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# State Transformation or Regime Shift?

## Addressing Some Confusions in the Theory and Sociology of the State

by Paul du Gay *and* Alan Scott

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Denn *wer in aller Welt ist denn "der Staat"...*? [Weber 1917, 267]<sup>1</sup>

### Introduction

Political sociology and state theory display two characteristics common across the social sciences. First, the various schools or strands work in relative isolation from each other. Even the terms “political sociology” and “state theory” mark these differences: the former generally codes a broadly Weberian approach, the latter a neo-Marxist one. Key theorists within one strand – say, Tilly, Mann, or Jessop – will rarely be referred to by those working in another. These walls serve a purpose: each position is able to develop its analysis without interference. They also have a paradoxical outcome: unless one assumes some strong version of relativism in which criteria of sameness are internal to paradigms, the same, or at least very similar, debates go on in parallel but seemingly with relatively little mutual awareness. Secondly, a lot of work in this area is concerned with identifying, generally relatively recent, transformations of “the state,” frequently in epochal terms. The dominant image is that of a before and after, the latter often designated by the simple prefix “post.”

Both of these tendencies are apparent in recent accounts of changes in the nature of the state. It has been widely recognized that in order to develop a social-scientific analysis of changes in the form and capacity of the contemporary state a base-line model has to be constructed to provide such a before-and-after portrait: State T<sub>1</sub> and T<sub>2</sub>. How that model is constructed differs according to theoretical stance. In regulation theory, as it has been developed notably by Bob Jessop [e.g., 2002] and

<sup>1</sup> For *who on earth is the "state..."*? [Weber 1994, 104].

Neil Brenner [e.g., 2004], that base-line is the Keynesian state. Within the now extensive governance literature, the *before* is simply called “government” and the *after* “governance,” the latter bearing a variety of modifying adjectives. For the TransState group at the University of Bremen, the base-line model is anthropomorphized. It, or rather she, has a given name: TRUDI, the “Territorial State, the state that secures the *Rule of Law*, the *Democratic State*, and the *Intervention State*” [Zürn and Leibfried, 2005: 3, emphasis added].

There are both similarities and differences between these diverse before-and-after portraits. The differences lie in the characterization of the two models and of the transition, the causes that the labels – globalization, deregulation; neo-liberalization, etc. – chosen for the transitions imply and accompany, and in the evaluation – not least normative – of the effects of this shift. But underlying these differences is a shared rhetorical structure and periodization: the high point of the State  $T_1$  is located between the 1950s and mid-1970s, and the move towards State  $T_2$  sets in during the latter part of the 1970s/early 1980s, following the oil shock and roughly coinciding with the first Thatcher government in Britain (1979-1983) and Reagan’s first presidential period in the US (1981-1985). The TransState group is perhaps the most explicit here. They do not shy away from using the term “golden age” to characterize the prime of the territorial-rule of law-interventionist-state. Notions like a golden age of the state or “sociological liberalism” provide what Colin Crouch [1999]) calls a “snapshot” against which subsequent changes can be assessed – i.e. they are benchmarks, or better, high tide marks. The logic of the regulationist argument is not so different from these neo-Weberian positions: the point of transition is differently described but similarly located in time. Such snapshots are useful devices, but they can lead us astray.

In this paper, we want to try a thought experiment. We muddy the waters by bringing in a perspective from outside either political sociology or state theory which works with a quite different time scale, namely the so-called “Cambridge Historical School,” associated with the work of Quentin Skinner, John Pocock, John Dunn, and Raymond Geuss. Here our first point above is illustrated in spades: this “school” is enormously influential in the history of ideas, but one would have to look long and hard before seeing much reference to it in the theory or sociology of the state. And yet, this is an influential strand of academic work no less concerned with tracing the formation and nature of the modern state. It is also one which can be viewed as continuing the historical analysis of the emergence of the state associated with the old German tradition of *Staatslehre*; a tradition which, via Weber,

has had an enormous impact on the sociology/theory of the state.<sup>2</sup> But to introduce this foreign body into current debates – whether neo-Marxist or neo-Weberian – casts the terms of the debate into doubt, perhaps throws the latter into total confusion.

While it would be pointless to deny the basic premise of much recent sociological analysis that something significant has happened in this latter period and we are still living with the consequences just as we are searching for a conceptual language to characterize it, the introduction of the arguments of these historians of political ideas starkly reminds us just how compressed the timeframe of much current analysis is. The emergence of “the state” has been such a long-term and gradual process that to speak of its transformation in a period of some thirty or so years, or to assert or imply some form of epochal break looks like loose talk:

only very gradually, in the late Sixteenth and early Seventeenth centuries did the word “state” (...) come to acquire a specifically political meaning, as referring to a distinct entity entrusted with exercising civil authority through a separate structure of offices and powers. Before that time there was no single identifiable word that was used to designate the entity which we now commonly refer to as “the state” in a recognisable political sense [Geuss 2001, 48]

If the belief among social scientists is that this concern with the concept of the state is largely of scholarly interest and does not impact upon concern with its current transformation, then, as we hope to show, this belief is simply wrong. If we take these arguments seriously, then we must start to recast the terms of the sociological analysis of the state.

The plan of the paper is as follows. We first summarize the relevant arguments of the Cambridge School (§1). We then take Gianfranco Poggi’s account of the *constitutional state* as an ideal type characterization of the state in a certain developed form (§2). We then draw out the implications for the kinds of recent analysis briefly sketched above (§3). Finally, we make one suggestion as to how that debate can be conceptually recast in the light of the historically less compressed picture that emerges when we bring the arguments of the historical school together with Poggi’s Weberian account, namely we seek to revive the notion of “regime” as it was used by Raymond Aron (§4).

It should be clear already that we are not arguing from any neutral position: our analysis is firmly located within the Weberian strand.

<sup>2</sup> The affinity between the Cambridge School and Weber is made quite explicit in Raymond Geuss’s work. See Geuss [2001]. For a recent discussion of the tradition of *Staatslehre*, see Loughlin [2009].

## 1. The Idea of the State and the Problem of Anachronism

Clearly, the idea of the state, as well as the existence of actual states, is a historical phenomenon. There have been times when no states or discourses of state existed [see, for example, Crone 1986]. However, so attuned have we become to the language and institutions of state that we sometimes find it difficult to avoid the tendency to use the term rather too flexibly; to extend its meaning backwards, for instance, way beyond that which it was originally deployed to designate. At one level this is not necessarily a huge problem; because of the basic “looseness of the historical fit” between words and things, we can always expect to encounter a certain lack of clarity regarding “both the ‘proper’ [historically accurate] meaning of terms like ‘state’ (...) and the reality of the institution it purports to designate” [Geuss 2001, 48]. However, such a tendency can become a serious problem, as when, for instance, it leads to a paralysing anachronism. After all, one of the most important contributions made by the history of political thought is its capacity to make us reconsider some of our most taken for granted assumptions concerning the meanings inherent in the political discourses we routinely deploy. Applying insights from the history of political thought enables us to see some of the anachronisms pervading contemporary debates about the transformation and even transcendence of the state.

Quentin Skinner’s “Meaning and understanding in the history of ideas” [Skinner 1969] came, as John Pocock [2009, 128] has noted in his review of Skinner’s *oeuvre*, to be “the manifesto for an emerging method of interpreting the history of political thought.” Skinner sought to disentangle philosophy and history, and to counter the tendency to read historical texts “as attempts to formulate bodies of theory whose content had been determined in advance by extrahistorical understandings of what ‘political theory’ and ‘history’ should be and were” [Pocock 2009, 128]. Pocock continues:

This confusion led to errors of anachronism (the attribution to a past author of concepts that could not have been available to him) and prolepsis (treating him as anticipating the formation of arguments in whose subsequent formation the role of his text, if any, had yet to be historically demonstrated) (...) Skinner contended that the publication of a text and the utterance of its argument must be treated as an act performed in history, and specifically, in the context of some ongoing discourse [*ibidem*, 128-129].

What Skinner and like-minded historians such as Pocock were doing, in effect, was “insisting that a certain branch of the study of politics be understood as a history of activity, and be conducted within the discipline of history” [*ibidem*, 129].

The title of Skinner's two volume *The Foundations of Modern Political Thought* (comprising *The Renaissance* and *The Age of Reformation*), however implies a historical process in which "political thought has become 'modern,' and the 'foundations' of this development in some way laid." Pocock goes on to argue that "since the central contention as regards method is still that we must seek to understand what authors 'were doing,' we must establish limits on the extent to which these authors were engaged in a process of becoming modern and to which becoming modern should be regarded as an outcome of the process." That said, it is "nevertheless the case that *The Age of Reformation* ends with a generalization that political thought became 'modern' in large part through a process by which 'the state' came to be seen as an impersonal structure [of rule]" [*ibidem*, 130].

*The Age of Reformation*, in contrast, was primarily "concerned with religious division and the increasing problem of resistance to authority in the name of religious truth." On Pocock's reading, the "state" for Skinner is to a large extent a "consequence of" and, we might add, an answer to this problem. This would in part account for the centrality of Hobbes not least because he was 'the first to attack the 'republican' view of politics and liberty on behalf of another view of the same concepts" [*ibidem*, 132]; and to do so as part and parcel of an intervention in the conflicts of his time. This intervention was aimed at undermining what Hobbes saw as the dangerous and deadly claims put forward by radical and parliamentary writers in the course of the English Civil War, which was for him in significant measure a religious war, and to do so in the name of peace.

For Skinner, it is therefore only in Europe, in the late Sixteenth and early Seventeenth centuries, and in the context of enduring religious strife, that the state becomes established as an "independent, free-standing entity, along three dimensions: first in the dimension of historical reality, second, conceptually, and third, morally." It was in this period that "there begins to emerge in Western Europe entities that come to have some of the structural properties that Max Weber describes as characteristics of the modern state" [Geuss 2001, 49]. For instance, the distinction between an office and the person holding that office (*Amt und Person*) "becomes sharper and begins to harden as there arises a separate, highly structured domain of offices, and associated with those offices a greatly accumulated set of powers, resources, instruments which were not really under the effective personal control of those who happened to occupy the offices at any given time" [*ibidem*, 49-50]. At the same time, the term "state" comes to designate this abstractly defined set of offices and associated powers. Finally, along the third of Geuss's dimensions (the moral), "'the state' comes to be seen as an entity that can claim a distinct, overriding civil authority in its own right" [*ibidem*, 50]. As Leslie Green [1988, 19] puts it, the authority of the state is both binding and

content-independent: it forms a premise for the subject's action without that subject considering the merits of what it requires [see du Gay 2005]. Thus, on the one hand, the "authority of the state cannot be seen as the authority of the people who constitute the subjects of the state, either individually or collectively" [Geuss 2001, 50]. The state cannot therefore be seen as the powers of its citizens under another guise, as republican authors would argue. Rather, the emergence of the state indicates a situation in which an alternative view predominates; one where the ends of civil or political association make it indispensable to establish a single and supreme sovereign authority whose power remains distinct not merely from the people over whom it is exercised, but also from whichever office-holders may be said to have the right to wield its power at any particular time [Skinner 1989, 112]. In this direction, the invention of the concept of the state is part of a strategy for opposing the doctrine of popular sovereignty. However, and on the other hand, it also sets its face against the idea that the authority of the civil power is simply the personal authority of the holder of an office of state, such as the monarch. The legitimacy or illegitimacy of the state "can and must therefore be discussed in abstraction from the will of the people and from the personal and moral characteristics of the persons who exercise state-power" [Geuss 2001, 50].

Skinner's historical account suggests that the idea that the supreme authority within a body politic should be identified as the authority of the state

was originally the outcome of one particular theory of politics, a theory at once absolutist and secular-minded in its ideological allegiances. That theory was in turn the product of the earliest major counter-revolutionary movement within modern European history, the movement of reaction against the ideologies of popular sovereignty developed in the course of the French religious wars, and, subsequently, in the English Revolution of the seventeenth century [Skinner 1989, 121-122].

Thus, the idea of the modern state was developed "slowly, and with some difficulty" in order "to facilitate the construction of a single, integrated system of authoritative political and legal decision-making over a given territory and subject-population" and to offset the continuing subversive or anarchistic "potential of the long-standing viewpoint" that derived political authority, in one way or another, "from the people over whom it was exercised" [Dunn 2000, 80]. At the heart of this novel idea was the concept of "sovereignty," "of ultimate worldly authority over people and territory, and its location within specific institutions and decisions: the right to be obeyed without challenge" [*ibidem*]. "The right within which that entity inhered," as John Dunn has argued, was no longer envisaged as a particular human being:

but as a continuing structure of government, decision-making, legal interpretation and enforcement, which was sharply distinct from its current human incumbents. Such a structure could take in or lose subjects or territory without altering its identity.

It could change its system of rule or legal adjudication almost beyond recognition, and yet remain intractably itself [*ibidem*, 80-81].

As Skinner's historical analysis indicates, and as Dunn's comments suggest, it is therefore important to exercise a degree of caution when exploring changes in the identity of the state, or indeed, when demanding them, for it is possible, in the first case, to mistake something that a government does for something that a state is. This category mistake is most notable, as we shall argue later, in work in political sociology and state theory that fails adequately to differentiate government and regime, on the one hand, and the idea of the state in and of itself, on the other [see also Hunter 2005 and Loughlin 2009]. In the second case, in trying to moralise the state in some way, to "soften" or even "transcend" its "authoritarian" historical nature, on the one hand, or to make it express some higher principle (e.g., an all pervading spirit of community), on the other, it is possible to turn the state into something other than what it is: in other words, to stop it functioning as a state.

Regarding this latter tendency, as Skinner [1989, 122] points out, it is not surprising to find that both the ideology of state power and the new terminology deployed to express it provoked "a series of doubts and criticisms" that have never entirely disappeared. Skinner identifies two distinctive strands of critique that registered the state as an ideological disappointment. The first – conservative – strand wished to "repudiate any suggestion that the aim of public authority should be purely civil or political in character" – that social peace and physical security were adequate or noble enough goals in and of themselves. Here the state was deemed to require a higher moral purpose to justify its existence. The second – radical – strand of critique derived from those for whom the ideal of popular sovereignty continued to provide something like *the* benchmark of virtuous government, against which the inadequacies of the state could be registered. Here, "loyalty to the classical ideal of the self-governing republic" was the mainspring of ideological opposition to the idea of the state.

Skinner suggests that in its capacity to guarantee social peace, the state had no need for, indeed had to live without, the need for, "higher" religious or philosophical justifications. The state's indifference to the transcendent beliefs of the rival communities over which it ruled was a crucial element in its elevation to sovereignty in the political arena, which in turn was the precondition for social pacification. However, indifference to moral identities and transcendent truth claims – to the moral perfection of its citizens, or the protection of "natural" rights and freedoms – made the state appear suspect and morally ignoble, at least in the eyes of those groups or estates whose religious or ideological affiliations kept them committed to these ideals.



This is particularly the case, as Hobbes indicated long ago, when long periods of peace and stability within a state lead to forgetfulness regarding the sheer fragility and misery of human existence that follows from the dissolution of the state's power to protect. After all, "statelessness means rightlessness. Stateless people, in practice have no rights" [Holmes 1994, 605] while inhabitants of poor or weak states tend to have few or laxly enforced rights.<sup>3</sup> Without centralized and bureaucratic state capacities, there is no possibility of forging "a single and impartial legal system – the rule of law – on the population of a large nation. Without a well-organized political and legal system, exclusive loyalties and passions are difficult to control" [*ibidem*]. Under stable conditions, as in much of the contemporary west, groups that play an important role in seeking to limit the autonomy of the state, and/or to harness its powers to "higher" purposes – dissenting academics, civil libertarians, for instance – can be led to declare the moral bankruptcy of the state by holding it accountable to moral standards precluded by the manner of its historical emergence [Hunter 2005]. Because the state is imperfect, indeed, in being born it had to renounce perfection, as Weber [1919] famously argued in *The Profession and Vocation of Politics*, both its own and that of those it sought to rule, making do instead with its capacity to enforce peace and their capacity to act peaceably, it is foolhardy to insist on benchmarking the state against ideals that are alien to its constitution. In seeking to make the state conform to certain expressivist ideals – whether liberal or communitarian – critics of the state can come dangerously close to endorsing its re-theologization, or its dissolution. Michael Ignatieff [2001, 35] makes precisely this point when he argues that individual rights cannot and should not function as transcendental limits on state action because they are themselves the product of action by sovereign states. They are historical entitlements to legal action, contingent upon the state's establishment of security whose perimeters it polices. Under conditions of peace, the sovereign state, in its guise as security state, can almost seem to disappear, and the state becomes the addressee of a wide range of additional demands and expectations. As soon as the security envelope is threatened, however, whether internally (incitement to insurrection, domestic terrorism, treason and so forth) or externally (foreign terrorism, invasion, subversion) then civil liberties and rights are retracted to the extent that is necessary to protect the space within which they are unfolded [Hunter 2005]. The nature of its historical emergence and constitution means that the state – whether early modern or contemporary liberal – is and must be a security state. It should therefore come as no surprise, indeed, should be taken as evidence of its "stateness," that contemporary liberal states default to their

<sup>3</sup> For a fuller discussion, see du Gay [2005].

‘foundational’ security setting when under threat. It would rather be a worry if they did not. This indeed would be evidence of their transcendence or “hollowing out.”

What still seems so hateful to those seeking to moralise the state, and what conjoins them with earlier civic republican critics, is their distrust of the independence or autonomy of the state as an impersonal structure of rule: and, in particular, that the state cannot hope to be able to undertake its core functions of pacification and security unless it can decide for itself, “without internal impediment” what can be publicly expressed, or just who can own what, and why. It is the state, and the state alone, that can and must “judge the degree of jeopardy in every instance” [Dunn 2002, 84]. The state carries and must carry “the authority of its own subjects’ will and choice to make that judgement on their behalf and to act, decisively, upon it. Indeed, each subject has a right against every other that it should do just this” [*ibidem*, 87-88]. It is in this sense, as we indicated earlier, that the authority of the state is both “binding and content-independent” [Green 1988, 19].

This is a diabolic state of affairs for those – whether cosmopolitan, or radical democratic in orientation – for whom the state is already an object of considerable unease. For those wedded to the ideal of popular sovereignty, the key to preventing the state from becoming a fearsome, alien force, is to vest control over it in the hands of the populace as a whole. The problem here, like that faced by rights based anti-statists, is clear and obvious. It attempts to hold the state accountable to values and standards precluded by the very manner of its historical emergence. As we have seen, the state was instituted precisely to neutralise the negative effects derived from the practical application of doctrines of popular sovereignty in the early modern period. After all, there are many cases in which it can be desirable to thwart the popular will, and prevent it from expressing itself in the form of direct action: pogroms and lynchings come to mind.<sup>4</sup> As Geuss [2001, 129] has argued in this respect:

Part of the whole point of having such a free-standing coercive structure (the state) is that it be independent; local popularly controlled police forces, after all, usually join in the pogrom or least stand aside and remain “neutral.” As long as the basic fact remains, there is *always* going to be a gap between the political power of the state and the effective powers of the populace, and, on this argument, that is a good thing.

He further notes that:

While some of the institutions of representative democracy may be valuable in a variety of ways, and some of the more extreme forms of democratic rhetoric (self-rule,

<sup>4</sup> Compare Michael Mann’s observation that “settler democracies” were particularly murderous: “settlers controlled the frontier zone, but their political institutions had not been securely institutionalized and did not have a monopoly on the military power that most modern states possess” [Mann 2005, 110].

positive freedom and the General Will, etc.) may serve as a useful social-psychological emollient, reconciling people to their *de facto* subjugation to a structure which has much more power than they do and does not always have their individual best interests at heart, the hope that state-power could ever really be ‘our’ power or fully under collective control is completely misplaced.

One of the main reasons for having a police force, for example, that is independent of local control is that they can “face down the local lynch mob” [*ibidem*], and this, Geuss observes, is something that authoritarian and non-democratic systems of rule can do no less well than democracies. The very rationale of the state as an “independent coercive apparatus,” one beyond the direct control of its subjects, means that it will always be antithetical to the moralising ideal of popular sovereignty, and from an *étatiste* point of view, this is a major point in its favour.

In the same spirit, the state as an independent coercive apparatus cannot be assumed to be in crisis, decline, or significant transformation simply because it no longer appears to conform to a “golden age” of political association. There may be, we put no finer point on it than this, a similar sort of political expressivism at work in these sociological representations as we detected in the radical democratic critiques of the state outlined above. Indeed, it is not difficult to chart the unease felt in sociological characterizations of contemporary transformations in the state precisely because the latter are deemed to undermine what are considered to be highly cherished political principles – of representative democracy, of welfarism, or of Keynesian interventionism, for instance. To say this is not to denigrate the latter, but simply to register that their recent and ongoing political problematization is not the same thing as a transformation in the identity of the state *per se*.

One possibility, which we shall discuss later, is that in much contemporary, often epochally framed, theorising, there resides a conceptual confusion between *state* and *regime*. Before that, however, we want to explore the possibility of identifying, for current purposes at least, something akin to a base-line model that moves State  $T_1$  back about a century.

## 2. The Constitutional State

If we take the point that the state is a long-term historical project, one option open to us is to identify an earlier  $T_1$  in which what we have suggested above are its core features – those centred upon monopolization of legitimate violence and security – are manifest in a “mature” form. This is, we think, what Gianfranco Poggi was seeking to do in a significant essay first published in 1977, “The constitutional state

of the Nineteenth century: an elementary conceptual portrait.”<sup>5</sup> This piece merits revisiting as it provides a longer-term sociological analysis of shifts in the nature and workings of the state and a wider historical perspective than does more recent state theory. It provides another snapshot: that of mature a state that has not yet taken on the functions that it has more recently sought to shed.

The argument of this section will be that if we are talking about a shift in *state form* (as opposed to *regime type*) Poggi’s account provides a more realistic timeframe; one which provides a necessary link between the concerns of the historical school and the more contemporary concerns of political sociology and state theory. The issue that we have been discussing here is little or no different from that which Poggi [1977, 311] identifies at the start of his paper: “it is often argued or assumed that what the state today *is*, or *does* in relation to the wider society, represents a move away from what it *was* and *did* previously.” Given the accusation of “methodological nationalism” that is now commonly levelled against sociology [e.g. Beck and Schnaider 2006], it is interesting to note that he defined the state not in its own terms, but as the *basic unit* within a system of states; as that body which claims sovereignty within its own territory but which, in a dynamic tension with this, must exist “in the presence of others” and thus “came up against the unavoidable and irksome factual limits to its sovereignty” [Poggi 1977, 313]. While states contested boundaries externally, by the Nineteenth century, so Poggi argues, they had, as early modern advocates of sovereignty demanded they must, established “unity” within, that is to say “no individual, no corporate body can engage in activities of rule except in the capacity of an organ, agent, or delegate of the state.”<sup>6</sup> Thus, “mature modern states are intrinsically ‘monistic’” – i.e. “conceived as a unitary system of power, activated from the centre” [*ibidem*, 315]s.

Not only is the state’s ‘unifying drive’ associated with the project of cultural homogenization [see Gellner 1983], with standardization and making society “civil” and thus “legible” [see J.C. Scott 1998] but, moreover, “sophisticated legal mechanisms of delegation, appointment, agency, accountability are employed to reconnect with the unitary state’s own increasingly ramified and differentiated administrative organs, and to make them responsive to stimuli originating from the political centre” [Poggi 1977, 316]. The point here is that the state not only has to sponsor (cultural, administrative, etc.) unity within its territory – *à la* Ernest Gellner or James C. Scott – but it also has to control its own tendencies for internal differentiation that accom-

<sup>5</sup> A reworked version appeared as Chapter V in Poggi [1978].

<sup>6</sup> Compare Skinner’s similar formulation, but one he applies to a much earlier stage of state formation, in which political authority “brooks no rivals as a source of coercive power within its own *civitas* or *republica*” [Skinner 1989, 107].

pany the multiplication of its tasks and its increasing reach. Such tendencies emerge, for example, between distinct organizations within the state's apparatus. This point has a contemporary relevance as does the second tension that Poggi identifies: given that capitalism is *de facto* a relation of (highly unequal) social power, in legally protecting property rights the state "acts as a guarantor of power relations which do not originate from it and which it does not control" [*ibidem*, 317].

Of more obvious relevance to the current debates around governance and state transformation with which we started and with which we shall conclude, when discussing what the state does, Poggi refers back to the German state theorist Hermann Heller for whom the state finds its historical necessity in "that some status vivendi be achieved among the contrasting interests operating in a given section of the globe" [Heller quoted in Poggi 1977, 318]. This too implies that the modern state is *necessarily* limited in its scope; that it "does not claim or attempt to encompass the totality of social existence." While it "lays down frameworks for the pursuit by citizens of the most diverse private interests" it "does not itself undertake, sponsor, control, activities on behalf of those interests" [*ibidem*]. The constitutional state is thus both monistic *and* limited.

But perhaps the single most significant characteristic of the constitutional state, on Poggi's account, as for the state in Skinner's and Dunn's terms, is the centrality of law. Not only is it via the rule of law (*Rechtsstatlichkeit*) – "committing the state to its own law" [*ibidem*, 324] – that the state depersonalizes power, makes public its deliberations, and legitimizes its activities, but also the law is the single medium via which it regulates and co-ordinates its own activities, or, as Poggi [1990, 29] puts it elsewhere:

It is by means of law that the state articulates its own organization into organs, agencies, authorities; confers upon each different competences, facilities, faculties; establishes controls over resultant activities; attributes to individuals the capacities, entitlements and obligations of citizenship; extracts from economic processes the resources with which to finance its own activities, and so on (...) The state thus "speaks the law."

The very idea of "unitary state" has been heavily criticized by various constructivist analysts, as a (potent) myth: "the state possessed neither the unity nor the functionality ascribed to it; it was a 'mythical abstraction' which assumed a particular place within the field of government" [Rose and Miller 1992, 174-175]. There are a number of problems with this move, but we shall focus on just a couple. First, as Poggi [1977, 311] himself acknowledges, unity is the "somewhat fictive" *legal form* of the constitutional state, but it is a fiction that has also to be continually reproduced and maintained even as the state ramifies and diversifies. Were this not to be the case, it is difficult to see how a state could remain operative *as a state*. The achievements

of sovereign “stateness” – social pacification, individual rights, religious toleration, and so forth – flow from the assumption of and performance of independence from society and ultimate authority over it. To take an academic insight into the state’s reliance on some other – extra statist – structure of concern in its own self-constitution, and then try and make the operations of the state transparently accord with this insight, is a recipe for confusion, if not worse. For example, were the state to deploy its procedures in the company of an analysis of their roots in some extra state discourses and techniques, it would not be exercising, but rather dismantling its authority; in short, it would no longer be acting like a state, but rather engaging in some sort of academic enterprise [Fish 1994]. Rather than producing the authority it retroactively invokes, the state would be in the business of continually calling into question the very basis of its authority, and hence producing uncertainty, one of the very things it was instituted to avoid. Indeed, to actively attempt to de-autonomize the state, under the aegis of its status as a social construct of one form or another, can, as we suggested above, be effectively to assist in re-theologizing it [Hunter 1998]. One needs only point to the rise of democratic and nationalist movements in the Nineteenth century armed with not entirely dissimilar de-autonomizing logics, to indicate the dangers such re-theologization can pose to social pacification, the rule of law, and the practices of religious toleration.

What we finally wish to note about Poggi’s account is the manner in which he stresses the contingent and fragile nature of the state’s “sovereignty,” and thus its capacity to pursue its instituted purposes. He points in particular to some of the limitations placed upon the sovereignty of the constitutional state by three factors: *i*) its own tendencies to diversification, differentiation and fracturing; *ii*) the co-presence of a power source *within* its territory over which has only limited control, namely capitalism; *iii*) the presence of other states *beyond* its territory. It is, in other words, the relative precariousness of the constitutional state, and not simply its manifold strengths, towards which Poggi draws our attention. Even the unitary state has to manage complex materials over which it has limited powers and which are presented to it in forms not of its own choosing. How it does so, is extremely important. There are no guarantees.

What difference does it make to our understanding of recent changes in the nature of the state if we take three rather than two points in time: the State  $T_1$  (Poggi’s unitary state), the State  $T_2$  (TRUDI/sociological liberalism/the Keynesian state), and State  $T_3$  (network governance, horizontal co-ordination, or however we choose to label it)? The main answer that we seek to develop in the following sections concerns the ways in which it both relativizes the position of State  $T_2$  which no longer looks like *the* norm that it occasionally does both in neo-Marxist regulation theory and in

the neo-Weberianism of the TransState position, and highlights some of the category errors that persist as a result of contemporary attempts to theorize changes in regime type as if they were in fact indicative of fundamental changes in the very form of the modern state.

### 3. Regime

In the previous sections, we portrayed the state as a relatively disembedded, historically stable and limited set of institutional devices. Arguably, the distinction between non-state societies (organized along biological lines of kinship) and state societies is more profound than any distinction between *types* of state society [see Crone 1986]. To speak of changes over a period of decades in styles of political steering as changes in the nature or the form of *the state* thus seems inappropriate. We need another term, another level of conceptual analysis, to capture these more ephemeral shifts.

The historical story related by Skinner and like-minded political historians is one in which the concept of “the state” becomes detached not only from the person of the ruler but also from the “regime” that happens to be in place at any given moment of time [see Skinner 1989, 101]. This crystallizing out of the notion of the state as a socially disembedded instrument of rule raises the questions: i) How is the state to be linked back into broader social relations without losing sight of its separateness? ii) How can we depict the shorter – roughly thirty year – shifts that occupy current debate in social science if these are not to be characterized in terms of the changing nature of the *state*? Joel Migdal’s “state in society” approach is intended to address the first question [Migdal 2001], but it does so by so closely linking state to society that the former’s autonomy is severely weakened. Given that the arguments of the Cambridge School on which we have drawn – not to mention those of Mann, Poggi, Tilly, etc. – have sought to establish the state’s autonomy; its disembedded character, Migdal’s route is not the one we shall follow in this concluding section. Rather, in order to address the above questions we shall try to link two related concepts: Weber’s emphasis upon *struggle*, derived from Nietzsche, and the notion of *regime* as used by Raymond Aron.

For Weber, the state is not merely an *instrument of rule*; it is also a *site of struggle*. Except in the most totalitarian of circumstances, there is not only state there is also politics, the contestation between social groups for power; for control over the instruments of state:

[A]part from any substantive goals a political actor might pursue, the goal of all modern politics will be to gain at least partial control over the state: to become in Weber's words its "master" (...) "Politics," then, becomes an unceasing struggle of parties and leaders of parties to overcome the distinctive characteristic of the organized business of politics: the separation of the agent from the means of power [Breiner 2004, 297].

As Peter Breiner argues here, the notions of eternal struggle (*ewiger Kampf*) and selection (*Auslese*) are central to Weber's conception of politics. However, not only are these notions stripped of their Darwinian overtones (this is "unnatural selection," as Breiner puts it), but this struggle is not generally wild, it is institutionally regulated and channelled. Politics cannot normally be reduced to the brute struggle for power since that struggle is itself, to varying degrees and in a variety of ways, rule bound. Unlike the state, here there is a potentially wide variety of institutional arrangements available to direct, channel and "manage" the struggle between social groups for access to the state as a means of exercising centralized power. These groups in turn can pursue a variety of "substantive goals." In other words, whereas the state is disembedded, the particular institutional arrangement via which the struggle for access to the power that the state lends social actors is conducted is deeply socially – and culturally – rooted. It is these institutional arrangements, the coalitions between social groups and their associated beliefs and patterns of behaviour that we shall label "regime."

This usage is derived from Raymond Aron.<sup>7</sup> The concept of "regime" has of course an ancient, indeed classical, pedigree, but in Aron's sense it can be dated back to 1748 and the publication of Montesquieu's *The Spirit of the Law*. Aron credits Montesquieu with the insight that there is no single best regime, merely the best regime for particular societal types. In the language of contemporary social science, the regime is embedded in social relations; it both reflects and orders broader social life. While the state does not very closely reflect, but has to accommodate its workings to, wider social relations – e.g. the nature of the class structure, the relative power of social groups, etc. – the regime most certainly does; as the one changes, so the other.

Since modern political regimes, of all sorts, claim, and draw their legitimacy from, popular legitimacy, contemporary regimes are distinguished, for Aron [1968, 28], by the various ways in which "the political or juridical procedures by which this legitimate authority is transmitted from the abstract people to real men." In constitutional pluralist regimes, this transmission is via peaceful competition between parties: "*the peaceful rivalry for the existence of power exists constitutionally*" allowing for a "*legal exercise of power,*" which, in contrast to the "*seizure of power,*" is temporary

<sup>7</sup> For a fuller discussion of Aron on regimes, see Scott, A. [forthcoming 2011].



[*ibidem*, 41, original emphasis]. This, plus the institutional constraints placed upon parties once in power, lessens the danger of democracies crossing “the threshold of violence” [*ibidem*, 43]. Those who have lost the struggle for power are assured that those who possess it cannot destroy them and that there may be further opportunities for them in the future. They are thus more likely to accept their, probably temporary, defeat. Constitutional pluralism then, in Aron’s highly affirmative analysis, is a regime which has tamed the potentially violent struggle for power into peaceful party rivalry and electoral competition.

To this already affirmative picture is added a normative or cultural dimension. These institutional arrangements are merely the structure or “nature” of constitutional regimes. Closely following Montesquieu, Aron argues that these arrangements can work only insofar as they are animated by *principles* and have come to be rooted in the *mores* of the actors (Montesquieu’s *spirit* of the law). In the case of constitutional pluralist regimes, these principles consist, according to Aron, of respect for the law and a sense of compromise.

The notion of regime complements and supplements Poggi’s account of the unitary state. Whereas for Poggi the limit to *the state* is an externality (the existence of a source of power outside it namely, private, particularly wealth generating, property), *the regime* is the site in which multiple externalities are reincorporated into the state’s sphere of activities. If the state “speaks the law” [Poggi 1990, 29], then it is the regime that is charged with the task of speaking politics. Multi-party and single-party regimes are the two contrasting (ideal type) ways in which the struggles – “the tumult of passions and competing interests” [Aron 1968, 63] – that inevitably accompany social pluralism are organized. Regimes are shaped by the “problems” and “tasks” that they have to address. Their chief task is to preserve “national unity” in the face of the inevitable competition between social groups for the distribution not only of power, but also of national wealth. What is striking in Aron’s analysis of the regime is that beyond his clear preference for pluralism lies a sober, occasionally sardonic, recognition of the severe limits on what a regime, of any kind, can do. A regime cannot be much “better” than the social conditions which it seeks to govern, but which it also necessarily reflects: “when a country is divided over the best regime or over the line to be followed in any given situation, it is often better to accept a state of semi-paralysis” [*ibidem*, 153]. Similarly, he is sceptical about the effectiveness of constitutional reform or new institutional design in addressing problems of declining regimes. There is, in Aron, plenty of iced water to be found to throw over currently fashionable notions of “good governance.”

The appeal to Aron, a liberal-conservative thinker who has long been a marginal figure in political sociology and whose reputation has largely been kept alive by

conservative political theorists, may seem an odd move. It will seem even odder when we now come to compare Aron's notion of regime with recent arguments from a position considerably to his left: those Colin Crouch [2007; Crouch 2008] has recently advanced concerning the end of "privatized Keynesianism." Clearly, the context of Aron's analysis is the Cold War and he is searching for categorical ways of identifying the *essential* differences between pluralist multi-party and totalitarian monopolistic regimes. But this need not detain, nor deter, us. What is important for our argument is that Aron makes the decisive move away from political sociology towards what Crouch [1999, 313] has called a *sociology of politics*: an approach to political phenomena that links the nature of regimes to broader shifts in the social structure, and specifically to the fate and relative power of social groups.

What unites these unlikely bedfellows is a shared Weberian view of politics as the site of struggle between social groups in which the regime is conceived of as an informal set of arrangements – a coalition between social forces – embodying a set of more-or-less coherent ideas and a common "spirit." Writing at the high tide mark of what Crouch calls "sociological liberalism," Aron thought that the regime organized around party competition was the most suitable for "industrial society" and foresaw no *necessary* limitation or time limit on its success. It is this – rather than the more obvious political differences – that distinguishes the arguments of Aron and Crouch. Nevertheless, their common use of the notion of regime illustrates the move that we believe is necessary if we are to overcome the conceptual confusions which issue from eliding the concept of state and regime. We shall conclude with the more contemporary analysis offered by Crouch.

Crouch relabels the regime that has been in place since the 1970s – normally characterized as "neo-liberal" – "privatized Keynesianism."<sup>8</sup> The change of label is more than a semantic move. Whereas "neo-liberalism" generally implies either the absolute decline of the state or, in a more sophisticated version, a shift in its capacities, "privatized Keynesianism" simply describes a state-led shift in the burden of credit from the public purse to the private pocket. Whereas the notion of neo-liberalism emphasises the break between Keynesianism and "post-Keynesianism" [e.g. Brenner 2004], Crouch [2007, 2] stresses both discontinuities (in the distribution of the burden of debt) and continuities of aim: "the need among capitalists themselves for stable mass consumption in domestic markets, as well as workers' political demands for stable lives, remained." In line with Aron's notion of regime (the term also used by Crouch to describe these arrangements), both classical and privatized Keynesianism represent temporary alliances in which he argues (with an ironic nod to Marx) the

<sup>8</sup> Crouch, however, also continues to use the terms neo-liberal and neo-liberalism.

interests of one class become temporally the general interest: “the Keynesian model did represent a temporary coincidence between the interests of the industrial working class in the global north-west and a general interest of the politico-economic system” [*ibidem*, 1]. In contrast, privatized Keynesianism represents a coincidence of interests between financial capital and – in face of the shrinking of the working class [Crouch 2004] – the more amorphous interests of consumers and homeowners. Whereas Aron was working with what now appears to be a very static distinction between constitutional pluralism and totalitarianism, Crouch is working with a more dynamic conception in which regime life, and the regime cycle, is reduced to some thirty years: “Both Keynesianism and its privatised mutant lasted 30 years. As regimes in a rapidly changing world go, that is probably as good as it can get” [Crouch 2007, 3].

#### 4. Conclusion

This paper has sought to address what seems to us a conceptual confusion in which what a state *is* is conflated with what a government *does*;<sup>9</sup> what a state’s necessary and constitutive tasks are, as a *state*, and what additional ones it may be expected to take on or shed as a result of *regime* changes. We have argued that those tasks associated with maintaining sovereignty and, internal and external, security are historically constitutive of the state, and thus may be considered “essential” to it, others, such as creating a national welfare system, or securing a representative democracy, are add-ons. In taking on those additional tasks, a state is no more, and in casting them off no less, *state*. By taking the so-called Keynesian state as its base-line model, both neo-Marxist state theory and some broadly Weberian approaches (such as that of the Bremen group) have incorporated non-essential aspects of the state’s activities into its identity or definition. Thus, the shedding or out-sourcing of those activities is read as evidence of an absolute decline or a change in the nature of the state itself. By taking Poggi’s characterization of the Nineteenth century constitutional state as an alternative ideal type or snapshot of what a fully mature (nation) state is, we have returned to a more stripped down definition of the state and a shorter list of its functions. The arguments of the Cambridge School should be taken to support an even more parsimonious definition in which even constitutionalism is only one historical “option.” To these arguments we have added the claim that we need to disaggregate

<sup>9</sup> This (i.e. the immense plurality of ends) is, of course, the consideration that lead Weber to define the state not in terms of ends or functions at all, but of means (the monopoly over legitimate violence). But as these means entail a limited set of ends (e.g. security), we have not followed Weber all the way down that road.

the state into instruments (“means” in Weber’s sense) and regimes. A change in the latter does not entail a transformation of the former. States outlive regimes. While the notion of changes of the state not in terms of its *form* but of its *modality* implicitly or explicitly acknowledges this, this shift of emphasis alone remains too weak to fully capture the longer-term historical continuities in the state as a historically particular form of political association.

The state/regime distinction encourages us to interpret recent and contemporary developments differently. With respect to the former, rather than read the policy shifts of the last thirty years or so as a transformation of “the state,” we have interpreted them as adjustments to changes in the environment within which states have had to operate, and in particular to the dominant regime in the sense of a coalition of social groups and confluence of ideas (even the term “environment” here is somewhat misleading as these shifts have often themselves been state led, or by-products of state action). With respect to the latter, while it is tempting to read the major interventions that states have made in economic life during the current financial crisis as a “return of the state,” our argument would be that such actions would not have been possible had the state ever “been away.” As Crouch and others [e.g. Hibou 2004] have argued, the privatization of some services (or of the public debt in Crouch’s analysis) both suited and, under certain circumstances at least, strengthened states and political elites even while weakening the state’s institutional integrity. When these arrangements were threatened by events, states acted in what appeared, from a historically foreshortened perspective, to be a more “state-like” way: large scale transfers and nationalization. However, firstly, a weakened or “hollowed out” state could not have responded so rapidly, nor in this way, to a crisis; secondly, here again the change of a *mode of operation* should not be read as a change of *ends*. Unless or until the crisis brings about a change in the dominant ideas, as crises sometimes do [see Blyth 2002], these emergency actions will be aimed at shoring up the regime that Crouch has labelled “privatized Keynesianism.” Only if and when that fails, or when the emergency measures intended to rescue privatized Keynesianism proceed so far that the status quo ante cannot be restored, will states have to work via another regime.

By disaggregating the state – via our engagement with the work of the Cambridge School of political thought – into historically constitutive and non-constitutive elements (for which we have used the term “regime”), we can start to distinguish exactly what must change – concerning sovereignty and security – in order for us to speak seriously about the transformation of the state. In this stricter sense, the state may have been changing slowly “behind the backs” of epochal state theory/political sociology insofar as some of its *core* functions have been out-sourced, or “pooled” into international institutions, in a way that does begin to problematize sovereignty.

Only here, and only once we have described these developments in relevant terms (thus not confusing regime with state) and with sufficient detail (to avoid epochalist dramatization) to be certain of their provenance, might we begin to speak of a transformation of an entity which we can legitimately refer to as “the state.”

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## State Transformation or Regime Shift?

### Addressing Some Confusions in the Theory and Sociology of the State

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**Abstract:** Much recent sociological debate about the state, whether neo-Marxist or neo-Weberian, has been concerned with its supposed transformation or its decline in the face of globalization and neo-liberalization. This paper argues that conceptual confusion underlies such claims, and to speak of a *transformation* of the state in short historical runs, of around thirty years, is inappropriate. We offer a narrower understanding of the state in terms of the means it deploys (cf. Weber) and its “core tasks” – i.e. those concerned with internal and external security. In doing so, we also seek to counter aspects of contemporary anti-statism, not least by highlighting their historical genealogies. To make our case, we appeal to the analysis of the state by the so-called “Cambridge School” of historians of political thought (§1). We then take Gianfranco Poggi’s account of the *constitutional state* as an ideal type characterization of the state in a certain developed form (§2) and draw out the implications for recent sociological analysis of the state (§3). Finally, we make one suggestion as to how that debate can be conceptually recast in the light of the historically less compressed picture that emerges when we bring the arguments of the historical school together with Poggi’s Weberian account, namely we seek to revive the notion of “regime” as it was used by Raymond Aron who builds on Weber’s account of politics in terms of eternal struggle and selection (§4). The changes that have been misdesignated as transformations of *the state* are better understood as changes in regimes.

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*Keywords:* anti-statism, Aron, Cambridge School, Poggi, regimes, state transformation.

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