitating in turn the expansion and differentiation of the administrative apparatus, bureaucracy is unavoidably promoted and the rule of the bureaucracy reinforced. Hence it is completely clear for Weber that the bureaucratisation of the state "is everywhere the inescapable shadow of a growing *mass* democracy."[196] Here again, the quantitative aspect is of decisive importance: "In large states everywhere modern democracy is becoming a bureaucratised bureaucracy."[197]

He never tires of pointing to the tension involved in the fact that

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

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

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

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

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[194] Weber, "Parliament and Government," op. cit. p. 145.
[195] Weber, *Herrschaft*, MWG I/22-4 p. 201 (WuG 567).
[196] Weber, *Wirtschaft und Gesellschaft*, Part I Ch. 3 § 5.
[197] Weber, "Socialism" (1918), in his *Political Writings*, op. cit. pp. 272–303 (279).
[198] Weber, *Herrschaft*, MWG I/22-4 p. 213 (WuG 572).
[199] Weber, "Suffrage and Democracy in Germany" (1917), in his *Political Writings*, op. cit. pp. 80–129 (105–6).

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

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

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

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

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

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

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

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

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

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

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

[206] Weber, "Parliament and Government," op. cit. p. 222.

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

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

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

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

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