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From the Nation-State to the Global Polity

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AMBIGUITIES OF THE STATE

This chapter is divided into three parts: the first concerns the rise of the state, the second discusses the decline of the state, and the third is on the resurgence of the state.

In 1931, an American scholar wrote that ‘a cursory examination of the term “state” brought to light no fewer than one hundred and forty-five different definitions’; and he concluded that ‘from now on State will need to be accompanied with subscript brackets indicating the particular definition that is being used’.¹ Therefore, it is important to handle the concept of ‘state’ with caution.

As Max Weber first noticed, the state is but one of the many forms of polity that emerged in the sixteenth century and developed through the nineteenth century.² Later, Otto Brunner³ and Otto Hintze⁴ took up the concept of the historical nature of the state, recently developed by Bertrand Badie and Pierre Birnbaum. According to the latter two authors, ‘Often seen as the unescapable result of political development, the construction of the state should by contrast be understood as an original innovation located in time and space.’⁵

¹ C. H. Titus. 1931. A Nomenclature in Political Science. In *American Political Science Review* 25(3): 615ff. See also S. Cassese. 1988. *Fortuna e decadenza della nozione di Stato*, in *Scritti in onore di Massimo Severo Giannini*. Milano: Giuffrè, pp. 91–103.

² M. Weber. 1966. *Staatssoziologie*. J. Winckelmann (ed.). Berlin: Duncker und Humblot.

³ O. Brunner. 1965. *Land und Herrschaft. Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter*. Baden: bei Wien (English translation: 1995. *Land and Lordship. Structures of Governance in Medieval Austria*. Philadelphia: University of Pennsylvania Press).

⁴ O. Hintze, 1931. *Wesen und Wandlung des modernen Staats*, in *Sitzungsberichte der Preussischen Akademie der Wissenschaften*. Berlin: de Gruyter, p. 790; see also O. Hintze. 1975. *The Historical Essays of Otto Hintze*, with an introduction by Felix Gilbert. New York: Oxford University Press.

⁵ B. Badie and P. Birnbaum. 1979. *Sociologie de l'État*. Paris: Grasset, p. 243 (English translation: A. Goldhammer. 1983. *The Sociology of the State*. Chicago: Chicago University Press).

As for the concept of the state, this formed slowly in the seventeenth century and was explored by a wide range of thinkers, from Hobbes to Hegel, to whom we owe the idea that ‘civil society’ and the state are both connected and opposed at the same time. The contribution of jurists was essential to the construction of the state. The German jurist Ernst Forsthoff observed: ‘Der moderne Flächenstaat ist eine Hervorbringung des Juristen. Die Juristen haben ihn im 16 Jahrhundert geschaffen, die Juristen haben ihn auf seinem Wege bebltet’.⁶ The Austrian jurist Hans Kelsen noted that the concept of the state is essential for two different purposes: to unify diverse entities and to direct them towards a unitary objective, the general interest; and to ensure the neutrality of the officials called to work for the state, distinguishing the holder of the office from the office itself.

In other words, the conceptual construction of the state has been instrumental in uniting countries (civil societies) around their ruling class and in giving a common purpose to separate parties.⁷

THE FIRST CYCLE: RISE AND GROWTH

If we consider the cycle experienced by Europe’s political bodies over the last few centuries, we may see that in the fourteenth century there were 1,000 political bodies in this part of the world. In the sixteenth century there were only 500, in the age of the French Revolution there were 350, and at the beginning of the twentieth century there were only twenty-five political bodies that could be called nation-states. As the British historian Mark Greengrass writes: ‘[s]wallowing and being swallowed up, were fundamental features of Europe’s political past’.⁸

Notwithstanding this process of mergers, the states that resulted were not fully united. For example, even after the merger of German states (what is called the unification of Germany), there were several political bodies within the larger unit: after 1871, in the *Kaiserreich*, under Prussian rule and *Kanzler* Bismarck, there were twenty-six political bodies; some of these even had power in military affairs.

Why has there been such a thorough change since the fourteenth century? Why did nations become nation-states? What are the explanatory factors for this development? What were the catalysts of state-building?

⁶ F. Forsthoff. 1964. *Rechtsstaat im Wandel*. Stuttgart: Kohlhammer, p. 77.

⁷ H. Kelsen. 1949. *General Theory of Law and State*. Cambridge, MA: Harvard University Press, p. 191.

⁸ M. Greengrass. 1991. *Introduction: Conquest and Coalescence*. In M. Greengrass (ed.) *Conquest and Coalescence: The Shaping of the State in Early Modern Europe*. London: Edwards Arnold, p. 2.

There are three explanations.⁹ The first was developed by the American historian and political scientist Charles Tilly, in a book entitled ‘Capital and Coercion’,¹⁰ and can be summarized with the following sentence: ‘States make war, war makes States’. In other words, the military-fiscal state emerges from dynamics of conquest and domination.

The second explanation characterizes nation-building a process of self-perpetuation and self-aggrandizement that is governed by the insiders. Those who occupied state offices were able to act with a certain degree of autonomy from the ruling classes and were able to bring about the ends they desired. The state is a development of monocratic power: central institutions were built to serve the prince and were organized in concentric circles around the ruler,¹¹ as ‘le roi a un pouvoir préexistant aux lois’ (the king’s powers pre-exist the legal system).¹²

The third explanation has to do with culture, identity, language, ideas, national traditions, and beliefs. On 11 March 1882, a great French historian, Ernest Renan, gave a lecture in Paris on ‘Qu’est-ce qu’une Nation?’ His conclusion was that ‘une nation est une âme, un principe spirituel’, ‘une grande solidarité’, ‘un heritage’; ‘l’existence d’une nation est un plébiscite de tous les jours’ (a nation is a soul, a spiritual principle, a great solidarity, a heritage; the existence of a nation is a plebiscite held every day).¹³

The classical German eighteenth- and nineteenth-century school of philology also established a direct link between culture and the state. For Friedrich August Wolf, school and state were one;¹⁴ for Ulrich Wilamowitz-Moellendorf, there was a direct relationship between ‘Volk, Staat, Sprache’: a

⁹ For a taxonomy of the theories of state formation, see T. Ertman. 2003. *State Formation and State Building in Europe*. In T. Janoski, R. Alford, A. Hicks, and M. A. Schwartz (eds) *Handbook of Political Sociology*. Cambridge: Cambridge University Press, p. 367; H. Spruyt. 2002. The Origins, Development, and Possible Decline of the Modern State. *Annual Review of Political Science* 5: 127ff.; L. Tedoldi. 2009. Dove eravamo rimasti? Lo Stato in età moderna tra problemi storiografici e questioni aperte. *Le carte e la storia* 15(2): 19ff.; P. Carroll. 2009. Articulating Theories of States and State Formation. *Journal of Historical Sociology* 22(4): 553; and T. Vu. 2010. Studying the State through State Formation. *World politics* 62(1): 148ff.; H. P. Glenn. 2013. *The Cosmopolitan State*. Oxford: Oxford University Press, challenges the concept of the nation-state; for him all states are cosmopolitan.

¹⁰ C. Tilly. 1992. *Coercion, Capital, and European States AD 990–1992*. Oxford: Blackwell.

¹¹ P. Molas Ribalta. 1996. *L’impact des institutions centrales*. In W. Reinhard (ed.) *Les élites du pouvoir et la construction de l’État en Europe*. Paris: PUF, pp. 25ff.

¹² F.-R. Chateaubriand. 1849–50. *Mémoires d’outre-tombe*. Paris: Laffont, p. 1305.

¹³ <<http://www.lexilogos.com/document/renan/nation.htm>>. For an Italian translation, see E. Renan. 2004. *Che cos’è una nazione? E altri saggi*. Rome: Donzelli. Another explanation for the birth of the state is offered by the process of secularization, on which see E.-W. Böckenförde. 2007. *La nascita dello Stato come processo di secolarizzazione*. In E.-W. Böckenförde, *Diritto e secolarizzazione. Dallo Stato moderno all’Europa unita*. Rome-Bari: Laterza, pp. 33ff.

¹⁴ D. Lanza. 2013. *Interrogare il passato. Lo studio dell’antico tra Otto e Novecento*. Rome: Carocci, p. 33.

people has no right to exist if it does not have a common culture and a shared language.¹⁵

In conclusion, war is not the only path to bureaucratic centralization and to state-building; there are other explanations too, which are complementary to that of war. This does not mean that war becomes less important. States continue to prepare for wars, to be able to defend their territories or their citizens even beyond their territories, or to maintain peace in other parts of the world.

What is the nation-state? What are the peculiarities of this polity compared to previous forms (city-states, confederations, federations, empires)? First, the state is a polity that develops in a nation. This does not mean that it is established as a representative body, but that the ‘fabrication collective des identités nationales’ (the collective fabric of national identities)¹⁶ is largely the product of the state-building process, because the construction of the state runs parallel with a nation’s self-recognition.

Second, it has a minimum size, which must be sufficient for a certain degree of economic development in a world where trade is under state control, and for resisting pressures from other states.¹⁷ Therefore, state-building occurs against and in contrast to other entities.

Third, unlike the political bodies of the Middle Ages, that were fluid and polycentric and did not have a vocation for absolutism, the state is stable, hierarchical, unitary, and centralized.¹⁸

Fourth, within the state a division of labour exists such that decision-making, implementation, and conflict resolution are assigned to different bodies.

Finally, the state is also a culture, an important component of which is legal positivism. This was developed by lawyers, who played a significant role in the rise and development of the state.¹⁹ Positivism is an expression of faith in the state.²⁰ Thus, the state has become a quasi-divine entity, belonging to a superior, sacred world.²¹

As seen above, the cultural aspect of the state—that is, the state as an idea, not as an entity—has played an important role throughout the state’s entire history. For almost two centuries now, however, this role and its meaning has

¹⁵ U. von Wilamowitz-Moellendorf. 1898. *Volk, Staat, Sprache*. Berlin: Büxenstein; see also D. Lanza, *Interrogare il passato*, p. 67.

¹⁶ A.-M. Thiesse. 1999. *La création des identités nationales. Europe XVIII–XX siècle*. Paris: Seuil, p. 13.

¹⁷ A. Alesina and E. Spolaore. 2005. *The Size of Nations*. Cambridge, MA: MIT Press.

¹⁸ M. Ascheri. 1994. *Istituzioni medievali. Una introduzione*. Bologna: Il Mulino; P. Grossi. 1995. *L’ordine giuridico medievale*. Rome-Bari: Laterza.

¹⁹ R. Schnur (ed.) 1986. *Die Rolle der Juristen bei der Entstehung des modernen States*. Berlin: Duncker und Humblot.

²⁰ As noted by E. Forsthoff. 2011. *Lo Stato nella società industriale* (1971), Italian translation. Milan: Giuffrè, p. 12.

²¹ F. Werfel. 1936. *Aus der Dämmerung einer Welt*, Italian translation, *Nel crepuscolo di un mondo*. Milan: Mondadori, 1954, p. 151 (Anniversary of the ‘Maturità’ examination).

been challenged by authors as diverse as Karl Marx, Léon Duguit, and Philip Abrams, to cite only a few. For Marx, the state is a 'superstructure' of civil society. Duguit wrote that 'in public law we no longer believe that behind those who hold office there is a collective personal and sovereign substance of which they are only the agents and organs'.²² Abrams concluded that the state 'is a spurious object of sociological concern and [...] we should now move beyond Hegel, Marx, Stein, Gumplowicz and Weber on from the analysis of the state to a concern with the actualities of social subordination'.²³

Once established, nation-states began to grow. There were three factors of growth. First, the suffrage: with the advent of elections, governments became more representative: the 'citizens' states'.²⁴ With the extension of suffrage came a growth in popular demand for schools, healthcare, social services, and public enterprises. Then there were wars: suffice it to consider the rise in public employment in England, Italy or France after the First and Second World Wars.

The law-and-order state became the 'avuncular state', which undertakes to protect the people from illness and accident, to provide education, to remove distinctions based on gender and ethnicity, and to ensure welfare and well-being.²⁵ As Tocqueville had foreseen, the state is now 'un pouvoir immense et tutélaire [...]. Il est absolu, détaillé, régulier, prévoyant et doux'.²⁶

These developments affected the state's constitutional aspects (parliament and government) much less than its administrative one: as noted by Carl Schmitt, 'the total state (the state that occupies every space of society [...]) is by nature an administrative State'.²⁷ Consequently, the state has engaged in a new endeavour: that of distributing and allocating resources among its citizens.

Throughout its history, the state has turned out to be a highly adaptive polity, capable of adjusting to various internal and external pressures. States have adapted to democratic and authoritarian rule; to large territories and small; to liberal and to communist policies.

In this process of adaptation, the state has developed a great ability to negotiate and mediate,²⁸ contrasting strongly with the traditional *hoheitlichkeit*,

²² L. Duguit. 1970. *Law in the Modern State*. New York: Fertig, p. 243 (English translation of *Les transformations du droit public*. Paris: Colin, 1913).

²³ P. Abrams. 1988. Notes on the Difficulty of Studying the State (1977). *Journal of Historical Sociology* 1(1): 58.

²⁴ O. Beaud. 1994. *La puissance de l'État*. Paris: PUF.

²⁵ T. Caplow. 1997. *Evaluating State Performance*. Paper presented at the Conference on Social Change in Western Europe, Poitiers, 8–9 October. See also M. L. Dauber. 2012. *The Sympathetic State*. Chicago: University of Chicago Press.

²⁶ A. Tocqueville. 1986. *La démocratie en Amérique II* (1840). Paris: Laffont, p. 648.

²⁷ C. Schmitt. 1972. *Legalità e legittimità*. In *Le categorie del 'politico'*. Bologna: Il Mulino, p. 215.

²⁸ B. Jobert and P. Muller. 1987. *L'État en action. Politiques publiques et corporatismes*. Paris: PUF, pp. 69ff. and 74ff.

following different patterns of bureaucratic rationalization.²⁹ Therefore, in many countries, the state is now no different from a modern factory and the managerial techniques applied therein.

Another indicator of the state's adaptive nature is its ability to assimilate elements that were originally foreign to its traditional foundations. For example, the merit system was unknown in Europe until the eighteenth century, when it was imported from China and became a permanent feature of the major European states (later, China imported electoral systems from Europe, which were previously unknown to it).³⁰

In the course of this long history, beyond the apparent uniformity, there are several substantial differences and different styles of statism.³¹ One major difference is that between strong states (for example, French *étatisme*, the Prussian tradition, and the powerful, Hegelian theory of the state) and weak states (such as in Italy, where 127 different executives were established in the 150 years of its life).

A second difference is between European and non-European states: the first share the common tradition of the *ius publicum europaeum*, based on the German reinterpretation of Roman law.³²

The third most important difference is that between states with a significant martial component and states where, instead, this has become less important.³³

Recent literature prefers to abandon the strong states/weak states dichotomy in favour of the idea that it is necessary to broaden the notion of stateness,³⁴ and that there are differing degrees of stateness and statehood: '[t]he State's importance cannot be captured on a one-dimensional strong-weak continuum or through a model that builds on a Weberian conception of

²⁹ B. S. Silberman. 1993. *Cages of Reason: The Rise of the Rational State in France, Japan, the United States and Great Britain*. Chicago: Chicago University Press.

³⁰ G. Bertuccioli. 1994. Riflessioni su un anniversario. *Mondo cinese* 87: 3ff., but especially p. 6.

³¹ P. Baldwin. 2005. Beyond Weak and Strong: Rethinking the State in Comparative Policy History. *Journal of Policy History* 17(1): 12ff. and especially 18; S. Steinmo. 2010. *The Evolution of Modern States. Sweden, Japan and the United States*. Cambridge: Cambridge University Press, pp. 29 and 206.

³² C. Schmitt. 1987. *Ex captivitate salus*, Italian translation. Milan: Adelphi, pp. 64–80. L. Garofalo. 2007. Carl Schmitt e la 'Wissenschaft des römischen Rechts'. Saggio su un cantore della scienza giuridica europea. *Diritto e società* 2.

³³ Caplow, *Evaluating State Performance*.

³⁴ The first author to stress the importance of 'different levels of stateness' is J. P. Nettl. 1968. The State as a Conceptual Variable. *World Politics* 20(4): 559ff. This idea was then expanded by C. Tilly. 1975. Reflections on the History of European State-Making. In C. Tilly, *The Formation of National States in Western Europe*. Princeton, NJ: Princeton University Press (Italian translation C. Tilly 1984. *La formazione dello Stato in Europa: Riflessioni introduttive*. In C. Tilly, *La formazione degli Stati nazionali nell'Europa occidentale*. Bologna: Il Mulino, pp. 7ff.). See also O. Nay. 2013. Fragile and Failed States: Critical Perspectives on Conceptual Hybrids. *International Political Science Review* 34: 326.

coercive capacity located in centralized bureaucracies'.³⁵ This conclusion, however, prompts a question: 'how does the state evolve and succeed without the traditional elements of state building, or the customary apparatus of power and authority?'³⁶

Another important point is the interaction between the process of state-building and the way in which the concept of state is approached; in other words, how the state is perceived and studied. Voltaire believed that there were two models, embodied by France and England respectively. In France, the state was at the centre, while England was based on self-government (however, it must be noted that while we now conceive of self-government as synonymous with local government, in the nineteenth and twentieth century, scholars such as von Gneist believed that *Selbstverwaltung*, as opposed to *Staatsverwaltung*, had a much greater meaning, i.e. that society itself could run the state³⁷).

England is a paradox: a very powerful state, with strong military might and the centre of a colonial empire, but one without any notion of state.³⁸ In his book *Introduction to the Study of the Law and Constitution*,³⁹ the British master of nineteenth-century constitutionalism, Professor Albert Venn Dicey, ignored both the word and the notion of state, while scholars such as Georg Jellinek in Germany or Vittorio Emanuele Orlando in Italy placed the theory of the state at the very centre of their reflections. Authors such as Bertrand Badie and Pierre Birnbaum go so far as to write that in countries like the United Kingdom and the United States, the organization of society makes the construction of the state unnecessary. The centre does not erect itself into a state, nor does it delegate its agents to do so. The 'self-organization of society' is sufficient.⁴⁰

The same is true for the USA, where the concept of state 'slipped in importance during the "behavioral revolution" of the 1950s and 1960s'⁴¹ and had a revival in the 1980s: in 1985 a book entitled *Bringing the State Back In*⁴² was

³⁵ D. King and R. Lieberman. 2009. Ironies of State Building: A Comparative Perspective on the American State. *World Politics* 61(3): 581.

³⁶ King and Lieberman, *Ironies of State Building*, p. 548.

³⁷ R. von Gneist. 1857–1863. *Das heutige englische Verfassungs- und Verwaltungsrecht*, 2 volumes. Berlin: Springer, vol. 2, pp. 818 and 1863. R. von Gneist. 1863. *Geschichte und heutige gestalt des englischen Communalverfassungs oder das Selfgovernment*, 2 volumes. Berlin: Springer. On Gneist, see F. Ferraresi. 2002. *Il modello costituzionale inglese e la Germania fra Otto e Novecento*. In E. Capozzi (ed.) *Le costituzioni anglosassoni e l'Europa. Riflessi e dibattiti tra '800 e '900*. Soveria Mannelli: Rubbettino, pp. 79ff. and especially pp. 83ff.

³⁸ A different opinion in J. McLean. 2012. *Searching for the State in British Legal Thought: Competing Conceptions of the Public Sphere*. New York: Cambridge University Press.

³⁹ A. V. Dicey. 1982. *Introduction to the Study of the Law of the Constitution* (1885). Indianapolis: Liberty Fund.

⁴⁰ Badie and Birnbaum, *Sociologie de l'État*.

⁴¹ Vu, *Studying the State through State Formation*, p. 148.

⁴² P. Evans, D. Rueschemeyer, and T. Skocpol (eds) 1985. *Bringing the State Back In*. Cambridge: Cambridge University Press.

published, and noted ‘a sudden upsurge of interest in “the state”’. It is now clear that ‘the apparent “statelessness” of the U.S. is an illusion’.⁴³

These paradoxes draw attention to a further one. There is not necessarily a convergence between states and theories of the state: strong states may have poor or no theories of the state at all (such as the United Kingdom), while weak states may have developed strong theories of the state (such as Italy). It has been noted—with reference to the latter case—that ‘in their initial self-construction as fully-inclusionary centres of political power, States produced an inflated and over-centric semantic form for themselves, which they were not able to realize’.⁴⁴

Today, there are 193 states that belong to the UN, 185 states that are members of the International Labour Organization, and 156 states that are part of the World Trade Organization (WTO). To become a member of one of these organizations, it is necessary to be a state. This is another paradox. Through treaties, states establish international organizations; but then international organizations induce, promote, support, and control states; they establish standards of democracy and of rule of law for states. Therefore, state-building is now both a bottom-up and a top-down process.

THE SECOND CYCLE: THE DECLINE OF THE STATE

The second cycle began in the early twentieth century, with the first crisis of the state. It continued into the 1970s, with the second crisis and the ‘retreat of the state’, and into our days with the state’s third crisis and the process of globalization.

Why did politicians and scholars begin talking of the crisis of the state in early twentieth-century Europe? This was because state authority was then challenged from within for the first time, by a variety of forces: associations, especially trade unions, which replaced the atomistic civil society, collectivism, and corporatism. At that point, unable to represent these interests, political representation revealed its deficiencies. This societal ‘malaise’ relating to the state, an indicator of the difficult relations between state authority and civil society, led many authors to write that the state was decaying, or being eclipsed.

⁴³ D. King and R. Lieberman, *Ironies of State Building*, p. 547.

⁴⁴ C. Thornhill. 2011. *The Future of the State*. In P. F. Kjaer, G. Teubner, and A. Febbrajo (eds) *The Financial Crisis in Constitutional Perspective: The Dark Side of Functional Differentiation*. Oxford: Hart, p. 372. On the theories of the State, see also M. Fioravanti. 2010. *Per una storia dello Stato moderno in Europa. Quaderni fiorentini per la storia del pensiero giuridico moderno* 39: 69ff.

This weakening of the state had three interpreters, one in France, just before the First World War, one in Italy during the First World War, and the third in Germany, during the Weimar Republic. The first was Léon Duguit, who declared that 'l'État est mort'.⁴⁵ The second, Santi Romano, proposed to replace the state with the 'legal order' (*ordinamento giuridico*) as the central concept of public law.⁴⁶ The third was Johannes Popitz, followed by Carl Schmitt, who introduced the concept of 'policracy' as a substitute for democracy.⁴⁷

The first crisis met different reactions. One was the Italian reaction: the restoration of state authority. Mussolini and Fascism were a reaction to the first crisis of the state.

On a theoretical level, there was another reaction. Duguit wrote that '[l']État n'est pas une personne juridique; l'État n'est pas une personne souveraine. L'État est le produit historique d'une différentiation sociale entre les forts et les faibles dans une société donnée'; '[...] faux le postulat de l'État-personne; faux celui de la puissance droit subjectif [...]', and proposed to abandon the concept of the state in favour of more realistic ones such as the 'service public' and 'rulers' (*gouvernants*).⁴⁸ In several countries, but especially in Italy and Germany, the authoritarian reactions to the crisis of the state produced another result: a *Staatsmüdigkeit* (state-weariness) and *Entzauberung* (deconsecration or de-mythization) of the state.⁴⁹

The second crisis occurred in the 1970s and 1980s. At the political level, the indicators of this new crisis were the reforms introduced by Prime Minister Margaret Thatcher and President Ronald Reagan. At the scholarly level, the book authored by Guy Peters and Richard Rose, entitled *Can Government Go Bankrupt?*, set the tone.⁵⁰ This crisis was due to the modern state's failure to perform its duties, to governments' inability to meet popular demands, to the difficulties suffered by the welfare state, to ungovernability, to the financial crisis,⁵¹ and to failures in policy implementation.⁵² Could only Hegel suppose that the state could go bankrupt?

⁴⁵ Duguit, *Law in the Modern State*, p. 243.

⁴⁶ S. Romano. 1946. *L'ordinamento giuridico (1917–18)*. Firenze: Sansoni.

⁴⁷ E. Forsthoff. *Lo Stato nella società industriale*, p. 14.

⁴⁸ L. Duguit. 1903. *L'État, les gouvernants et les agents*. Paris: Fontemoing, pp. 1 and 53. This book was a development of another book on the state: L. Duguit. 1901. *L'État, le droit objectif et la loi positive*. Paris: Fontemoing. The purpose of the latter text was to critique the work published by George Jellinek in 1892 and previous works of P. Laband and C. F. Gerber. See also L. Duguit. 1913. *Les transformations du droit public*. Paris: Colin, p. xix.

⁴⁹ G. Dahm. 1961. *Die Stellung des Menschen im Völkerrecht unserer Zeit*. Tübingen: J. C. B. Mohr, p. 11.

⁵⁰ G. Peters and R. Rose. 1978. *Can Government Go Bankrupt?* New York: Basic Books.

⁵¹ R. Mayntz. 1993. *Governing Failures and the Problem of Governability: Some Comments on a Theoretical Paradigm*. In J. Kooiman (ed.) *Modern Governance: New Government-Society Interactions*. London: Sage, pp. 11ff.

⁵² J. L. Pressman and A. Wildavsky. 1984. *Implementation: How Great Expectations in Washington are Dashed in Oakland, Or Why It's Amazing that Federal Programs Work at All*, 3rd edition. Berkeley: University of California Press.

The state responded to the internal signs of this crisis in several ways: the rollback of state regulation of the economy, liberalizations, privatizations, sale of state ownerships, outsourcing and contracting out of public services, cuts in public expenditure, and decentralizations.

These developments have reduced not only the size of governments, but also the differences between the public sphere and the private arena.⁵³ As a consequence, new problems have arisen. These include establishing what is the essence of the state and of sovereign authority, where is the 'hard core' of government powers, where lies the dividing line between public and private, how to map the state, where to establish state boundaries and how to classify state agencies. These issues are taken up in several other chapters in this volume.

These problems have many practical implications. For example, since the German *Grundgesetz* establishes that the exercise of sovereign authority is, as a rule, entrusted to members of the public service (Art. 33, par. 4), can forensic treatment facilities be privatised in Germany?⁵⁴ Or, since the Israeli Constitution protects human dignity and liberty, can a law authorize a private, for-profit corporation to operate a prison in Israel?⁵⁵

At a higher level, beyond the state, the blurring of the line between public and private has given rise to another problem: that of redefining an area that all members of a union can consider public. For this purpose, the European Union has identified a new institution, the 'body governed by public law', which also includes private entities that are under public control, either through participation or through financing. Thence, the state becomes an entity *à géométrie variable*.

But there were also external signs of crisis. These include transnational corporations exercising 'parallel authority' alongside national governments;⁵⁶ big businesses, insurers, accountants, and international bureaucrats all encroached on the sovereignty of the state; there was, therefore, a

⁵³ M. P. Maduro. 2010. *The Chameleon State: EU Law and the Blurring of the Private/Public Distinction In the Market*. In R. Nickel (ed.) *Conflict of Laws and Laws of Conflict in Europe and Beyond: Patterns of Supranational and Transnational Juridification*. Antwerp, Oxford, and Portland, OR: Intersentia. See also J. C. Alexander. 2006. *The Civil Sphere*. Oxford: Oxford University Press.

⁵⁴ See *Bundesverfassungsgericht*, 2 BvR 133/10 (2012). This decision established that the law did not give rise to objections concerning insufficient protection against unjustified interference with fundamental rights.

⁵⁵ The answer of the Supreme Court of Israel (Case No. HJC 2605/05 of 2009), was that the constitutional provision according to which the government is the executive branch of the state (Section 1) implies that there is a 'hard core' of sovereign powers that the government must exercise itself, in order to ensure personal liberty and human dignity. Similar cases have arisen in Costa Rica and India in relation to the privatization of prisons and police. See D. A. Slansky. 2011. Private Policing and Human Rights. *Law and Ethics of Human Rights* 5: 112ff.

⁵⁶ S. Strange. 1996. *The Retreat of the State: The Diffusion of Power in the World Economy*. Cambridge: Cambridge University Press, especially pp. 91ff.

‘declining authority of the States’ and a growth of ‘authority beyond the State’.⁵⁷

The third crisis is now under way. In Europe, national governments have lost control over their currencies. In 1998, there were thirty-seven currencies in Europe; in 2016, there are only eleven. At the global level, the phenomenon of globalization is unfolding: there are 2,000 global regulatory regimes and 60,000 non-governmental organizations (NGOs); there are international organizations such as the WTO, and networks of national regulators such as the Basel Committee; hybrid public-private regulators such as the International Standardization Organization, and private global regulators such as the Internet Corporation for Assigned Names and Numbers (ICANN). These regulators have the power to impose standards: see, for example, the Codex Alimentarius Commission, that establishes food standards that reach our very tables. These international organizations are not part of a unitary legal order, but rather of a fragmented legal space.⁵⁸

Globalization is, at the same time, denationalization of state institutions and a cumulative process of expansion of trade, communication, media, migration, crime, terrorism, and even fashion.⁵⁹ This development has two levels: one is global or universal, the other is supranational.

The main features of the global level are the following: development through mutual connections; a fluid organization; joint decision-making techniques; absence of any separation between the global and the domestic levels; three powers—legislative, executive, and dispute settling (but more continuity between them, rather than a true separation, a legislative branch acting mainly as standard-setter, and an executive branch less developed than in domestic legal orders, as the global polity is reliant to a great degree upon national implementation through indirect rule); an administration and administrative law with weak constitutional foundations; the growth of a global rule of law (i.e. principles that are common to all regulatory regimes: the right to a hearing, participation, the right to be informed, access to a judge) and legalization of global administrative networks towards a universal rule of law; and finally, control of the state by the economy, which replaces state

⁵⁷ Strange, *The Retreat of the State*, pp. 3ff. and 91ff. See also S. Cassese and V. Wright. 1996. *La restructuration des États en Europe occidentale*. In V. Wright and S. Cassese (eds) *La recomposition de l'État en Europe*. Paris: Éditions de la découverte, pp. 7ff.; and D. King and P. Le Galès. 2011. Sociologie de l'État en recomposition. *Revue française de sociologie* 52(3): 453ff.

⁵⁸ See S. Cassese (ed.) 2016. *Global Administrative Law*. Cheltenham: Elgar.

⁵⁹ See J. Habermas. 2006. *The Divided West*. Cambridge: Ciaran Cronin, p. 175; S. Sassen. 2006. *Territory, Authority, Rights: From Medieval to Global Assemblages*. Princeton, NJ: Princeton University Press, p. 1; C. Zürcher. 2007. *When Governance Meets Troubled States*. In M. Beisheim and G. F. Schuppert (eds) *Staatszerfall und Governance*. Baden-Baden: Nomos, p. 11.

control over the economy (indeed, through rating agencies, it is markets that control states, rather than states that control markets).⁶⁰

As for Europeanization—which is but one example of supranationalism—we may see multiple citizenships (European, national, and subnational); multiple *demoi* (akin to the *Vielvölkerstaat* of the Middle Ages)⁶¹ in which national identities become less important; several languages, as in the *Mehrsprachenstaat* of the past; a concentration of power that is replaced by networks (for example, the structure of the European Central Bank and the role of national governors); and a plurality of polities, such as the *imperium* which included several *regna*.

However, it is necessary to highlight that states are organized in ‘layers’, and that not all developments occur simultaneously. Therefore, the three crises mentioned above did not all occur at the same time and did not all span the same number of years, as noted by several authors.⁶²

The decline of the state poses a major problem: if the state is the place where democracy has developed, what will happen to democracy if the state disappears or becomes less important? Will it evaporate? Or will be replaced by a cosmopolitan democracy? The democratic deficit of the global polity is compensated by many surrogates. One is legitimacy through procedure, by participation in decision-making processes (deliberative democracy), that is widespread in the global space (from the WTO to ICANN). Another is horizontal accountability, that is global actors—national and international governments—being accountable to each other (Hungary and Turkey versus the European Union, the European Union versus the United Nations). Another is judicial review acting as a ‘fire alarm’ system (the approximately 120 global courts and an equivalent number of quasi-judicial bodies open the way to civil societies to keep under control both national and international bodies). Another is capacity-based authority, power based on reputation and expertise (as in the case of the International Electrotechnical Commission, the IEC⁶³).

THE THIRD CYCLE: RESURGENCE OF THE STATE

At the end of the second cycle, one could reasonably wonder whether the state would survive so many crises without defeat. Fortunately, many of the second

⁶⁰ S. Cassese. 2005. Administrative Law without the State? The Challenge of Global Regulation. *Journal of International Law and Politics* 37(4): pp. 663ff.; and S. Cassese. 2012. *The Global Polity*. Seville: Global Law Press.

⁶¹ K. F. Werner. 1998. *Naissance de la noblesse. L'essor des élites politiques en Europe*. Paris: Fayard (Italian translation, *Nascita della nobiltà*. Torino: Einaudi, 2000, p. 58).

⁶² L. Jacobs and D. King. 2009. America's Political Crisis: The Unsustainable State in a Time of Unraveling. *Political Science and Politics*, April: 277ff.

⁶³ D. D. Avant, M. Finnemore, and S. K. Sell (eds) 2010. *Who Governs the Globe?* New York: Cambridge University Press.

cycle's developments were replete with ambiguities. To implement Big Government reforms, Margaret Thatcher required a very strong central government: to make the state smaller, one needs greater powers. Lesser state ownership went hand-in-hand with greater regulation on part of independent regulatory agencies. State activism shifted from a market-steering orientation to a market-supporting one.⁶⁴ Also, greater emphasis on consumer protection implies more state regulation.

These ambiguities show that the state has not disappeared with liberalizations and globalization, but, on the contrary, is alive and is only self-restructuring to adjust its configuration and functions to the new spaces, so that it can overcome its internal weaknesses. The developments analysed in the previous section are simply part of the dynamics of the state.

States cope with internal fragmentation (next-steps agencies, *enti pubblici, établissements publics*) by governing without state-centric government models;⁶⁵ by learning the lessons of government without governance; by 'societal replacement for the incapacity of government to steer and row'; by its 'management of networks and [...] self-organizing systems of interaction' as an alternative to conventional governance; by a 'decentralized rowing';⁶⁶ and finally, by using an instrument of the British colonial tradition—indirect rule. Indeed, it can be said that the world is rediscovering indirect rule: the European Union is ruling indirectly, and the same is true for the WTO.

As for the external pressures, states are surrendering sovereignty to regional and global institutions, but at the same time they promote competition among nations.⁶⁷ Thus, from being 'guardians of national security', they become 'guardians against economic insecurity'.⁶⁸

Next to the thousands of international organizations, there are the regional supranational organizations like those established in Europe, South East Asia, North America, and South America. The most developed is the European Union, which presents many distinctive features.

First, while domestic administrations depend on a single centre of power, the European administration does not have only one centre. Unlike the situation in domestic governments, in the European Union there is no one single branch of government entrusted with the implementation of rules.

⁶⁴ J. Levy (ed.) 2006. *The State after Statism: New State Activities in the Age of Liberalization*. Cambridge, MA: Harvard University Press.

⁶⁵ J. Pierre and B. G. Peters. 2013. *Governing Complex Societies: Trajectories and Scenarios*. Basingstoke: Palgrave Macmillan.

⁶⁶ B. G. Peters. 1997. Shouldn't Row, Can't Steer: What's A Government to Do? *Public Policy and Administration* 12(2): 51 ff.

⁶⁷ V. Cable. 1995. The Diminished Nation-State: A Study in the Loss of Economic Power. *Daedalus* 124(2): 23ff. (issue topic: 'What Future for the State').

⁶⁸ S. Strange. 1955. The Defective State. *Daedalus* 124(2): 55 ff.

Implementing power can be exercised by the Commission, by the Council, or by member states.

Second, while domestic administrations have exclusive powers of implementation, the European administration is not the Union's only implementing authority. In the Union, the member states take all the measures necessary for implementing legally binding Union acts, and the Commission or the Council have implementing power where uniform conditions are required. Consequently, the Union's implementing power is residual and not monopolistic.⁶⁹

Third, while domestic administration is binomial,⁷⁰ European administration is trinomial. For example, in the area of competition and state aid, there are not only two players, the administration and the private party; on the contrary, there are several: the European Commission, acting as the guardian of competition; one national government, the grantor of the aid; a private party that has benefited from the aid as grantee; other interested states; and other interested parties. This multiplicity of players generates 'polycentric adjudication' processes.⁷¹

Fourth, unlike national law, the European Union features a double legality.⁷² In the European treaties, indeed, it is stated that the Union is a 'community based on the rule of law' and has a 'complete system of legal remedies and procedures', in accordance with the 'basic constitutional charter, the

⁶⁹ Court of Justice, C-8/88 *Germany vs Commission*. See A. J. Gil Ibanez. 1998. *El control y la ejecución del derecho comunitario. El papel de las Administraciones nacionales y europea*. Madrid: Instituto nacional de administración pública; K.-H. Ladeur (ed.) 2002. *The Europeanisation of Administrative Law: Transforming National Decision-Making Procedures*. Dartmouth: Ashgate; J. H. Jans, R. de Lange, S. Prechal, and R. J. G. M. Widdershoven. 2007. *Europeanisation of Public Law*. Groningen: Europa Law Publishing. On the relationship between European law and national administrative laws, G. Vesperini. 2011. *Il vincolo europeo sui diritti amministrativi nazionali*. Milan: Giuffrè.

⁷⁰ A.V. Dicey. 1935. *Introduction to the Study of the Law of the Constitution*. London: Macmillan, pp. 332–3: 'Droit administratif, or administrative law, has been defined by French authorities in general terms as the body of rules which regulate the relations of the administration or of the administrative authority towards private citizens; and Aucoc in his work on *droit administratif* describes his topic in this very general language: Administrative law determines the constitution and the relations of those organs of society which are charged with the care of those interests (*intérêts collectifs*) which are the object of public administration, by which term is meant the different representatives of society among which the State is the most important, and the relation of the administrative authorities towards the citizens of the State'.

⁷¹ L. L. Fuller. 1978. The Forms and Limits of Adjudication. *Harvard Law Review* 92: 394–5. Polycentric adjudication processes require inter-institutional agreements: M. Cini. 2013. EU Decision-Making on Inter-Institutional Agreements: Defining (Common) Rules of Conduct for European Lobbyists and Public Servants. *West European Politics* 36(6): 1143f.

⁷² On the features of the legality principle in European law, K. Lenaerts. 2007. The Rule of Law and the Coherence of the Judicial System of the European Union. *Common Market Law Review* 44(6): 1625ff.; L. Azoulai. 2007. *Le principe de légalité*. In J.-B. Auby and J. Dutheil de la Rochère (eds) *Droit administratif européen*. Bruxelles: Bruylant, pp. 393f.; A. von Bogdandy. 2006. *Constitutional Principles*. In A. von Bogdandy and J. Bast (eds) *Principles of European Constitutional Law*. Oxford: Hart, pp. 15f.

treaty'; that there are two ways of implementing the 'general measures' of the Union's institutions—Community implementation (private parties can bring an action before the Court of Justice) and national implementation (private parties can bring an action before national courts); and that all measures that are intended to have legal effects can be subject to judicial review.⁷³

Fifth, while national governments have a single component, the European Union government is a composite. In the EU, there are four essential components, of differing natures: purely European (the Commission and the Court of Justice), multinational (the Parliament), intergovernmental (the Council), and interbureaucratic (the Committees).

Sixth, while national law is imposed on national societies, European law leaves space for a choice of law.

Seventh, administration's development in the national context depends on national government policies, but administrative development at the European level depends on the interaction between national and European administrations. *Wechselseitige Eigennutz* ('reciprocal expediency') is the first and most important reason for which the state opened up and established standard-setting supranational and global bodies. One of the first to observe this was Immanuel Kant.⁷⁴

States share their sovereignty (from a traditional point of view, this is an oxymoron: true sovereignty cannot be shared—if it is shared, is not sovereignty). They join forces with other states and accept global standard-setting bodies, but they also try to reduce the asymmetry between the globalized economy and national governments.

Each state is confined by its own borders and has, therefore, no power to fight global terrorism and global warming, or to organize Olympic Games. To engage in these endeavours, the UN Sanctions Committee, the Kyoto agreement, and the International Olympic Committee respectively are necessary.

Because they must share tasks and power, states become part of global networks and replace hierarchies with horizontal links, and command and control with negotiation. Clear departmental boundaries, clear lines of authority, detailed reporting mechanisms, and formal decision-making procedures are replaced with complementarity and reciprocity, vertical and horizontal interdependence, and mutually supportive actions.⁷⁵

The result is often negative, because these confused new arrangements frequently lead to traps for joint decision-making. At this point, states have less power, because they must share decision-making with other states, but, at

⁷³ Court of Justice C-294/1983 *Les Verts*. See also Court of Justice C-46/87 and 227/88 *Höchst* and C-103/88 *Fratelli Costanzo*.

⁷⁴ I. Kant. 2010. *Zum ewigen Frieden*. (Italian translation, *Per la pace perpetua*. Milano: Feltrinelli, p. 78.) See his observations on the *Handelsgeist* (the spirit of trade).

⁷⁵ G. Thompson, J. Frances, R. Levacic, and J. Mitchell (eds) 1991. *Markets, Hierarchies and Networks: The Coordination of Social Life*. London: Sage.

the same time, they are thus able to enter areas previously closed to them. Here we may witness another paradox: less power, yet at the same time more power, for the state.

In conclusion, 'contrary to the brave new world many expected in the wake of globalization and global economy integration [...] the State is doggedly present'⁷⁶ and 'the notion of growing statelessness in the international system and the global economy has quickly evaporated'.⁷⁷ There is no decline, no retreat, no crisis of the state. There is only a process of reconfiguration, adaptation, and restructuring which is part of the state's dynamics. This process may overlap with severe short-term crises and policy challenges, but that is distinct to an implosion of the state as the key organizing entity for political communities.

Contrary to a widespread view that opposes globalization and national governments, states are a constitutive element of globalization, as in Kant's dove flight.⁷⁸

In the process of globalization, there are several paradoxes that strengthen the links between the state and globalization. First, globalization is a process through which states establish global regulators by agreement.⁷⁹ But the reverse is also true, as global regulators sustain, promote, and provide incentives for states, as occurs in the case of the United Nations' global efforts to promote democracy (e.g. the United Nations Democracy Fund or the European Union Democracy Initiative) and the rule of law.

Second, global institutions promote or develop global indicators, thus putting pressure on states and expecting self-harmonization, reciprocal pressure, and imitation. Examples are the 'State Capacity Survey' developed by Columbia University; the 'State Fragility Index' published by the Center for Systemic Peace and the Center for Global Policy at George Mason University;⁸⁰ the 'Sovereignty Index' elaborated by the joint venture between the Brookings Institution, the Institute for State Effectiveness, and the Australian

⁷⁶ King and Lieberman, *Ironies of State Building*, p. 550. Similar conclusions are drawn in G. Corso. 2011. *Persistenza dello Stato e trasformazioni del diritto*, and in L. Condorelli. 2011. *Crisi dello Stato e diritto internazionale: simul stabund simul cadent?* both in *Ars interpretandi* 16, special issue on *Lo Stato contemporaneo e la sua crisi*, pp. 107ff. and 173ff., and in P. Du Gay and A. Scott. 2011. *Transformation de l'État ou changement de régime? De quelques confusions en théorie et sociologie de l'État*. *Revue française de sociologie* 52(3): 537ff.

⁷⁷ D. King and R. Lieberman. *Ironies of State Building*, p. 547. On the challenge posed by globalization to the state, see also T. J. Lowi. 2009. *La globalizzazione, la guerra e il declino dello Stato*. *Rivista italiana di scienza politica* 39(1): 3ff.; and K.-H. Ladeur. 2010. *The State in International Law*. Osgoode Hall Law School Research Paper No.27.

⁷⁸ I. Kant. 1781, 1787. *Kritik der reinen Vernunft*. Riga: Hartknoch, Einleitung, III.

⁷⁹ This point has been recently stressed by R. Kwiecién 2013. *On Some Contemporary Challenges to Statehood in the International Legal Order: International law Between Lotus and Global Administrative Law*. *Archiv des Völkerrechts* 51: 279ff.

⁸⁰ J. A. Goldstone, R. H. Bates, D. L. Epstein, T. R. Gurr, M. B. Lustik, and M. G. Marshall. 2010. *A Global Model for Forecasting Political Instability*. *American Journal of Political Science* 54(1): 190–208.

National University;⁸¹ the ‘Index of State Weakness in the Developing World’ published by the Brookings Institution;⁸² the ‘Failed States Index’ produced by the Fund for Peace and published by Foreign Policy;⁸³ and the Worldwide Governance Indicators.

THE STATE IN FLUX

As a result of these developments, retreats, and advances, the state has become more malleable—better able to adjust, adapt, and change according to the new challenges and contexts.

These adjustments have produced several outcomes. The first is the de-differentiation of society and state. Over the past few centuries, the state established itself through a process of differentiation from the various social interests and the public interest. The separation of the political and the social led the state to become an entity separate from society. Today, the dividing line is blurring, and the state is a marketplace or arena of competing economic and social forces.

The second is internal fragmentation. Originally, the state was more or less united around a centre, which was able to keep the periphery under strict control and thereby ensure the unity of the legal system. Today, the growth in the dimensions and powers of territorial and functional bodies has resulted in the development of multiple legal systems within the state. Therefore, the centre is obliged to replace rule with negotiation.

Third, as parliaments became more representative through universal suffrage, the power of civil society grew. The state and its body of servants have been compelled to replace command and control with leadership, hegemony, and negotiation.

Fourth is joint decision-making: when both a national and a supranational or global administration intervene in the decision-making procedures, there are arrangements that allow for both levels of government, the national and the supranational or global, to make their voices heard. From the first perspective, the most interesting institutions are the European Union committees.⁸⁴ First established to keep the Commission under the control of the

⁸¹ A. Ghani, C. Lockhart, and M. Carnahan. 2005. *Closing the Sovereignty Gap*. London: Overseas Development Institute.

⁸² S. E. Rice and S. Patrick. 2008. *Index of State Weakness in the Developing World*. Washington, DC: The Brookings Institution.

⁸³ N. Haken, J. J. Messner, K. Hendry, P. Taft, K. Lawrence, T. Anderson et al. 2012. *Failed States Index 2012*. Washington, DC: The Fund for Peace, pp. 1–48.

⁸⁴ T. Christiansen and E. Kirchner (eds) 2010. *Committee Governance in the European Union*. Manchester: Manchester University Press. M. Savino. 2005. *I comitati dell’Unione: La collegialità amministrativa negli ordinamenti compositi*. Milan: Giuffrè; F. Gencarelli. 2012. *Il Trattato di*

Council and domestic administrations, they subsequently became a means for the Commission to broaden the scope of its jurisdiction, obtain information from domestic administrations, consult and receive support from national constituencies, and hold national administrations' actions under review. Moreover, the committees unite national bureaucracies and provide a 'forum' for discussion and exchanging ideas. They are a means for the formation of a common understanding among domestic administrations. As a consequence, committees play three important roles: bottom-up, to represent the views of domestic administrations in the Union; top-down, to transmit European policies to national administrations; and a horizontal one, to open and facilitate dialogue among national administrations. Committees, however, are not the only kind of mixed—national and European—organizations. There are many more such entities, which exist at a metaphorical halfway point between Brussels and national capital cities to ensure a balance among national and supranational governments.

Fifth is interdependence of state and non-state actors. NGOs are established in order to interact with global regulatory regimes. National governments become more transparent and must hear national, supranational, and global pressure groups. The global disputes are multi-polar and involve both private parties and states.

Finally, like Ulysses, the state has committed itself through international treaties, thus renouncing full sovereignty and agreeing to share power with other states and global institutions. Globalization and the ensuing state–global space interactions produced two paradoxes.

The first paradox is clear in the role played by globalization in the constitution and development of states. The United Nations Organization supports states as members of the international community. The traditional relationship between states and the international community is reversed: previously, states created the international community; now, it is the international community that supports states. States establish global organizations, which in turn legitimate states.

This reversal is amplified when global or supranational institutions impose on national governments, or promote among them, certain basic models of democracy or rule of law, as in the case of the United Nations Democracy Fund, which finances civil society organizations for the promotion of democracy, or the Organization for Security and Cooperation in Europe, of which the Office for Democratic Institutions and Human Rights is active in the fields, *inter alia*, of democratic development, election observation, and non-discrimination.

Lisbona e la nuova comitologia. *Diritto comunitario e degli scambi internazionali* 1: 1f.; T. Christiansen and M. Dobbels. 2013. Delegated Power and Inter-institutional relations in the EU after Lisbon: A Normative Assessment. *West European Politics* 36(6): 1159f.

The second paradox is the following: while global institutions are entirely new organizations, they mimic national governments. For example, they allocate rule-making, executive, and dispute-settlement functions to separate bodies. This does not mean that the separation of powers principle is replicated in the global space, as the different environment leads to changes that, in turn, result in different organizational arrangements in the two areas. Here, once again, the ‘myth of the state’ and the conceptual reduction of all public powers to the state affects the development of globalization.

METHODOLOGICAL IMPLICATIONS

This analysis has two methodological implications. First, one must take an evolutionary approach to social institutions.⁸⁵ Lawyers and political scientists are good at analysing and dissecting dead bodies. But states are subject to ‘a continuous adaptive process’, and are ‘moving in different directions’.⁸⁶ One has to learn to analyse and study these living institutions and move towards understanding the rules governing their change, like the American sculptor Alexander Calder moved from ‘stables’ to ‘mobiles’.

Second, while seeking to ameliorate the poor state of empirical measures on the quality of states⁸⁷ (which several other chapters in this volume engage with), one must also try to conceptualize the complex web of integrated global and national polities. States are a constituent part of globalization. They expand in the global space and, at the same time, are limited by global institutions.

National governments split, as noticed by the French international law scholar Scelle, in his theory of the *dédoublement fonctionnel*: they establish global institutions and become their servants or implementers. Between states and global institutions, and among states, new kinds of relations are established, which one could call of horizontal accountability;⁸⁸ national governments monitor their counterparts, since their actions are interrelated.

⁸⁵ O. Lewis and S. Steinmo. 2011. *How Institutions Evolve: Evolutionary Theory and Institutional Change*. Paper presented at the APSA in Seattle.

⁸⁶ Steinmo, *The Evolution of Modern States*, pp. 210 and 206.

⁸⁷ F. Fukuyama. 2013. What is Governance? *Governance* 26(3): 347 ff.; and the World Bank. 1997. *The State in a Changing World: Selected World Development Indicators*. Washington, DC: The World Bank.

⁸⁸ For this concept as applied within national governments, see G. O'Donnell. 1999. Horizontal Accountability in New Democracies. In A. Schedler, L. Diamond, and M. F. Plattner (eds) *The Self-Restraining State: Power and Accountability in New Democracies*. London: Lynne Rienner, especially pp. 38ff.