

DEBATE

Was There a Medieval »State«?

This debate takes up the question whether the concept of »state« can be used meaningfully in the context of medieval studies. The opening article by Brent D. Shaw addresses the political organization of the Roman empire, and develops a comprehensive argument why even by high standards it should be regarded as a state. The six comments by Nicola Di Cosmo (Chinese History), Stefano Gasparri and Cristina La Rocca, Hans-Werner Goetz, Régine Le Jan (European Medieval History), John Haldon and Yannis Stouraitis (Byzantine History) draw on their own fields of expertise to provide theoretical and pragmatic views on the possible significance of the concept of state for political entities of Antiquity and the Middle Ages.

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WAS THE ROMAN STATE A STATE?

Brent D. Shaw*

Was the Roman empire the type of formal political unit that we call a »state«, about which one can ask rational questions about its essence and its technical makeup as a state? Or was it a peculiar type of premodern entity about which such questions are inapplicable? At first glance, the question might seem to be a little absurd.¹ To some – myself amongst them – it must seem as patent as breathing air and drinking water that the Roman empire was a state. The term has conventionally been used to describe the Roman polities of both the republic and the empire. In a certain sense, the use of the word is, as Nicolet has noted, »a convenience«.² Even so, we might wish to found as fundamental a historical category as »the state« on something firmer than mere convenience – so it is right at least to ask the question. And if the Roman state was not a state, then what was it? Whatever the possible answers to

* Correspondence details: Prof. em. Dr. Brent D. Shaw, Princeton University, bshaw@princeton.edu

1 Because it is in fact absurd. For but one example of a (failed) attempt to make the case, see Anderson, *Nonmodern state?* – he falls (deeply) into what I call the »emic trap« (see below). He defines the state, a priori, as something modern and then sets a selection of hyper-modern criteria for its existence which almost no early modern state, from the age when the word »state« was created, could have met and which very few contemporary states (from the United States to Iran and Thailand) can satisfy (cf. Reynolds at n124 infra).

2 As noted by Nicolet, *L'Empire romain*, 111: »...il faut d'abord constater que les historiens modernes utilisent très fréquemment le mot État à son propos et même à propos de »Rome République«.« And then adds, confessionally, at n. 2: »Moi le premier, naturellement. Dans certains cas, l'emploi du mot est de simple commodité, pour designer en somme la forme d'organisation politique en usage.« For a larger number of German instances, see Walter, *Begriff des Staates*, 12; for the similar defence of the use of the term by historians of »medieval« Europe as based on »common sense« or »reasonableness«, see Davies, *Medieval state*, 283-284.

this question, the claim that it was a state has been seriously doubted by some and so the objection must be faced. The striking claims issue principally from highly regarded political theorists and eminent historians of the Roman empire. What do they mean when they say, for example, that the government of the Roman republic, with its subject territories and institutions, was not »a state«? Since this anti-Leviathan has raised its fearsome head from time to time and threatens to do so again in the future, its claims and implications must be faced head-on. Heeding the words of E. P. Thompson, we cannot glance at the antagonist in a casual way, seeing it as a weird apparition, a freak of intellectual fashion, which, if we close our eyes, will in time go away. It will not. Certain proponents of this view, especially within the field of German-language scholarship, make frequent appeals to the theoretical ideas of Carl Schmitt – ideas that are gaining much wider purchase in recent years (and for understandable reasons).³ Even where such concepts are not openly declared or, perhaps, are not so consciously known or used, they often lay in the deep background of these claims about the nature of Rome's polity. In Schmitt's influential analysis, the idea, the concept, and the reality of »the state« was an invention of European developments in the late sixteenth century – ideationally in the aftermath of the influential (even if then somewhat aberrant) ideas of Machiavelli, Jean Bodin and Thomas Hobbes.⁴ Schmitt's ideas cannot be easily dismissed, not only because of his thorough legal education and his subsequent eminence as a jurist and political theorist, but also because of his personal identification with the Roman past – as someone who could say of himself: »Ich bin Römer nach Herkunft, Tradition und Recht« (»I am Roman by origin, tradition, and Law«).⁵ There is no purpose here, of course, to laud the man himself, but rather to use his clearly expressed ideas as a firm benchmark against which concepts of »state« and »not-state« as applied to the Roman instance might be tested.⁶ Since his concepts are lucidly argued and apply directly to the »state-ness« of any polity, they provide a more severe test of these claims than do, for example, the latent presence of »political culture« (on which more, presently) as a wedge against the assertion that the Roman polity was a state.

3 As for example, Lundgreen *Staatsdiskurse*, 19, cf. 23 (but fundamentally underlying all of his essay); for an early summation, see Schmitt, *The State*, where his concern is focused, as often, on the relationship between »the state«, *der Staat*, and »law«, *Recht* (on which, see pp. 25-29 below).

4 As, for example, by Demandt, *Staatsformen in der Antike*, 57.

5 Niekisch *Gewagtes Leben*, 242: In direct conversation with Ernst Niekisch, beginning with the words »Meine Welt ist nicht die Ihrige«; cf. Bendersky, *Carl Schmitt: Theorist for the Reich*, 4 (my translation is different).

6 That is to say, Schmitt's explicit adherence to the Nazi state and his blatant anti-Semitism, both well documented: see Bendersky, *The »Crown Jurist« of the Third Reich* (somewhat understanding of »the man«), and Mehring, *In the Belly of the Leviathan* (somewhat bleaker); Schupmann, *Carl Schmitt's State and Constitutional Theory*, 25-34 (a fairly realistic assessment); and, finally, Tuori, *Empire of Law*, 159-160, 164-165: as Tuori shows, there were many other eminent jurists and Romanists who, when faced with the same challenges took a different path and developed different interpretations of the law's significance. It must be said, however, that some of them, like Fritz Pringsheim and Fritz Schulz, had little choice in the matter.

In Schmitt's view – one that is shared by most historians – over the long early modern age western Europe became a world of states, a world that was defined by the existence of this special unit of governance: it was the »age of the state«, *das Zeitalter der Staatlichkeit*.⁷ The state was *the* political unit that governed the important social and political orders of the time. Since it was at the leading edge of the future, it was the modern unit of big governance that was deemed to be the political harbinger of the forthcoming age. In a great sea change in his ideational view of the world, Jean Bodin's »republic« was most emphatically not the *res publica* of a Cicero; his *république* designated a new form of governance.⁸ If he wished to point out the type of bad familial-based governance that belonged in the past, he pointed to the kingdoms of Fes and Morocco: old fashioned, backward, and corrupt.⁹ If thinkers from Aristotle to Augustine had imagined the ideal state to have been formed out of a natural cumulation of households, the reverse was now true. If left on its own, familial power, still a strong and fundamental basis of the social order, was potentially threatening to the new polity. In the modern order of things, on the other hand, the state had the standing, the *status*, of being *the* legitimate and beneficial new power of the age. Hence its novel name. Since »the state« was indeed a recent modern innovation of the time, its modes of governance, administration, and ways of dominating others were accepted as defining the leading edge of the future. It was an objective entity that stood separate from individual power holders in its institutions and that stood over and above the people whom it governed. Such a powerful harbinger of ruling the world that was coming into being had a peculiarly exalted status in the minds of men of the time, and not just Bodin.

The result of the process was that then-contemporary thinking about political power reflected a world configured by a set of similarly structured political units organized into a constellation of mutually competing peer polities, the classic Westphalian state system. It was the context within which French juristic thinking developed the terms *souveraineté* (sovereignty) and *état* (from the Latin *status*, »standing«) to describe a new type of established government having a kind of totalizing control over the peoples within defined borders.¹⁰ The word *status*, originally designating the standing or quality of the ruler himself, only gradually, by the late fifteenth and early sixteenth century, shifted to include the instruments of governance used and the territory controlled by a given ruler. In a further development, »state« came to acquire the meaning of an impersonal thing that existed separately

7 Schmitt, Staat als ein konkreter Begriff = Schmitt, *Verfassungsrechtliche Aufsätze*, 375: »In diesem Zeitalter, das vom 16. bis 20. Jahrhundert reicht, ist der Staat der alles beherrschende Ordnungsbegriff der politischen Einheit.«

8 See Skinner, *The State*, 119.

9 See Bodin, *Les six livres* 1, chs. 2-6 (on the family and the state).

10 In Schmitt's view, the king of France was head of the first European state of this kind: France was the prototype of other states of this type and Jean Bodin one of its earliest theorists.

from the managers of governmental power and that existed separately from the bulk of the population; but this concept of »state« only emerged in some seventeenth-century thinkers.¹¹ In creating the new meaning, however, they were reacting to »facts on the ground«. Given the novelty of the term, indeed, for a long time some of them preferred not *status* but the inherited terms of *civitas* and *res publica* to describe the new polity.¹² Koselleck and others have similarly located the explicit appearance of the term »state« to the modern period, although, in his case, dating it slightly later in the eighteenth century.¹³ Armed with the allied concept of »sovereignty«, the political unit designated by this precise term – l'état, stato, estado, the state, der Staat – was a new type of collective and institutionalized power. In this conceptual watershed, if the new large-scale European political structure that emerged had the standing of »a state«, then those that preceded it were necessarily »pre-state«. This is certainly Schmitt's point of view.¹⁴ Even if it might be possible to consider other, more recent interpretations that have suggested that the Roman state – at least the developing and less cohesive structure of the republican polity – did not meet the criteria of a modern state, it seems that the sharper, stronger, more clearly argued theoretical views of Schmitt provide us with a limit case that can be tested against logic and evidence.¹⁵ Furthermore, his ideas can be seen at work in the evaluation of the status of the post-Roman polities of the European west, and so directly implicated in debates over the »status« of the premodern polities in western Europe that Schmitt used as the benchmark for his claims about the emergence of »the state«.¹⁶

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- 11 On all of this, see the compelling analysis of Skinner, *The State*. It is of considerable significance both for an evaluation of »state« and of Schmitt's ideas, since it demonstrates how the dominant modern concept of the »state« emerged from what Skinner calls »the earliest major counter-revolutionary movement in modern European history« (p. 121) that specifically set itself against opposing ideas of popular sovereignty.
- 12 Skinner, *The State*, 119; Hobbes said that *civitas* and »state« were terms designating the same entity as his »common-wealth«: Skinner, *On the person of the state*, 32.
- 13 See Winterling, »Staat« in der griechischen-römischen Antike?, 251; at p. 252, who rightly expresses concerns over the two centuries of »historical baggage« attached to the concept. Much the same concern has been aired by Christian Meier: see Walter, *Begriff des Staates*, 18-19. For a detailed study of the gradual emergence of the terms »Staat« and »Souveränität« in German, see Philipp, *Politische Wortstudien*, III and Brunner, Conze and Koselleck (eds.), *Geschichtliche Grundbegriffe*, confirming in detail the specific modernity of the terms. Although this matter of etymology is true, the more serious matter, given the editors' own historical commitments, is the follow-on claim that these terms necessarily have no justifiable application to premodern cases (pp. 5-6). Koselleck, of course, was a central figure in the *Geschichtliche Grundbegriffe* project that produced the very definitions that he embraced (see n. 30\$ below).
- 14 See Walter, *Begriff des Staates*, 16, referring to Schmitt, *Staat als ein konkreter Begriff* = Schmitt, *Verfassungsrechtliche Aufsätze*, 375-376, 383-384.
- 15 See, for example, Tan, *Rich Rome, poor state*, 3-39, who offers an argument for an attenuated late republican state of truly modest dimensions. Although Tan still allows that the Rome of the time was »a state«, his peculiar construction of it could be taken to sustain a judgement that in Schmittian terms the matter might be questionable.
- 16 See, e.g., Pohl and Wieser, *Der frühmittelalterliche Staat*, ix-x; Strothmann, *Karolingische politische Ordnung*, 51-52 (and 51 n. 3 with specific notation of Carl Schmitt) in his assessment of the nature of the Carolingian »political order«; and Keller, *Internationale Forschung zur Staatlichkeit*, 124, again with specific reference to Schmitt in debating the nature of the *Staatlichkeit* of the Ottonian polity.

Against this standard of estimating the quality of polities, it must also be remembered that the German state itself had emerged relatively late in the nineteenth century out of congeries of principalities, baronies, marches, city-states, and ecclesiastical units. In thinking of what might constitute the premodern, it is this historical background that German thinkers, from Hegel to Schmitt, had in mind. By this measure, when they were analyzing the concept of the state, both Hegel and Schmitt always had in mind the benchmark of the modern western European state.¹⁷ For them, the premodern world of German mini-polities was a litmus test for what constituted a premodern pre-state order. They were not alone. In the different context of France, when he considered his own times against the entire sweep of antiquity, Ernst Renan held the same opinion on the unique nature of the state: »Les nations, entendues de cette manière, sont quelque chose d'assez nouveau dans l'histoire. L'antiquité ne les connut pas.«¹⁸ In his view, premodern polities were small urban centers, city-states, rural assemblages of peoples, and other such congeries; the Persian empire was »une vaste féodalité«, and so on. When it came to the Roman empire, however, Renan hesitated – he had to admit that by sentiment it was indeed a genuine »patrie« and, with its great peace, had many of the required aspects of a state. »Mais un empire, douze fois grand comme la France actuelle, ne saurait former un État dans l'acceptation moderne.«¹⁹ Nevertheless, what precisely a *modern* nation-state was, was something that Renan – »Qu'est-ce qu'une nation?« – felt the need to ask. This comparative approach might not get us very far, however, since it has been commonly admitted by historians of medieval Europe that their age »knew no state of a *modern* type.«²⁰ The more difficult problem of typing their forms of state that has faced medievalists is not whether or not, say, the Frankish *regnum* was a modern state, but whether or not such polities constituted »states« in *any* justifiable form.²¹ The extent to which this question has remained unresolved is some measure of the difference between the early modern and modern periods, for which there is little debate that the polities of these times were indeed states in every technical sense of the term, and the preceding age when the elements of »state-ness« are uncertain enough to raise the question as a serious query.²²

17 See Schwab's remarks at Schmitt, *Concept of the Political*, 19 *ad loc.*, commenting on Schmitt's statement: »In its literal sense and in its historical appearance the state is a specific entity of a people.«: »Schmitt has in mind the modern national sovereign state and not the political entities of the medieval or ancient periods.«

18 Renan, *Qu'est-ce qu'une nation?*, 5-6: he continues, »L'antiquité classique eut des républiques et des royaumes municipales, des confédérations de républiques locales, des empires; elle n'eut guère la nation au sens où nous la comprenons.« Although it is only fair to add that later Renan admits that not all »nations« were »states«.

19 Renan, *Qu'est-ce qu'une nation?*, 6; cf. 15: the empire was also »modern« in that it was not founded on any principles of kinship or kinship groups.

20 E.g. Pohl, *Staat und Herrschaft im Frühmittelalter*, 9: »Daß es im Früh- und Hochmittelalter keinen Staat *im modernen Sinn* gab, darüber besteht in der Forschung weitgehende Einigkeit.« (my italics). And very few would actually claim that the entities concerned although not »modern states« were not »states« at all.

21 I think that the debates are adequately recapitulated and analyzed by Pohl, *Staat und Herrschaft im Frühmittelalter*, with the specific analysis of one of the best attested cases by Keller, *Internationale Forschung zur Staatlichkeit* and Strothmann, *Karolingische politische Ordnung*.

22 See, for example, Jarnut, *Anmerkungen zum Staat des frühen Mittelalters*, for a reasoned analysis of the debates on this question between Johannes Fried, who questions the existence of a »state« (certainly in their terms), and Hans-Werner Goetz, who asserts that »state« formations did exist. Jarnut himself concludes, with Goetz, accepting the device of the Weberian *Idealtypus*, that such polities were indeed »states«. On Fried's claim about how thinking about premodern polities in terms of »states« distorts our historical analysis, see Esders and Schuppert, *Mittelalterliches Regieren*, 14.

A critical problem with all of these comparisons is that the picture of the Roman empire that the nineteenth-century thinkers had in mind – one to a considerable extent inherited by their twentieth-century successors – was a schematic picture of a general entity configured by ideological preconceptions of »republicanism« and »absolutism«. In the nineteenth century, Schmitt claims, Europeans were tempted to extend their novel vocabulary of »state« to the Greek *poleis* and to the Roman *res publica*. In his rehearsal of the historical development, this extension, even if logical and understandable, was a mistake.²³ In terms of the facts, the claim is untrue – Europeans, both historians and philosophers, had conventionally referred to the Roman empire as »a state« almost from the beginning of the modern era.²⁴ It is understandable, however, that a problem arises in Schmitt's terms since the German world of the seventeenth or eighteenth centuries, as just emphasized, could not itself boast of a state. Indeed, with its various feudal arrangements, church domains, and multitudinous baronies and principalities, it was, as Schmitt remarks, »ein Reich und kein Staat«.²⁵ His claim about the before and after distinction was buttressed by the fact that there was no Greek or Latin word that could adequately translate the modern concept of »the state«. This is certainly true, say of *res publica*, which did not mean »republic« in our sense and probably only had a partial overlap with our concept of »state«.²⁶ The same lexical problem of the lack of a contemporary term that can be translated as »state« also bedevils the study of medieval polities.²⁷ This »absence-of-a-word« problem is one which we shall soon have occasion to revisit.

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- 23 Schmitt, *Verfassungsrechtliche Aufsätze*, 383, in his later annotation to this original 1941 essay. Naturally, the four characteristics of the emergent modern state outlined by Winterling, »Staat« in der griechischen-römischen Antike?, 251-252, are not forefronted in premodern states.
- 24 So, for example, David Hume already in the 1740s in his essay on *The Populousness of Ancient Nations* and elsewhere; Adam Ferguson in the 1760s in his *Essay on the History of Civil Society* and elsewhere; Edward Gibbon in the 1770s in *The Decline and Fall of the Roman Empire*, and elsewhere, and, in the same decade Adam Smith in *An Inquiry into the Nature and the Causes of the Wealth of Nations*. That is to say, almost as soon as the term »state« became available in the language to describe a polity of a certain type, it was commonly used to designate it. There is no evidence that these writers were conscious of any special »temptation« to extend the term beyond some confined »legitimate« use.
- 25 Schmitt, Staat als ein konkreter Begriff = Schmitt, *Verfassungsrechtliche Aufsätze*, 375-376; cf. Avineri, *Hegel's Theory*, 36: »The old German empire at the beginning of the eighteenth century was a hodge-podge of kingdoms, principalities, duchies, markgraviates, landgraviates, bishoprics and free cities...« As Hegel remarked at the time, what Germany lacked was precisely »a state«.
- 26 In general, see Demandt, *Staatsformen in der Antike*, 58-61; Winterling, A court without »state«, 11; on the specific significance of *res publica*, see Hodgson, *Res Publica and the Roman Republic*; and Moatti, *Histoire romaine and The notion of Res Publica*, 118-129, who shows that the term, with our meaning of »republic«, only came into common use in western Europe beginning in the fifteenth century. Despite many assertions to the contrary, however, it seems that the words adequately stand in for a Roman concept of their state. There was certainly a consciousness that came close to such an understanding, e.g. *Nov. Theod. 7.3: Nos quidem semper singulis atque univrsis ea provisionum maiestate consulimus, qua res Romana paulatim ad totius orbis terrarum processit imperium* (29 Dec. 440 CE).
- 27 See, e.g., Pohl, *Staat und Herrschaft im Frühmittelalter*, 9: »Oft wurde darauf verwiesen, daß ein zeitgenössisches Wort für »Staat« gar nicht existierte...« – so, an assertion not limited to the Roman case.

In all of this, a species of »medievalism« raises its head. In fact, one can see current debates over the »non-stateness« of the Roman polity as a crossover effect of *Die Neue deutsche Verfassungsgeschichte* of the 30s and 40s of the last century that gained a new impetus in the post-war decades. Once again, it was questions and concerns outside historical method (narrowly speaking) that heavily influenced the ideas. The contesting claims were about whether or how much medieval polities were Roman or Germanic in origin and structure. And it was an especial ideological interest for some historians involved in these debates to want to show that these early societies were based on natural expressions of the *Volk*, on familial and kinship bonds based on trust and honor, and not on the high artificialities of positive law.²⁸ Just how deeply embedded this strand of thinking was in the conservative ideologies of the time has been adequately demonstrated: it was »National Socialist in its very bones«.²⁹ This ideological background is most significant: it is not merely accidental that it is the same suite of scholars – among them Brunner, Conze, Koselleck and Schmitt – who consistently sustained this position on »the state«. Once again, one of the main prompts and items of evidence was the apparent lack of a term in medieval Latin or early German that could be translated as »state«.³⁰ In this context, it is hardly surprising that a gigantic work of reference that sought to define the basic concepts of doing history, *geschichtliche Grundbegriffe*, was edited by the same coterie of scholars and that its epic-sized entry on »Staat und Souveränität« reached these same conclusions. The project was grossly ideological in nature, seeking to establish the very terms in which history was to be understood.³¹ Questions run even deeper than a technical one of semantics. If, for example, not even the leading legal thinkers at the height of the Principate conceived of the empire, the *imperium*, as a unified state, then this was a serious conceptual problem for Roman thinkers themselves.³² It is perhaps ironic, however, that the proponents of the *Neue ... Verfassungsgeschichte* have not contributed much to debates about the status of the Roman empire, because its proponents accepted Rome as a genuine state against which the Germanic polities (in their terms) were to be measured as alternative types of *Personenverbandsstaaten*. So it is perhaps paradoxical that these debates about »state-ness« in Schmittian political theoretical circles, and in »medieval« and early modern historiography, have had long-term blowback effects amongst Roman historians who see the conclusions of those historians and thinkers as applying to their polity.

28 Mainly under the influential ideas of Otto Brunner, who asserted that we should not be seeing states of the »medieval period« in our terms as a »state«, but rather more dominantly in terms of *Herrschaft*, *Gefolgschaft*, *Treue*, *Schutz*, *Personenverbänden*, and so on; for a recapitulation, see Pohl, *Herrschaft*.

29 On Brunner, who is the pivotal figure, in particular see Miller, *Nazis and Neo-Stoics*, 148-149, 152-158, referring to Gadi Algazi's study of the man and his scholarship (quoted words from p. 150); for its tight connection with political ideology, see p. 155 n. 28.

30 For some of the background, see Pohl, *Herrschaft*; on Schmitt's importance for Brunner, see Algazi, *Otto Brunner – »Konkrete Ordnung« und Sprache der Zeit*, 168, 171-172, 182-183.

31 See Haverkate and Boldt, *Staat und Souveränität*.

32 Marotta, *Roman Jurists and the Empire*, 205: where he wonders whether even if »in the Severan period, the jurists attempted to define the Empire as a legal dimension. I would say no.«

Schmitt's basic claim, however, raises another broader historical question. Given the specific historicity of the concept of the state, is it even legitimate to apply such an apparently Eurocentric term to other global systems of political power?³³ The nomological objection raises a whole series of epistemological debates that are too complex and lengthy to be rehearsed here. Suffice it to say, by way of analogy, that a whole series of terms were invented in the late nineteenth and early twentieth century in the modern science of physics to designate things that had always existed, but which were now to be designated by terms that had only come into existence relatively recently: electron, proton, neutron, neutrino, quanta, quark, and so on. Surely there is no debate here. Although these are arbitrary neologisms of our own times, there is no doubt that they can legitimately be used to designate objects that existed not just thousands of years ago but even millions and tens of millions. The problem of meaning, it might be said, does not exist here because the things so designated have always been more or less the same in quality. The problem for Schmitt is that a word, *Staat*, came into existence in parallel with the emergence of a new type of governance in the fifteenth and sixteenth centuries to designate the *status* of a political entity. The question in this case is: Can the term legitimately be used to describe something from a period thousands of years earlier that might well have been different in kind? An initial answer must lie in the extent of the similarity of qualities that the earlier form of large-scale governance has with the later social organization designated by the term »state«. ³⁴ Are they sufficient to justify the use of a common term to designate them?

The answer must also depend on a further criterion: Despite any apparent commonalities, was there some other essence that would deny the appellation to premodern forms of governance like the Roman one? If the initial answer to this question is »yes«, it is then often faced with the objection that the lexical evidence, including terms like *res publica*, show that *they* had no concept of »state« in *their* mind. The strong caution against accepting this assertion as a valid argument, however, is that it is only tangentially relevant to our problem. Whether or not persons of the time had words for a given phenomenon is not part of *our* historical analysis of that thing. We know a parasite-borne disease that we designate with the word »malaria«. It has certain specific identifiable characteristics and elements. These can be specified, and, in historical terms, we can analyze that phenomenon in the past under the modern term »malaria«. We know that many regions of the Mediterranean in the Roman empire experienced this infection and that many persons of the time suffered and died from the disease. They did not know precisely what it was. They sometimes called it »bad air«, and so on. One can study the lexical elements of »bad« and »air« as used by them *ad infinitum*, and so conceivably provide us a better insight into how *they* at the time understood the infection and its causes. But it will not advance *our* historical analysis of the infection of malaria or infringe one whit on our ability to use the term to designate a disease, namely malaria, to use it for our analysis of the disease environment of that remote time and to use it for our historical

33 The question is specifically put by Eich *et al.*, *Der wiederkehrende Leviathan*, 23-25, who make the compelling point that even within its western European early modern signification the term Staat/état/state is variable and covers a wide range of different political structures. The assertion that it is incapable of a reasonable metaphoric extension to polities elsewhere on the globe or earlier in time seems rather weak.

34 See Finley, *Politics in the Ancient World*, 41, for similar problems with the extension of a modern sociological term, »clientage«, derived from the Latin *clientela*, to all similar instances.

analysis of the infection.³⁵ The same pertains to our use of »state« (or »republic« for that matter). It is not unimportant, of course, that we should understand what words and concepts that *they* had of *their* ruling orders and institutions, but endless studies of concept words like these – e.g. *res publica*, *imperium*, *auctoritas* or *potestas* – only gets us so far and no further. To engage solely in this sort of analysis is to fall into what I would call the »emic trap«: the false idea that by exhausting a kind of empathetic understanding of *their* world in *their* terms we have completed a historical analysis of the phenomenon. This road, alas, has no end to it. Like »state«, the word »army« in English and French, used to designate the armed forces of a state, is, similarly, a modern word that emerged in parallel with the early modern state.³⁶ If that is so, should I stop referring to the Roman army as an »army« and instead consistently refer to it only as an *exercitus*? Must we only publish books and articles that assiduously avoid the use of the modern concept word »army« and only use the emically approved Latin *exercitus*?³⁷ The answer to these questions is at once obvious. This is not a semantical or a concept problem.³⁸ The Roman army was certainly an »army« in our conceptual terms. If we were likewise to abandon all similar terms created in the concept-generating mill of the early modern and modern transition, we would have real difficulties in doing history.

Part of the problem, however, is not lexical but cultural, rooted in the German historical and ideological experience of a world that was bereft of a big unitary national state like France or England. Furthermore, German scholarship in particular has been heir to a long tradition of ideas on the state going back to Hegel and neo-Hegelians in which *der Staat* has a very precise and, one might say, an elevated »idealist« sense, but also one that is strongly caught up in debate with the reality of the German experience and ways that condition ideas about statehood.³⁹ The long shadow of Platonist ideas is apparent. In this stream of thinking something as significant as »the state« must have an essence that supervenes any specific

35 Again, it is manifest (and not at issue here) that a word study of *res publica* will surely advance our understanding of *their* ideas and concepts (e.g. of the distinction between the imperial *domus* and the *res publica*), but this is a separate »emic« benefit. Whereas the changing biological makeup of a given pathogen creates difficulties in identifying a given disease across time is a relevant question, but it is not one that will be settled by a terminological issue like the one being considered here.

36 Like »state«, the word »army« is also derived from Latin »originals«. Meaning »a body of men trained and equipped by the state for war« in French by the late fourteenth/early fifteenth century, and in English by the mid-sixteenth century, it, too, is a word that emerges with this meaning in the same early modern synapse.

37 It goes without saying that Italian speakers, armed with *esercito*, are fortunate in this respect.

38 So, for example, »feudal« and »feudalism«, great favourites, canonized in the nineteenth century historiography, would have to go – and, as Elizabeth Brown famously demonstrated, they are infrequently found in the original sources of the time. As also medieval, mittelalterliches, médiévale, along with »Middle Ages«, Mittelalter, Moyen-Age – yet another set of modern confections – would have to be abandoned as terms of historical analysis. No one felt »middling« at the time and no such »proof use« of the word could possibly be found in evidence from the time.

39 I still find the study by Avineri, *Hegel's Theory*, to be the most persuasive analysis of Hegel on the state – which, one should note, Avineri carefully construes as the *modern* state. It is manifest how much the fragmented world of the German politics conditioned Hegel's thinking about what a state should be; hence the long shadow of Plato in suggesting the prominence of a higher ideal. Schmitt, *Begriff des Politischen*, 24, was, of course, well aware of this tradition of thinking: »Die deutsche Staatslehre hielt zunächst noch (unter der Nachwirkung von Hegels staatsphilosophischen System) daran fest, daß der Staat gegenüber der Gesellschaft qualitative verschieden und etwas Höheres sei.«

antecedent parts of it or any institutions that it hails into existence and that are its governing mechanisms. A further problem that is evident in both Hegel and Schmitt when considering the premodern state is the dominance in their thinking about antiquity and, specifically, the nature of the Greek *polis*.⁴⁰ Apart from some general statements culled from Cicero, the actual state apparatuses of the six or seven centuries of the Roman imperial state seem strangely absent from their deliberations. Part of the explanation is not only the higher profile of Greek thinking about ideal forms of the state, but also the high cultural value that Greek studies had in nineteenth century Germany. The gap between thinking about the Greek polis and the realities of the Roman imperial state is immense. The former allows one to exalt an »essence« of state that was being formed by Greek writers and thinkers. On the other hand, it also tends to set a rather limited idea of these premodern polities that enables one to place them on the same limited plane as an Italian city-state of the Renaissance or an early modern German principality. Against this precision, the problem for Anglophone scholars, on the other hand, is a different one. For most English-speakers, who use a much less precise, even *louche*, language, »the state« means not much more than the institutions of governance – plus symbolic add-ons for modern states like a flag, a national anthem, a pervasive nationalist sentiment (and, of course, an army).⁴¹ For them, it does not necessarily have any special »essence«, least of all some exalted one. For others who were not part of either tradition, such essentialist historical differences might not be at issue. For them, the modern state in itself was nothing especially peculiar. It could be seen, for example, as *reviving* the concepts and practices of citizenship that had once existed in the ancient polity.⁴² Even given these diverse cultural perspectives, however, it must surely be possible to resolve the question of the Roman polity's standing in a historically satisfactory fashion.

40 A partial exception in Hegel's case might be his attention to the Roman citizenship, although his valuation of it changed significantly over time: see Rocco Lozano, Ancient and modern sources.

41 Skinner, *On the person of the state*, 25-26 and 40-41, traces the origins of this now-dominant idea in the Anglophone world where »state« virtually equates to »government«. Lundgreen, *Staatsdiskurse*, 20-21, sees this problem, drawing attention to laid-back English usages like »empire« and »imperialism« as similarly vague and ill-defined.

42 E.g. Renan, *Qu'est-ce qu'une nation?*, 13: »L'homme était *revenu*, après des siècles d'abaissement, à l'esprit antique, au respect de lui-même, à l'idée de ses droits. Les mots de patrie et de citoyen *avaient repris* leur sens.« (my italics).

What Makes a State?

We might begin with the prosaic elements that were building blocks of such a superior political unit that possesses sovereignty – in Schmitt’s terms the »final decider« of critical matters within its sphere of power.⁴³ Basic social units like families and kinship groups remain discernible and important elements in the structure of any state, including the Roman one. Almost all Greek and Roman theorists, indeed, envisaged the state as evolving out of a cumulative organic growth of household units. Even if subject to the normal (and greater) pressures of personal patronage and family powers typically found in any premodern state, it had a complex governmental structure that had formal criteria for membership and objectively defined terms of positions, official actions and empowerments.⁴⁴ In any event, in Schmittian terms, neither the »scramble for offices« or »the politics of patronage« are sufficient to deny a polity the status of being a state.⁴⁵ As is understood by historians like Theodor Mayer, an order *constructed* by such personal connections must be a real substitute for the impersonal institutions of a state to count as a qualitatively different entity.⁴⁶ The place and role of a purely personal power must rule out the classic model of an *institutionellen Flächenstaat*. By contrast, the Roman state certainly displayed an autonomy of its political structures, including its armed forces, that set the state over and above an accumulation of familial powers. The state’s autonomous governmental apparatus issued formal generally applicable and enforceable norms – *leges, senatus consulta*, decrees of magistrates (and later of emperors) all armed with sanctions against the disobedient. It supported an extensive set of state courts, both central and municipal, that both assessed and enforced its legal ordinances. The government had widespread and widely applicable regulatory structures and norms of some legal complexity that were part of this judicial network. By the systematic extension of miniature models of its own governance, through colonies and municipalities, and the absorption of existing units of local governance (mainly Greek-style poleis in the east), although not only these, enabled the powerful extension of the central state’s instruments of governance and legal practices into local venues throughout the empire.⁴⁷ Although it might have been pragmatic in working with existing modes of governance and taxation in each given region that it took over, in the end the Roman state maintained an effective monitoring of these activities with extensive networks of centralized archives of information on local social relations and on decisions made with respect to its governance not only of Italy but of the provinces by its governors.⁴⁸ Whatever notional or formal autonomy that was left to these urban units, it was only left to them as long as the local elites served the interests of the empire.

43 Schmitt, *Begriff des Politischen*, 19.

44 So Lundgreen, *Staatsdiskurse*, 23-24, points to the work of Walter Eder, who is sceptical of the applicability of the term »state« to the Republican government on the basis that it fails to account for the exceptional powers of the *paterfamilias* and because it draws too sharp a distinction between government and society. But both of these have been conventionally seen as compatible with early modern (and, certainly, »medieval«) forms of the state.

45 Schmitt, *Concept of the Political*, 32, both of the modern state; original, 2015, 30.

46 See Esders and Schuppert, *Mittelalterliches Regieren*, 31-32; and Pohl, *Personenverbandsstaat*, on the concept of the *Personenverbandsstaat*.

47 As rightly emphasized by Ando, *Empire as state*, 178-179.

48 See Díaz Fernández and Pina Polo, *Managing economic public information*, who more than adequately refute strange ideas that the republican state functioned without such banks of information. They discuss »the vastness of the documentation« archived in the *Aerarium* alone, just one of the state archives of the republic. For the empire there can be no doubt; the evidence is simply overwhelming.

The great expansion in number, size and wealth of these »sub-governments« was enabled by the existence of the imperial state, and, as has been rightly noted, they »served as essential nodal points for the extension of metropolitan institutions and the amplification of governmentality«.⁴⁹ Often underestimated in their extent and effect, recent detailed investigations of the banks of information kept by these local units of government and their centralization in provincial »capitals« and at Rome, confirm the extensive competence of the Roman government in this respect.⁵⁰ It had formal means, long-term banks of records, for assessing and collecting tributary payments, i.e., taxes, and it had state treasuries out of which the considerable expenses of the government were maintained. It engaged as a definable entity of organized violent conflicts of long duration and enormous scale, wars that required the training and maintenance of a state army. It committed itself to the organization and expense of long-term public projects of enormous scale like the building of a historically unprecedented network of public roads and the extensive surveying and impersonal legal and administrative designations assigned to units of public lands.⁵¹ More important than this is the application of a census, not just of Roman citizens as in the republic, but in making a count of all of the subjects in each province of the empire.⁵² Furthermore, it is not as if all these items, and many more, existed seriatim and in isolation from each other. It can readily be shown that they were integrated parts of a whole structure of governance. Indeed, a list can be made of such structural requirements for a state more extensive than the more restricted one found in the German philosophical tradition, including Hegel, Marx, and Schmitt – and the Roman polity would fulfil every one of them.⁵³ That is to say, Rome more than adequately fulfils the technical requirements of being a state.

The listing of these characteristics (which could be extended in number) is not trivial since these are the very aspects that Schmitt regards as diagnostically identifying »the state«.⁵⁴

Die spezifischen Organisationsmittel der einheitlichen Staatsgewalt sind bekanntlich: staatliche Armee, staatliche Finanz und staatliche Polizei. Das Recht verwandelt sich immer mehr in staatliches, von der staatlichen Justiz gehandhabtes Gesetz und findet seine sachgemässe Erscheinungsform in staatlichen Gesetzeskodifikationen.

49 The quoted words are from Ando, *Empire as state*, 185.

50 See, e.g., Royo, *Une mémoire fragile*, who reports both on the research project fronted by Claude Nicolet and on other studies that confirm this picture of Roman archiving and administration. Although often underestimated, it should not have been surprising that the Roman state was characterized by a general dependence on record-keeping and on a wide range of fronts, given the fact that, as a state, it would tend to adopt practices of government already put into practice by Greek city-states, on which see Faraguna, *Gli archivi*.

51 The literature is too extensive to be cited here. See Campbell, *Writing of the Roman Land Surveyors*, for the writings of the *agrimensores* or »surveyors« themselves, but archaeology and epigraphy has revealed much more about practices on the ground.

52 See Le Teuff, *Census*, who documents the extraordinary monitoring of the lives of individual subjects by the census, and who (7-8) signals the fundamental change from the counting of citizens under the republic to the counting of subjects under the empire.

53 For example, Nicolet, *L'Empire romain*, 112-113, who, in considering precisely this problem, set the following items as required: a unitary head or body of state, a standing state army, a money system of which it was the sole issuer, a defined territory where its power is recognized, and hierarchical and centralized administration, the extensive use of written records and archiving of them for administrative purposes, and an ideology that expressed its unity and legitimacy. On investigation of these, one by one, he shows that they collectively meet any reasonable definition of statehood.

54 Schmitt, *Staat als ein konkreter Begriff* = Schmitt, *Verfassungsrechtliche Aufsätze*, 379.

That is to say: a centralized state army, a uniform fiscal system, and a policing power over internal civil society. And, finally, very importantly for Schmitt, a law and legal system that comes more and more under the aegis of the polity, is administered by it, and which ends in codification by the government. Schmitt sees these developments as special and modern because they gradually overcame the corporate, feudal, and rank-based relations of earlier medieval times. Of course, even if true, this claim hardly means that these same supervening institutions could not have existed in pre-feudal polities. The post-Roman age in western Europe was perhaps marked in some cases by entities whose central political institutions were so weak that the countervailing loci of regionally powerful families and other corporate bodies, like the church, exercised considerable countervailing force. But was Rome like this? A recent study that has attempted to provide an explanation for the early Roman expansion and control of the Italian peninsula has founded its analysis on an implicit model of such a rather »weak« premodern polity.⁵⁵ But even for this early period, the interpretation has met with manifest scepticism in the eyes of its critical readers precisely because it grossly underestimates the on-going instruments and institutions of power that made the Roman government a political structure independent of personal networks of families and regional interests – among them local loci of government established or recognized by the central state, monumental construction projects, a substantial central treasury, a large national army, systems of registration and record keeping, and many other such aspects of the republican polity.⁵⁶ The Roman state certainly had established governing entities that counted as genuine institutions: they possessed an objective aspect, were reasonably permanent, had non-personal criteria for choice and membership, and had designated governmental tasks that were assigned specifically to them. The senate was but one of these corporate instruments of governance. Despite variations in its membership and the precise powers of its authority, the senate remained the central council of state for at least eight or nine centuries.⁵⁷ Not only the senate, but a range of consistent types of magistracies, and numerous other positions of governance, attest a depth and complexity of institutional development that are typical of a state. I forebear from adding a detailed annotation and discussion of the well-known fact that the Roman state maintained a professional standing army of half a million men for over half a millennium. Nor is it necessary to emphasize the plain fact that violence was marshalled by Rome on an enormous scale, year after year, and not just in the middle and late republic, but throughout the centuries of the Principate, and that this mobilization of force required the organizational capacities and resources of a truly Leviathan-like thing.

55 Terrenato, *Early Roman Expansion*.

56 See Walter, Review: *Early Roman Expansion* and Harris, Roman conquest of Italy, amongst others.

57 For the republic, see Bonnefond-Coudry, *Le Sénat de la République* and *Senatus*; for the high empire, Talbert, *Senate of Imperial Rome*; for both periods and the late empire: Chastagnol, *Le Sénat romain*. These are more than sufficient to demonstrate its consistency as an institution.

The utility of using the criteria outlined above as a yardstick by which the »state-ness« (or not) of Rome is to be measured is that every one of the *specific* developments that Schmitt outlines were the very ones that *characterized* the emergence and development of the Roman imperial polity. Whatever effects a »feudal« or »sub-state« patronage or vested local powers might have had in the operation of its institutions, they did not gainsay the autonomous existence of the instruments of Roman governance. Countervailing extra-state influences like personal patronage were often exploited to acquire advantageous appointment to state posts, to acquire citizenship, to be awarded government contracts, and to avoid aspects of tributary payments or the imposition of other arbitrary demands. But this does not mean that the government posts, citizenship, contracts, taxes, and regimes of formal legal instruments did not exist as autonomous political sites, powers, and privileges that could be mediated by personal or familial interests.⁵⁸ In fact, much of the time patronage was exercised as a means of acquiring privileged access to state resources that existed independently of the powers and resources of the patronal resources of individual families. In these instances (and many more) the mediation of patronage signaled that some separate object was being mediated, and not just yet more personal connections. Neither does the existence of »warlords« either in the late Republic or the late empire gainsay the existence of a »state« – even the modern state has not everywhere escaped from this problem of collective personal power.⁵⁹ Such distinctions could draw on the very influential ideas of Georg Jellinek on the distinction between personal power and statehood, although, again, they raise similar problems about the grounds of the distinctiveness or uniqueness of the Roman situation, but not about its existence as a state as such.⁶⁰ Naturally, because the Roman state was not a modern European state, it could not be part of any Westphalian system. It had gradually developed into a premodern empire which had no boundaries and so it was not part of a system of peer polities or a system of competing states.⁶¹ It was alone in its world. But this solitude should not be interpreted as reducing it to »not being a state« – and especially not because one of its perceptive historians specified a solitude as the state at which the Roman imperial peace was aiming. Because of the concrete historical contexts of their existence, in their own time most premodern empires were not and could not be part of a system of states in the Westphalian manner. But there is surely no theoretical reason that they should have to be such to count as states, or not be a state merely because they happen not to meet the specifics of the early modern and modern European model.

58 The most insightful analysis of the role of personal patronage in the context of the Roman imperial state is Saller, *Personal Patronage under the Early Empire*, who demonstrates that personal relations ordinarily construed as *amicitia*, »friendship«, served as a way of negotiating asymmetrical relations involving persons of lesser power and those holding superior resources, often those of the state.

59 This is where, for example, Lundgreen, *Staatsdiskurse*, 47-50, wishes to draw the line between *Herrschaft* and *Staatlichkeit*. The existence of such »big men« or, another problem for Lundgreen, *Staatsdiskurse*, 43-47, of bandits and pirates, in my view does not void statehood as such, but rather stands in a particular relation to a specific type of state: see the argument in Shaw, *Bandits in the Roman Empire*.

60 Lundgreen, *Staatsdiskurse*, 17 and 36-37, where he is concerned to draw on Jellinek's distinction between *Herrschaft* and *Staatlichkeit*. Whereas it is quite possible in the Roman case to claim that the former always represented a problem and a challenge to the latter, it seems insufficient, on the examples proffered by Lundgreen that elements of *Herrschaft* present at Rome obviated the very existence of a state; see Schupmann, *Carl Schmitt's State and Constitutional Theory*, 72-76, for a more compelling interpretation of the relationship between the two. In any event, as Walter, *Begriff des Staates*, 20-21, adequately demonstrates, on the basis of Jellinek's three basic criteria of statehood there are no good grounds to deny that status to Rome.

61 One can plead the exception of the Parthian and Sasanian states which did have a small land border with Rome; but it is a singular item that is an exception, not the rule.

Even if this debate is limited to the governance of Rome and its empire in the middle and late republican periods, the argument that it was not a state still does not make much sense. One can, of course, artificially limit one's purview to political struggles in the city of Rome and to the institutions of government in the metropolis. If so, then discussions of the important function of political rhetoric and the impressive power of theatricality, display, cityscapes, and traditional customs of public behavior are indeed relevant and very important. But this highly selective perspective of the Roman state is so cramped and myopic that it is pragmatically non-functional as a historical analysis of its »state-ness« as a whole. The entirety of the permanent extra-personal institutions and the diverse instruments of governance, all the way down to small localities in the empire, cannot be reduced to the politicking of its formal decision-making elites in the city of Rome.⁶² In important ways, the injection of the concept of »political culture« into the argument has served to deflect focus away from the state as an entire thing to the modes of competitive politicking and the micro-management by the power elites in its urban center.⁶³ On the one side, a positive one, the new interests in »political culture« have functioned as a necessary supplement to the institutional-structural edifice of the Mommsenian reconstruction of the Roman state.⁶⁴ In doing so, however, such interests tend both to underplay the much broader structures involved in the governance of a Mediterranean empire and to diminish the powerful effect of the long-term *structural* instruments and *participatory* roles of imperial power. The instruments of government were perduring permanent things which, however much they might change over time, long outlasted the lives of the few individuals or families who annually competed for a share of power at the center.

An ancient interpretative frame that perhaps encourages this narrower focus on civic politics is emic, namely the philosophical theorizing of the time, beginning in the fourth century BCE, that sought to explicate the *politeia* and *ta politika* of the Greek city. Both Plato and Aristotle, however, were massively disinterested in the one big force that moved the state of their time – not its internal civic institutions of governance and politicking on which they focused, but the facts of the recruiting, training, logistics, and the practice war on land and sea of its armed forces. In their remorselessly internal focus on a civic model of the state, other than voicing the truism that the Greek city-states were almost always at war with each other, they tended to marginalize such matters in their theorizing. When Polybius attempted to apply Greek theories of the civic state to the Roman state of the republic, as an outside observer he was immediately aware of its shortcomings. He was compelled to add an unusually long section on the army and its organization to explain the obvious importance of this institution to the success of the Roman state. No matter how much it was subverted in Greek

62 Which seems to be the essence of Winterling, »Staat« in der griechischen-römischen Antike?, 253-254.

63 For an explanation and defence, see Hölkeskamp, Politische Kultur and Politics of elitism, who points out that this approach has raised the question if the *res publica* was in fact a state (p. 24).

64 Nicely outlined by Hölkeskamp, Politische Kultur and in Konsens und Konkurrenz.

political theorizing, this aspect was surely also true of the Greek *poleis*, although the intermittent and endlessly indecisive armed conflicts could be consigned to an exterior sphere of »events« by the philosophers. But it simply could not be ignored in the case of a massive conquest state like Rome.⁶⁵ Polybius was compelled to perform the same additions for other not inconsequential matters like unusual aspects of Roman civic and cultural practices that were also not encompassed by Greek theorizing on the polis. And since the cumulation and maintenance of large-scale armed force is admitted by almost all of its modern analysts to have been critical to the formation of the modern state, it is difficult to understand how this could not also be true of the Roman polity.

Whether or not the individual persons involved in the more fluid personal and family-oriented politics at the urban center liked it or not, the control and regulation of something as challenging as peninsular Italy alone required elements of governance that far outstripped the abilities of private individuals and the institutions of the city itself, however flexible. In this sense, we can sensibly speak if not of *der Staat*, then at least of elements that gave the political body a manifest aspect of *Staatlichkeit*. The insistent demands of external threats (perceived or real), the need to maintain a very large armed force, the ability to feed and supply it, to train and arm the men, and, in short, to pay for the continuous large-scale warfare, are directly relevant to »what is a state«, especially a heavily militarized premodern one. In the politicking in the center, whatever the uses of personality (e.g. charisma), aspects of self-presentation, the public spectacles, these aspects were surely very far from coterminous with the whole political-legal-military entity that we call »the state«. It seems that an excessive focus on politicking at the center, whether of a senate or an emperor, leads to this evocation of a world of »ritual« and »spectacle« as »rules of the game«, a largely personal game.⁶⁶ Something as basic as the pragmatics in the designing, planning, and building of an extensive and unprecedented *system* of public roads is rarely, if ever, considered in this context. The same organizational demands on the government applied equally to the costs, building, and operation, say, of the gigantic aqueduct systems. The provision by the government of a *system* of coinage of unprecedented scale for its needs – however irregular the strikings might have been – must, once again, be brought into this argument. So, too, a whole network of subsidiary centrally authorized sub-governmental units – municipalities, colonies, allied communities in Italy; provinces outside Italy that were themselves armed with similar subsidiary units of imperial governance – but their impact on the generality of imperial rule seems hardly ever to be canvassed in debates about the »status« of the Roman state. The list could easily be expanded to a host of other governmental tasks, agencies, and institutions that the managers of the Roman government used to effect their control of Italy and the transmarine territories that its armies acquired.

65 Polyb. 6.19-42, which is an artificial addendum to the classic analysis of the Roman *politeia* that ends at 6.18; similar measures were taken much later by Aelius Aristides in his *Eis Romēn = Or.* 26.72-89, where the inclusion of the army is a set-aside addition to his general laudation of the Roman »constitution«.

66 As in the studies of Althoff (*Die Ottonen* and elsewhere) on the Ottonian »state«: as noted by Esders and Schuppert, *Mittelalterliches Regieren*, 160-161.

If cultural constructs are to be brought into the argument, then it cannot be simply the effectiveness of public rhetoric and the theatrical displays of power that made all these complex long-term institutions and structures function. The myopic focus on the small number of personalities who were quite literally at the center of the state and its government, whether the senate of the republic or the imperial court of the empire can lead to the supposition that they alone counted and literally ran the whole of the empire. Even on the universalizing force frequently ascribed to local elites of the empire in its operation, this makes little sense since the imperial displays of power at Rome, whether in the court, the amphitheater or the circus, were a significant but small element in the day-to-day running of the empire in most of its locales.⁶⁷ If the Ottonian polity of late tenth and early eleventh-century western Europe might be argued to be a kind of »kingship without a state«, *Königsherrschaft ohne Staat*, then the Roman empire could be argued to have a »court without a state«, a *Hof ohne Staat*.⁶⁸ Even with all its allied arguments, however, the former seems dubious, the latter, I would think, almost impossible to confirm. Most strong imperial states like the British empire or Ming Dynasty China, or strong states like Elizabethan England or the France of Louis XIV, had courts and elaborate court societies.⁶⁹ The existence of a court at the center of these other states (normally admitted to be such) has never voided their naming as »states«. The assumption that the courts of medieval polities worked mainly based on a series of personal relationships might well be validated by the evidence. But close examination of the evidence demonstrates that this was not true in the case of the court of the Roman emperor. The *officia* and »bureaux« of the government had personnel that were maintained in place from one emperor to the next; and there is little evidence of personal links with the court determining either the institutional apparatuses or the duties assigned to them.⁷⁰ That the few such men who were close enough and sufficiently known by the emperor or powers around the throne could act as patronal brokers is well known and is hardly surprising, but is not directly pertinent to the specific tasks, for example as controllers of the imperial correspondence or judicial decisions, that they and their staffs had to perform on a daily basis for the government. The administration of the large number of provinces, although staffed by imperial agents in some manner appointed (even if by several removes) and monitored (however lightly) by the court, demonstrably did not function solely as *personal* agents, even as personal agents of the emperor and court. I have considered the dynamics of royal court systems, principally the

67 Often, I think, misconstrued, misrepresented, or simply exaggerated: Shaw, *Global Empires*, 511-524 and Table 1, 512-513.

68 On the former, see, e.g., Althoff, *Die Ottonen*, on which see Esders and Schuppert, *Mittelalterliches Regieren*, 28-29; on the latter, Winterling, *A court without »state«*, with his detailed study of the imperial court: Winterling, *Aula Caesaris: Studien zur Institutionalisierung*.

69 Indeed, it was the last of these that hailed forth the formative classic analysis of Elias, *Die höfische Gesellschaft*.

70 See Davenport and Kelly, *Administration, finances, and the court*. On just one aspect of the court's administration (p. 117), they note that there were many thousands of slaves and freedmen in the imperial service at any one time and that »the emperor cannot have had personal relations with all of them.«

Herodian court of Judaea, that might seem to have functioned within a system dominated by »personal power«. ⁷¹ Individual persons in these systems managed power in a social system determined by non-institutional relations of kinship, amity, and personal indebtedness that made their polities much closer to a model of a *Personenverbandsstaat* than was Rome. ⁷² These men of power, however, were quite conscious of the fundamental distinctions between the way that they were doing things and the way that they witnessed them being done by a Roman imperial state that was characterized by a more rigid and impersonal system of political command and control, and a more objective administrative apparatus, that they did not possess. In this context, the successful operation of the large and quite complex political entity of the empire was not achieved by a court *per se* – a court that was an after-effect of its power – but by a complicated series of permanent institutional apparatuses in which manifold local persons, high and low, throughout the empire participated. In short, whatever theoretical requirements that we might establish about this side of the question to designate something that we would describe as a state, it appears that the specific instruments of Roman imperial governance more than meet any reasonable objective criteria of indicating the presence of such a complex corporate entity.

An Essence?

But perhaps the distinction between state and not-a-state, at least in a Schmittian view, lies less in the sum of similarities or in the cumulation of various factors than in some »essence« that stigmatizes a thing called »a state«. In this sense, the state becomes something that has an autonomous existence that rises above the individual parts that contribute to its special status. As has been noted of Schmitt, there is »a quasi-Catholic juridical rationality that renders the sovereign a representative person who amounts to something much more qualitatively than the sum total of the wills that created or empowered him«. ⁷³ In response to Hobbes, Schmitt asserts that »the state that came into being in the seventeenth century and prevailed on the continent of Europe is in fact a product of men and *differs from all earlier kinds of political units*« (m.i). It was so, says Schmitt, because the state was like a machine, a product of »a new technological era«. ⁷⁴ Furthermore, he claims, the decisive step in this watershed happened when the state »was conceived as a product of human calculation«. ⁷⁵ That is to say, the state becomes a machine-like apparatus that could be consciously created by deliberate planning. Other than the metaphoric machine-like view of the state, it is difficult to know what is meant precisely by the latter claim, since any human polity must be made by some species of »human calculation«. Even in making these claims, however,

71 See Shaw, *Tyrants, Bandits and Kings* and Shaw, *Roman Power and Responses*, somewhat close, therefore, to Althoff's concepts: Esders and Schuppert, *Mittelalterliches Regieren*, 28-29. I am not now quite as certain of the findings asserted there as I was at the time, but the general outlines will suffice for the argument here.

72 The overriding difference of the larger context in which these personal relations functioned is critical to understand: Pohl, *Personenverbandsstaat*, 215-17.

73 McCormick, *Teaching in vain*, 270 and 282, referring to Schmitt, *Leviathan in the State Theory of Thomas Hobbes*, 31 & 33; to which he adds, »and the irrational element of *myth* that allows individuals to perceive themselves to be part of a collectivity with a historical or providential mission.«

74 Schmitt, *Leviathan in the State Theory of Thomas Hobbes*, 34; see Schmitt, *Der Leviathan in der Staatslehre*, 53: »Der Staat, der im 17. Jahrhundert entstand und sich auf dem europäischen Kontinent durchsetzte, ist in der Tat ein Menschenwerk und von allen früheren Arten der politischen Einheit unterschieden.«

75 Schmitt, *Leviathan in the State Theory of Thomas Hobbes*, 37.

Schmitt repeatedly glosses this state as »the *modern* state«, so one presumes that he latently accepts that there must have been non-modern ones that were perhaps not characterized by such »technological« powers.⁷⁶ Similar analyses that have denied the status of state to the Roman imperium have also retreated into the safe ground of saying that it was not a *modern* state.⁷⁷ In the light of these strong qualifications, even (apparently) by Schmitt, one might reasonably ask: Are these »differences« in and of themselves sufficient to deny the categorization of state *tout court* to the Roman instance? How much, one must ask, was rationality, planning, and calculation so absent in the Roman case that they would void the legitimate use of the name (i.e. of »state«). In this respect, it is important to note that even within the »modern state«, Schmitt recognized various subtypes like the absolutist state of the eighteenth century, the »neutral« (i.e. non-interventionist) state of the nineteenth, and the totalitarian state of the twentieth century.⁷⁸ It is surely reasonable, then, to ask if a similar progression of city-state, territorial state, and imperial state, would not be possible and justifiable for the case of Rome.

Firstly, it should be noted that Schmitt's list of essential characteristics of this »essence« is conventional and is in no way different from how many nineteenth-century thinkers (and twentieth-century historians) defined the new European state of the period. Thinkers like Marx: »The centralized state power, with its ubiquitous organs of standing army, policy, bureaucracy, clergy and judicature – organs wrought after the plan of a systematic and hierarchic division of labour – originates from the days of absolute monarchy.«⁷⁹ So it can be summarily stated: »The Absolute monarchies introduced standing armies, a permanent bureaucracy, national taxation, a codified law, and the beginnings of a unified market.«⁸⁰ The new modern state might well have »introduced« these items as qualitative innovations when compared to its »feudal« predecessors, but it must be protested that they were not »introduced« for the first time, since the Roman imperial state featured every one of these

76 E.g. Schmitt, *Leviathan in the State Theory of Thomas Hobbes*, 31, 56; cf. 1938/1982, 47: »Moderner Staat und moderne Polizei sind zusammen entstanden...«; 85: »der moderne »neutrale« Staat ...«; while the adjective is normally omitted elsewhere, it is manifest from context that it is this specific type of state that Schmitt is considering throughout.

77 For example, Marotta, *Roman Jurists and the Empire*, 228: »... it is not possible to adopt the notion of territorial state in the modern and contemporary sense (m.i.) of homogeneous normative space«; cf. 219 n. 13 where he appeals to Tilly on the modern origins of the term.

78 See, e.g., Schmitt, *Begriff des Politischen*, 23: »Die Entwicklung geht vom absoluten Staat des 18. Jahrhunderts über den neutralen (nicht-interventionistischen) Staat des 19. zum totalen Staat des 20. Jahrhunderts.« Note that these mark developmental stages.

79 Marx had long before singled out these characteristics of the state: as here from *The Eighteenth Brumaire of Louis Napoleon* = Marx, *Surveys from Exile*, 237-238. For moderns, see, e.g., Anderson, *Lineages of the Absolutist State*, 15-17, at 17: »The Absolute monarchies introduced standing armies, a permanent bureaucracy, national taxation, a codified law, and the beginnings of a unified market.«

80 For Rome, concerning a standing army, national taxation, a codified legal system, and so on, there can be no doubt; there might be some justified balking at the presence of an established bureaucracy (although not for the later empire), but it depends very much on what one accepts as »bureaucratic«, the extent and depth of the administrative functionaries, the nature of the administrative system, and so on. There is no reasonable doubt that the Roman state of the earlier Principate had such an administrative infrastructure, even if it was less complex and extensive than the bureaucracies of the most advanced European states of the nineteenth century. It was surely comparable on both grounds, however, with the administrative apparatuses of many modern states, even France, say, of the sixteenth and seventeenth centuries.

characteristics, right down to the »beginnings of a unified market«. In any event, the mantra of »being introduced for the first time« should not distract. There are indeed some aspects of the modern state, especially conceptual ones, that came into existence after the Greek *polis* and the Roman *imperium*, like debates and philosophical constructions about political legitimacy and its grounds. But these are surely new ideas and expectations that arose with a new *type* of state.⁸¹ They do not, as such, prove that a polity lacking these specific concepts about itself was on these grounds alone not a state at all.

Manifestly a very large number of ancient theorists from Plato and Aristotle (most famously) onward were clearly able to envisage a *politeia* or a *res publica* in theoretical terms, to produce ideal (if not entirely mechanical) models of it, or to conceptualize it in terms that allowed refinements and fundamental alterations to existing ones. If the seventeenth century produced theorists like John Locke who could envisage this apparatus and see the state as something separate from and above the society which it enveloped and governed, then surely Cicero was no different. He, too, distinguished the state from the government and, if only in a rudimentary fashion, separated the state from society. And he was the first, long before Locke (despite frequent claims otherwise) to see private property as a fundamental element of the social and political order, and that a prime, if not *the* prime function of the state was to define and to protect private property.⁸² If in all of this thinking about the nature of the state Cicero uses the term *res publica*, it is manifest that the different terminology (not more than the Greek *politeia*) does not exclude that he is thinking, at least in part, about what we call a state. Whatever he was, Cicero was no great theorist – he was mostly describing and justifying what he already knew to exist. As already pointed out above, the Latin *res publica* never designated what we conventionally call »a republic«, but the words certainly overlap with our conceptions of a government and probably with the idea of a state – that is to say, an established government with all the apparatuses of a complex rule that was operationally separate from its individual subjects and which had a »perpetual existence« as juristic thinkers put it.⁸³

If we are to accept Schmitt's claim, reposing on an extreme premise that the critical basis of the state and politics rests finally on the distinction between friend and enemy and that the origins of the modern state, which offers the ideal of almost total protection within its borders to its citizens, is to be coordinated with the emergence of modern police forces, then a gap between the Roman state and the modern one does emerge, although only in some particulars.⁸⁴ In the essence of this definition, it would seem that the difference is truly tenuous and hardly essential. If the essence of politics is the prior existence of the state and this entity reposes, in turn, on the potential for final action for friends and against enemies – the latter construed as peer-state hostiles – then the Roman empire meets even this special,

81 Finley, *Authority and Legitimacy*, with apposite comments by Pleket, *Authority and Legitimacy*; and Finley, *Politics in the Ancient World*, 130-132.

82 I choose Wood, *Idea of the state*, since Wood was an established student of John Locke who had a good basis for assessing the significant differences between Cicero and sixteenth and seventeenth-century thinkers like Bodin and Grotius.

83 See n. 26 above on both of these points.

84 Schmitt, *Leviathan in the State Theory*, 31; it is a critical consequence of holding that the Cartesian essence of the state is *protego ergo obligo*: see Schmitt, *Concept of the Political*, 52; Schmitt, *The Leviathan in the State Theory*, 92.

truly Schmittian, criterion. Indeed, it is striking to see that Schmitt – logically, given his legal training – had recourse to Roman jurists to define precisely what is meant by a »public enemy« *in his terms*.⁸⁵ If, in his view, »In its entirety the state as an organized political entity decides for itself the friend-enemy distinction,« this is a classic statement of how the Roman state, whether as Republic or Principate, behaved. Neither an individual private person nor even an individual senator, could wage war using the combined forces at Rome’s command to battle against his or her personal enemies in Schmitt’s sense. Even on the separate criterion of confronting internal enemies, we must ask if this »essence« is sufficient to deny the category of state to the Roman instance? Although the empire and its provinces, and large urban centers like Rome, Carthage, Antioch, and Alexandria, admittedly did not possess modern police forces, there were modestly effective types of policing that were available to them. And, in terms of policing, there was a gap between the ideal and practice, but not one that is as totalizing as is sometimes imagined.⁸⁶ If Schmitt wishes to co-ordinate the modern state with modern policing, then, even if this policing *began* in the seventeenth century, the full development of police forces that systematically backed the remit of state power in enforcing conditions of peace within its borders did not occur until the latter half of the nineteenth century. The extent and depth of Roman policing, often carried out by militia-like units of the army or by local forces provided by municipalities in the west and by Greek-type city-states in the east, was a critical element of the Roman peace in most provinces of the empire. In the developed, urbanized core provinces of the empire, indeed, it was not much less efficient and effective in terms of policing than was found in most of Schmitt’s states of sixteenth and seventeenth (and, indeed, eighteenth) century western Europe. This is more or less the type of »policing« that Hegel, for example, regarded as consistent with the modern state.⁸⁷ There is no necessity, of course, that the Roman state should meet Schmitt’s peculiar definition of a state as a seat of final authority that enforces this type of civic peace any more than it has to meet his peculiar definition of »sovereignty« – although it does in fact meet both.⁸⁸ It is precisely in the autonomous existence of a supreme law-giving administrative authority armed with a sufficient force and ideological legitimacy to guarantee unusual conditions of peace and civil stability within its lands that the Roman state, along with the premodern dynasties of China, for example, has often been compared to the modern state.⁸⁹

85 See Schmitt, *Concept of the Political*, 27-29, citing *Dig.* 50.16.118 (Pomponius).

86 For the city of Rome, the analysis of Nippel, *Public Order* remains central, but it must be complemented by Sanger, *Zur Organisation des Sicherheitswesens*, Fuhrmann, *Policing the Roman Empire*; Kelly, *Policing and Security*; and Brelaz, *Surveiller le territoire*, who encapsulates much of his earlier work relevant to this question.

87 Avineri, *Hegel’s Theory*, 102.

88 See Schmitt, *Political Theology*, 5, and chapter one *in extenso*, on »sovereignty« as residing in »he who decides on the exception«, that is, as a kind of liminal power (which the Roman emperor certainly possessed). As Elshtain, *Sovereignty, God, State, and Self*, 30-33, 114-117, has pointed out, this view of sovereignty was not original to Schmitt and, in any event, it has been hotly contested.

89 In general, see Genet, *Rome et l’État moderne*; in particular, see, e.g., Nicolet, *L’Empire romain*; Ando, *Ambitions of government and Hannibal’s legacy*, both of whom cite much of the earlier relevant literature.

More to the point in Schmittian terms as one of the state's defining essences is that it is the organizational entity that is capable of waging war on a large scale against entities that *it alone* is capable of designating as »the enemy« (in his terms). If this is so, then the Roman state more than meets this requirement. In these same terms, it was also capable – as richly demonstrated by the historical record – of experiencing true internal or civil wars. In this regard, it is more than interesting that Schmitt sets as a logical corollary of these propositions that it is a necessary task for an institution called a »state« to establish conditions of peace within the territorial remit of its control. This further means that *every state (m.i.)* must have some means of defining an internal enemy – and amongst the category of every state, it is notable that Schmitt specifically refers to Rome and the form of declaring a *hostis publicus* (a state enemy) as a classic illustration of what he means.⁹⁰ In his larger general argument about essence, therefore, he leaves no doubt that Rome must be a classic instance of a state in his terms.

More than this, however, Rome also meets Schmitt's refutation of pluralist constructions of politics and sovereignty in the specific terms of *his* definition of sovereignty. The Roman government was in fact the final decider when it came to designating who were public enemies (i.e. of the state) and in mobilizing huge instruments of warfare against them. Just as in Bismarckian Germany, no professional *collegium*, public municipality, religious organization, or other such lesser corporate unit could prevent it from doing so.⁹¹ Just so, there is no doubt that although Rome either tolerated, accepted, or formally sanctioned lesser corporate bodies within its own body, like professional and religious *collegia*, there was no doubt *at the time* that Rome was not just yet another larger, even much larger, corporate body. The *Res publica* and its highest institutions (as later the emperor) and it alone had final power on matters as existential as waging wars that might threaten the whole of its society. Rome was, in Schmitt's own terms, the political entity, i.e. the state, which was the decisive polity. The political entity that was the Roman state might well have harbored many other corporate entities within it – some of them extensions of its own power, for example the public municipalities of the west or the Greek poleis of the eastern provinces, but, once again, and in Schmitt's own terms, its »political entity was something specifically different, and vis-à-vis other associations, something decisive«. ⁹²

90 Schmitt, *Concept of the Political*, 32-33; 46-47; cf. original, 2015, 31-32, and 43: »In allen Staaten (m.i.) gibt es deshalb in irgendeiner Form das, was das römische Staatsrecht als *hostis*-Erklärung kannte ... der innerstaatlichen *Feinderklärung*.«

91 See Schmitt, *Concept of the Political*, 40-45, in detail; cf. original *Der Begriff des Politischen*, 41: »Die politische Einheit ist eben ihrem Wesen nach die maßgebende Einheit... Sie existiert oder sie existiert nicht. Wenn sie existiert, ist sie die höchste, d. h. im entscheidenden Fall bestimmende Einheit.«

92 Schmitt, *Concept of the Political*, 45; cf. the original 2015, 42: »Die reale Möglichkeit der Gruppierung von Freund und Feind genügt, um über das bloß Gesellschaftlich-Associative hinaus eine maßgebende Einheit zu schaffen, die etwas spezifisch anderes und gegenüber den übrigen Assoziationen etwas Entscheidendes ist.«

The Law

Critical to the Schmittian idea of the state is the place of the law in the function and identity of a polity having the standing of a state. Indeed, it is practically impossible to understand his ideas on the modern and premodern state (and their implications for Rome) without understanding the context of the fundamental legal debates between the so-called »positivists« and »anti-positivists« in German legal circles in Schmitt's own age, as well as before and after it.⁹³ His overarching interpretation of the law is still one that sets out stark parameters of definition, even if it seems difficult to place his contributions in a context of Roman law as such.⁹⁴ In Schmitt's perspective, the state is a kind of supervening entity that emerges from and which, so to speak, embodies a deep pre-existent social schema of law and justice. Although this sequence of developments is surely debatable, at least in terms of the observable historical record, we might still interrogate the relationship between »law« and »state« to see if the Roman case would meet Schmitt's own criteria for the function of a »political unit« to rise to the level of »a state«. An investigation of the linkages between the Roman state and its laws, legal structure, interpretative specialists, and enforcement of its laws surely indicates that this relationship was sufficiently developed along Schmittian lines that a total separation between his idea of »the state« and the Roman empire seems excessive and unjustified. As has been observed, this was one of the critical ways in which the Roman state differed from the Greek polis.⁹⁵ If the law and legal norms are antecedent things that the state upholds, then it is only reasonable to ask what the relationship between the two was conceived to be (and can be argued to be) in the Roman case. Of course, Schmitt's position is one that postulates a vision of »the law« that is somewhat arbitrary, every bit as much as its opposite, »the state of nature«, so favored by some early modern thinkers. Even so, the problem is not at all finally resolved. In fact, it is precisely in the context of the legal thinking of the jurists and the concept of »empire« that the existence of the polity as a »state« has been rejected.⁹⁶ But this is not our problem or, indeed, Schmitt's.

93 This vital context of debates in the law is provided by Schupmann, *Carl Schmitt's State and Constitutional Theory*, 6-25.

94 See, e.g., Schiavone, *Invention of Law*, 37-39, where his words seem, to me, to be truly ambiguous.

95 See Finley, *Politics in the Ancient World*, 31. For a range of studies on the growing professionalism and authority of the jurists, the state-institutional structure of the courts, and the complexity of the law, see Frier, *Rise of the Roman Jurists* to Schiavone, *Invention of Law*; Du Plessis *et al.*, *Handbook of Roman Law*, chs. 12-14, are a sufficient demonstration (as are other contributions in this same collection) of the embedding of this whole »legalism« in the structures of the Roman state.

96 Marotta, *Roman Jurists and the Empire*, 205: Did the jurists ever treat the concept of *civitas* in such a fashion that »the Roman dominion constituted... a territorial state?« and, furthermore, it »makes no sense (sc. in this specific light) to wonder if it (sc. the Roman polity) was by now a State that had had an Empire rather than a State that had an Empire.« He continues in the footnote (n. 56): it might be noted »that this term – State – if used in reference to premodern political syntheses, cannot assume a legal and institutional importance – unless we are satisfied with merely descriptive formulations.« And further (p. 219) »for the jurists, the Roman conquests did not lead to the creation of a territorial state.«

A hard separation between the law of the modern national state (the peculiarities of the Common Law aside) and that of the Roman empire was one widely shared up to a generation or two ago. It was a concept of the legal world of the empire that restricted the purview and effects of specifically Roman laws, the legal measure of the Roman state, as limited to the civic silo of Roman citizens – in this precise sense, Roman law was strictly a »civil law«, *ius civile*. This perspective left the empire as a patchwork quilt, as it were, of social tranches where Roman law applied and where it did not; and, alongside these divides, a varied congeries of local legal systems and customary norms. This weak concept of the law and legal structure of the empire is a view that had serious implications for categorizing the type of the empire as a state. This interpretative perspective on the legal world of the empire, which was a classic view of its nature by both historians and Romanists through the mid-twentieth century, has been strongly modified by different streams of research by both legal scholars and social historians over the last four or five decades. The new picture of the law in the centuries long before its formal systematization in the great written »codes« of the fifth and sixth centuries CE is one of a much more pervasive and deeply penetrating system of ideas, practices and institutions that extended far beyond the limited number of Roman citizens to peoples who were technically outside the formal purview of the *ius civile*. This limited sectional view of the Roman law was upheld by a wide range of Romanists, classically represented by Ludwig Mitteis in his canonical nineteenth-century work on *Reichsrecht und Volksrecht*, and embodied in handbooks on the civil law like the classic works of Max Kaser.⁹⁷ Doubtless, this was the more confined perspective of the purview of the Roman law – a civil law limited to Roman citizens, a system not broadly applied in the whole empire – that Schmitt had absorbed in his initial training in Roman law in Berlin in 1907-08.⁹⁸ This idea of the law remained a real force in the theoretical Romanist underpinnings of the modern European civil law systems. The picture of Roman law as a system of legal regulation restricted by social status, political definition, and by strong cultural barriers, as just noted, is no longer tenable. It is now generally recognized that the influence and application of Roman law was extended over a wide range of subjects of the empire beyond its citizens.⁹⁹ This happened in a number of different ways that encompassed means in addition to the spread of Roman citizenship: by the fictive treatment of non-citizen provincial subjects *as if* they were Roman citizens, so bringing them within the scope of the law; by the widespread propensity of non-citizen provincials to imitate Roman legal forms or to petition Roman court venues in order to have their disputes heard under the aegis of Roman law; or by the propensity, underwritten by orders issued by the emperors themselves, to treat local customary arrangements as legally binding and within the purview of judicial proceedings held by provincial governors or their judicial legates.¹⁰⁰ The concept that Roman legal pronouncements applied to all

97 Mitteis, *Reichsrecht und Volksrecht*; and, on standard legal models, see, e.g., Kaser, *Römisches Privatrecht*.

98 Bendersky, *Carl Schmitt: Theorist for the Reich*, 7.

99 For some of the ways in which this happened, which varied from province to province and, in more strategic terms, between west and east, see the nuanced studies collected in Czajkowski *et al.*, *Law in the Roman Provinces*, with the important analysis of them by Kehoe, *Law and legal institutions*.

100 On these and other aspects, with specific examples, see Kehoe, *Law and legal institutions* (e.g. a Roman governor of Macedonia interpreting the local Greek freeing of slaves *as if* they fell under Roman rules for informal manumissions).

subjects of the imperium or »command« of the Romans is clear in many instances. For example, a decision by the emperor that slaves could not be treated with »excessive savagery« by their owners – such behavior was not permitted »not only for Roman citizens but [is] also [not permitted] for any other men who live under the command (i.e. »in the empire«) of the Roman people«. ¹⁰¹ The Roman empire was, in very important ways, an empire of Roman law.

These and other modes meant that Roman law and, more broadly speaking, legal norms, came to be widespread practices that were an integral part of the imperial state and with which its state-like practices were especially identified. ¹⁰² The use and impact of the general law of the empire is well attested from the extreme southwest in the mountains of the Atlas in present-day Morocco to the extreme northeast of the mountains and mines of Dacia in present-day Romania. And from the extreme northwest in Britannia at Vindolanda and Londinium, to the arid lands of the province of Arabia in the far southeast. ¹⁰³ And in almost every locale in between. In the case of the detailed records of labour and commercial contracts on the wooden tablets recently discovered (and in numbers) from Londinium and those in wax tablets found at Alburnus Minor in Dacia, these are found embedded in normal activities only a generation after the Roman takeover and, in both of these cases (and many others), the forms of Roman law were being imitated and voluntarily adopted by local persons who were not even Roman citizens. ¹⁰⁴

101 Gaius, *Inst.* 1.53: *Sed hoc tempore neque civibus Romanis nec ullis aliis hominibus qui sub imperio populi Romani sunt, licet supra modum et ne causa in servos suos saevire.* (my emphasis); cf. Marotta, *Roman Jurists and the Empire*, 211, who also cites *Dig.* 36.1.27 (Paul) on a *senatus consultum* applying to all cities/communities *quae sub imperio populi Romani sunt*. There are many declarations that elements of the Roman law, as rescripts of the emperor, apply everywhere and at all times in the empire: see, e.g., *Dig.* 47.12.3.5 (Ulpian): *quia generalia sunt rescripta et oportet imperialia statuta suam vim optinere et in omni loco valere.*

102 The literature is now vast. What can be provided here are only some exemplary instances. On the use of legal fictions, see Ando, *Work-Arounds in Roman law* and Ando, *Fact, fiction, and social reality*; on the use of Roman courts and imitation of Roman legal norms, see the use of Roman forms, including a model formula for an action of *tutela*, in the Babatha archive; Czajkowski, *Localized Law*; Humfress, *Law in Practice, Law & custom and especially Law's empire on the widespread appeals to Roman law even by non-citizens*; on the negotiation with local forms of law and Roman courts, see Humfress, *Thinking through legal pluralism*, Dolganov, *Theory and practice*, and Nótári, *Private Law*.

103 Morocco: manifest in the terms of the *Tabula Banasitana*: Euzennat and Seston, *Un dossier de la chancellerie*; Dacia: Nótári, *Private Law*; on the »Bloomberg tablets« from London, see Tomlin, *Roman London's First Voices*; on Arabia: the well-known Babatha archive is sufficient, on which, see Czajkowski, *Localized Law* (encompassing most earlier studies).

104 On the mimicking of Roman forms in the »Bloomberg tablets«, see, e.g., Tomlin, *Roman London's First Voices*, WT 44, 45, 55, for contracts that are close imitations of the formalities required by Roman law; Kehoe, *Law and legal institutions*, 498-499, notes the well-known sales and labor contracts on wax tablets from the mining district of Alburnus Minor (Dacia), made by persons who, like those at Londinium, were not Roman citizens.

This process of classic *étatisme* is already evident in the application of Roman law by its officials in a rather early age of the formation of the empire. Complex developments in the law produced a set of specifically Roman legal norms and procedures that were being widely applied to the subjects of Roman rule already by the middle Republic – a fact that one should emphasize with some force: not just to its citizens but to its subjects in general.¹⁰⁵ As far as the relationship between the state and its provincial subjects is concerned, there is no doubt that the government's application of its legal norms via its recognized officials – in most cases, provincial governors and their legates, but also lesser officials armed with *iurisdictio* – were seen to be one of the very bases of the political system of the state. As Cicero remarked to his brother Quintus in 60/59 BCE, the Roman imperial rule of the province of Asia »is most especially upheld by the administration of the law, *iurisdictio*«. ¹⁰⁶ Since his brother Quintus was going out to govern one of the wealthiest and most important provinces of the empire at the time, the judgement of a learned fellow senator must bear some significance. It is not just this pragmatic aspect of law and governance that alone counts, but also the conceptual relationship between state and law. In this respect, the long road to formal codification (a specific concern of Schmitt's) does count. In this process, the influence of great monist ideas, like those of Plato in the age of so-called »neo-Platonism« and of Christian ideologues, can be seen as quite congenial to the systematic and imperial nature of the Roman law. Surely this is so because, whatever its apparent disjointed and casuistic actuality, the law had this »universalism« built into its background assumptions, vision, and actual development.¹⁰⁷ When compilers of general law could refer to it both as divinely inspired for the collective and as a *magisterium vitae* for each individual, it is manifest that this was a law-state connectivity of much the same type as Schmitt envisaged.

The extent to which this law not only governed the lives of the subjects of the empire but was also absorbed by them and governed their behavior is demonstrated, in part, by the extensive archiving of court records made by provincial families, for example, for their own legal protection. These records were linked, ultimately, to records kept by the state in its archives, many of which were copied by non-citizen subjects of the state. The state kept them for its own interests – to confirm judicial decisions, to announce awards, to keep records of recruitment, to maintain receipts of tax duties, and so on – but the private individuals kept them or, most frequently, copies of them for reasons that were closely tied to the existence of the state, namely, to protect their property and personal status.¹⁰⁸ Furthermore, this

105 As is evident, for example, from the procedures followed by the Roman governor, Gaius Valerius Flaccus, in adjudicating an irrigation dispute between two Iberian communities in the Ebro Valley in the province of Hispania Citerior as early as 87 BCE: Richardson 1983 (*AE* 1984: 586; ancient Contrebia, modern Botorrita; 15 May 87 BCE). There is no reason to believe that this was the earliest instance of this practice.

106 Cic. *Q. frat.* 1.7.20: *Ac mihi quidem videtur non sane magna varietas esse negotiorum in administranda Asia, sed ea tota iurisdictione maxime sustineri; in qua scientiae, praesertim provincialis, ratio ipsa expedita est...*

107 On the influences of neo-Platonic concepts on the final codification, see Schmidt-Hofner, Plato and the Theodosian Code, 45-60, specifically on the case of the *Codex Theodosianus*; on the important Christian influences, see Letteney, *Christianizing of Knowledge*, appendix 1, with the same case study. For *magisterium vitae*, see *CTh* 1.1.5, which also emphasizes the completeness and universality of the law's application (Theodosius et Valentinianus AA ad Senatum, 429 CE).

108 Bagnall, The councillor and the clerk, 212, concerning very well documented cases that we have from Roman Egypt.

ideological impact of the law extended far beyond any formal application of its normative rules in judicial hearings in public courts and other venues. The writings of secular thinkers and belle-lettristes like Apuleius and Christian ideologues like Tertullian, living in the height of the empire, were suffused with concepts of law and legal terminology that typified the Roman state. Both men, who were African subjects of the empire, were about as Roman as one can get; consequently, the law of empire was deeply written into their creative work. Their writings reflect a law, by which is meant specifically Roman imperial law, that was central to the ideas and behaviors of a wide range of persons through the length and breadth of the empire. As far as Tertullian was concerned, both in the formal institutional makeup of its congregations and in its basic concepts, the Christian church was imitating the forms and ideas of the state.¹⁰⁹ More broadly, however, such »state-talk« laced with legalese and with the dramatic scenarios of Roman courts, was central to the invention, construction, and continuity of something as central to early Christian identity as the ideology and practice of martyrdom.¹¹⁰ In this sense, we can witness specific effects of *Staatlichkeit* on individuals that are not limited to the modern instance.

Can the Roman Imperial Polity be Called a State?

Many of the doubts about the typing of the Roman government and its status as »a state« have been focused on the republican state where such doubts might have occasional purchase, albeit only with an exercise of the type of myopia indicated above. I strongly doubt that such claims about the nature even of the less-structured republican polity, in those times for which we have adequate and dependable evidence on its structure, can produce an accurate description of *the whole of its governance*. My principal focus here, however, is on the structure of the mature Roman state of the high empire where, surely, there can be little doubt that the government of the empire met almost all the significant objective criteria of being a state – that its organization possessed a quality of »stateliness«. Naturally, given the growth trajectory of the Roman polity, there were sectors or elements of it that deviate from the perfect Schmittian model of »the state«: state power was not uniformly applied or claimed within the boundaries of the state. There was no perfect Weberian claim to a »monopoly of force« exercised by the state, an item subscribed to by Schmitt as an essential characteristic of a state. Roman law norms and their controls over violence were not literally applied everywhere and in every instance (i.e. there was no general monopoly of state law). Civic policing within the Roman state admittedly fell short of the in-depth policing established with the permanent police forces of the modern state. The economy was not – at least in my estimate – a universal »national economy« that dominated virtually all economic activity within the state's purview characterized by the universal price-setting markets of

109 Documented, in great detail, in the classic work of reference by Gaudemet, *L'Église*.

110 Despite occasional objections to some of the details, the fundamental argument in Bowersock, *Martyrdom and Rome*, is sufficient to demonstrate this point.

modern capitalism. And so on. Whatever the effects of these exceptions, large and small, we might at least settle on the absolute minimum that the state-like structures of the Roman empire were operationally sufficient for our purpose for us to ask: What was this Roman state like and what functions did sub-corporate units have in its structure? In fact, it is in the transition from the republican form of the state to the principate that we find the formation, extension, and regulation of many of the sub-corporate bodies, like public *collegia*, which, even if they had a more informal earlier existence in republican times, were more carefully defined (precisely in legal terms) and reshaped to serve the interests of the Roman state.

On the side of historical concepts, I have already noted that Schmitt, whose theorizing is often appealed to in these matters or is a latent basis for them, makes the claim that the state – as such, and with the attendant vocabulary – is a relatively recent invention coordinated with the emergence of the modern national polities. The subsidiary claim is that the concept of »state« can only designate this specific type of polity. But in the operative non-theoretical terms that I have outlined above, this perspective also seems to be more than a little myopic. Most historians nowadays do not accept the forming of national states in their western European-north Atlantic type as a self-evident unique manifestation of »the state« in global history. They were, rather, the contingent result of the peculiar forces of that time and place.¹¹¹ In following this interpretation, we are obeying Schmitt's own injunction that what is a state has to be seen in historical terms, as a form attached to concrete social and political contexts.¹¹² Even if one accepts the historical peculiarity of this particular type of state, it does not necessarily follow that all governmental apparatuses before the emergence of »the state« in Schmitt's terms, which depends on this peculiar historical episode, do not qualify as what historians can legitimately call a state. One can still accept Schmitt's observation about emergence of a new type of governance with the new term, *der Staat*, to designate it in the sixteenth and seventeenth centuries without being forced wholly to abandon the term as one that is useful in identifying similar units of rule and governance that are found before the emergence of the peculiar modern type.¹¹³ Otherwise we are driven to Schmitt's position,

111 Eich *et al*, *Der wiederkehrende Leviathan*, 11. Oddly enough, this was also, in an important sense, Schmitt's view, based on his acceptance of the *konkrete Ordnung* as being of prior importance in determining specific forms of law and state: Schmitt, *Staat als ein konkreter Begriff* = Schmitt, *Verfassungsrechtliche Aufsätze*, 378-380.

112 See Schmitt, *Staat als ein konkreter Begriff* = Schmitt, *Verfassungsrechtliche Aufsätze*, 376; 2007, 27 & 45; and 2015, 20, 66-67, for the importance of the *konkrete Ordnung* in Schmitt's thinking; see Bendersky, *Carl Schmitt: Theorist for the Reich*, 87-88, 100-101; McCormick, *Teaching in vain*, 277-279; Schupmann, *Carl Schmitt's State and Constitutional Theory*, 94-95, 129-131; for its influence on historians like Brunner, see Algazi, *Otto Brunner – 'Konkrete Ordnung' und Sprache der Zeit*, 171-175.

113 As such, Schmitt's thinking is a part of a range of similar thinking – e.g. Weber on capitalism, Koselleck on historical time, Foucault on disciplinary regimes – that posits a fundamental ideological break located in a modernist watershed in European history. Although there is some analytical benefit in their claims, the extremity of the polarities that they posit is overdrawn in a way that surely impedes longer-term historical analysis. As in Weber's case, although he did draw a mostly true line between the modernity of the eighteenth and nineteenth centuries and the social orders, economies, and polities of the centuries immediately preceding, the uniform extension of the idea backward in time led to a forced and false categorization of *everything* that went before, in his case reducing the Roman state, to something akin to »patrimonial« entities.

namely, to say that pre-state forms of power were a peculiar kind of *Herrschaftsorganisation*. On close examination, if this *Herrschaftsorganisation* proves to have all the hallmarks of what we would call »a state«, it seems both otiose and rather misleading to say that only the one modern western European type is a state, while all the others are not. There seems no point to constructing a definition in such a narrow Eurocentric sense as to exclude most of the other manifest cases in world history.¹¹⁴ In this sense, we are perhaps in danger of making too much of the word »state«, exalting it excessively and making of it too much. It was, admittedly, an early modern neologism that emerged to describe something that was indeed new to the experiences of the persons of the time. It designated a polity that had a certain type of »standing« or status (hence the use of the Latin *status*) that set it apart from most contemporary political or governmental units. This should not be taken to mean, surely, that such units with a comparable status (if not exactly such) had not existed before, outside the immediate experience of moderns.

More significantly, these rhetorical approaches to the word (or its absence) would compel us to abandon all modern-invented concept terms, like »economy«, for which earlier social orders had no word, in our analysis of premodern societies. This would be an obvious fallacy of historical logic and method, leading to the illogical premise that, because there was no equivalent word for »economy« in Latin, the Romans had no economy and no way of recognizing or enacting economic relations.¹¹⁵ This strange assertion that *we* have to function within the scope of *their* words and concepts in order to analyze their society, although congenial to some anti-modernist trends in history, is illogical and not borne out by any actual historical practice.¹¹⁶ Nor is there any need to rescue the emic via too rigorous an application of a Weberian *Idealtypus*, since even Weber himself was able to make the distinction between various types of states (which counted, indeed, as »states«). If a monopoly of violence was a critical measure of statehood, then, he admitted, premodern states had this only in respect to their own regulatory measures. And it is probably true that only some modern states have possessed this »monopoly« in totality of violence as a measure of their self-definition.¹¹⁷ But

114 Although he is criticizing the ideas of Gianfranco Poggi and Martin Van Creveld, and not those of Carl Schmitt, Scheidel, *Studying the state*, 7-8, makes the same point.

115 For this problem of the gap between modern conceptual terms and the »emic« world of the Greek and Roman writers, see Winterling, »Staat« in der griechischen-römischen Antike?, 249-51. His suggested resolution via the Weberian *Idealtypus* is possible but, it seems to me, not necessary. The number of such »modern concepts« that are necessary to our historical analysis is rather large. As both Winterling, »Staat« in der griechischen-römischen Antike? and Lundgreen, *Staatsdiskurse*, 15, emphasize, we (moderns) cannot do history without them. I think that this sufficiently answers Lundgreen's emic worry (*Staatsdiskurse*, 16) about the concerns we should have with how »they« would have described their own polity. We should, of course, be concerned with such an »indigenous« perspective, but it should not be allowed to occlude our own analytical interests or the use of the historian's tools that we need to get the work done.

116 So, for example, the claims by Otto Gierke and Otto Brunner, which one must expect of them, are in part true (e.g. the word »status« in their sources is not equivalent to our »state«), but quite false in the conclusions that they draw (i.e. we cannot use our concept of state to analyze past historical actors). I therefore disagree with an artificial problem on »the state« that seems to be created by Davies 2003, 292-93 (where, in any event, the position is regarded by the author himself as »untenable«).

117 Weber, *Economy and Society*, 135-136; on which, see Scheidel, *Studying the state*, 5 and 5 n. 3 who seems, to me, to have assessed this matter correctly.

this does not mean (as it did not even for Weber) that all polities had to meet this criterion before they could be accounted a state. The very weakness of anti-Leviathan claims like these necessarily directs us to consider a different model of the Roman state that is more appropriate and more functional in its analysis of its instruments of governance, an analysis that shifts from a narrow focus on the functioning of politicking at the center to a wider one on the whole structure of the empire. And less with a fascination with having Rome measure up to the requirements of a *modern* »state« than as exhibiting elements typical of a state of its own type. In this context, we might consider a definition of »state« that claims to exclude the Roman empire from state-ness.¹¹⁸

The state... is a corporation... Above all, it is a corporation in the sense that it possesses a legal *persona* of its own, which means that it has rights and duties and may engage in various activities *as if* it were a real, flesh-and-blood, living individual. The points where the state differs from other corporations are, first, the fact that it authorizes them all but is itself authorized (recognized) solely by others of its kind; secondly, that certain functions (known collectively as the attributes of sovereignty) are reserved for it alone; and, thirdly, that it exercises those functions over a certain territory inside which its jurisdiction is both exclusive and all-embracing.

Van Creveld advances to claim that the state is a subspecies of »the corporation« and that for most of history there existed »governments« but not »states«. In taking this course, he shares a liberal idea of pluralism in political power in which the state is, indeed, just another corporate body.¹¹⁹ He further contends that the state as a corporation was unknown in pre-modern times and that therefore the Roman empire was not a state. The problem is that all these assertions are untrue; in fact, they are especially untrue of the Roman state. The Roman *imperium* manifestly meets van Creveld's three major criteria of »corporateness«. Its proponents had a definition and consciousness of their polity as a corporate body, this state authorized other corporate bodies under its aegis, and it exercised »aspects of sovereignty« – even if this, too, is a modern word – and did so within a territory that it defined, if not with the modern sense of mutual exclusive *shared* »borders« that defined the constellation modern western European states. If, like most empires, it had no firmly established outer borders, the Roman state still had plenty of internal ones between its component units, especially those of the provinces, that functioned similarly and marked out areas of what might be called the remit of the state's juridical, political and military powers.¹²⁰ The empire also had

118 Van Creveld, *Before the state*, 1.

119 In its classic sense, one important to arguments here on competing or alternative locations of »sovereignty«, pluralism is perhaps still best represented by the early work of Harold Laski, e.g. *Problem of Sovereignty and Authority in the Modern State* (of course, Schmitt rejected the »pluralist« construction of the state).

120 Ando, *Hannibal's legacy*, esp. 76-78, offers the best analysis of this aspect of the Roman state.

»lines of demarcation« with the external non-Roman world. If you imported things across those lines you would know (as would the state's authorities) because you paid ten times the level of duties imposed on internal frontiers. The Roman empire, in short, had an effective form of sovereignty, even if it was not, say, like that of eighteenth-century France. Most unfortunately, modern theorizing of this kind is not very helpful. A commonly arraigned definition, for example, is that offered by Spruyt in his basic work on the state.¹²¹

If politics is about rule, the modern state is verily unique, for it claims sovereignty and territoriality. It is sovereign in that it claims final authority and recognizes no higher source of jurisdiction. It is territorial in that rule is defined as exclusive authority over a fixed territorial space.

At this point, all that one can do is to issue a strong and hard objection, since in this case, *by these precise definitions*, Rome is either a modern state or the modern state is not unique. The reader will have to make his or her choice, but in doing so will find themselves caught in the internal contradiction of such ahistorical theorizings.

In the end, it is probably more fruitful to accept the fact that, even if it was not a modern absolutist or national state, the Roman empire at least was a kind of organization that we call »a state« and to ask what kind of state it was. This observation directs us back to the dual problems of the nature of the Roman empire's composite makeup, precisely its status as a corporate body, and the function of lesser corpora in the structure of its larger body. Again, Schmitt's overwhelming concern as far as »state« was concerned, and specifically Germany, was to separate modern developments from the world of »medieval« or »feudal« polities where, as he remarks, no prince of a German mini-kingdom or tyrant of a Renaissance city-state in Italy aimed at producing the sort of state of which he is speaking.¹²² This is probably true, but it tells us little about what the managers of other nascent states did in other historical circumstances different from those of »medieval« and early modern western Europe. Instead, we are presented with a rather simple »before and after« scenario in which modern European developments establish a complete and sufficient definition of *everything* that was »before«. Whatever the virtues of this idea as a Schmittian concept, historians and political scientists have had no difficulty in distinguishing the modern absolutist states from earlier »feudal« polities or from Italian city-states *as states*. Nor, for that matter, have they had any difficulty in distinguishing, typologically, early Rome as a city-state, from its later manifestations as a territorial state (dominating Italy) or as an empire that dominated the Mediterranean.¹²³ The same applies to the use of the term to describe other comparable polities in global history.

121 Spruyt, *Sovereign State and Its Competitors*, 34 (what follows on this page and the next does not improve matters); for comment, see Esders and Schuppert, *Mittelalterliches Regieren*, 33-34.

122 Schmitt, Staat als ein konkreter Begriff = Schmitt, *Verfassungsrechtliche Aufsätze*, 378.

123 For modern historians and political scientists, see, e.g., Hall, *States in History*; for ancient historians, see, e.g., the survey by Demandt, *Antike Staatsformen*.

In the light of the arguments made above, the short answer to the question as to whether the Roman state was a state is, surely, »yes«. I might be forgiven if, with others, I quote the words of Susan Reynolds, which are cast less at the level of high theorizing than at what might be fairly described as a kind of English »common sense«.¹²⁴

A good many medieval historians do not merely distinguish the »feudal state,« with its personal bonds, from the modern administrative state. They prefer not to call medieval polities states at all. Since few who reject the word attempt any definition of the state that does not conflate it with modern state, nation state, or sovereign state, it is hard to know whether they do so because medieval kingdoms and lesser lordships lacked fixed boundaries, effective central authority, sovereignty (however defined), or modern technologies of communication. Most discussions, moreover, tend to confuse words (e.g. the use of status and its derivatives), concepts (the supposed modern concept of the state), and phenomena. A definition of the state as a phenomenon, however conceptualized by those within it, that will serve for comparative use seems desirable. I offer the following, which is based on Max Weber, with some modification: a state is an organization of human society within a fixed territory that more or less successfully claims the control (not the monopoly) of the legitimate use of physical force within that territory. If one were to deny statehood on this definition to medieval kingdoms or lesser lordships in general, or even to those of the early middle ages, on grounds of the fluidity of their boundaries, the ineffectiveness of control within them, the autonomy, or partial autonomy, of lesser authorities within them, or their lack of sovereignty (however defined), one would have to deny it to a good many modern states as well.

One can only add »amen« to such plain speaking. But should we choose to disregard Reynolds' words, even when set against the extreme standards of Schmittian theorizing, the mature Roman imperial project, its command or *imperium*, of the second century BCE to the fifth century CE, surely meets all the developmental criteria of *his* more stringent model. Perhaps more important in his terms, it exhibited the *essence* of stateliness as a corporate body that monitored conditions of civility and peace, *pax*, for all of its subjects – all those under its aegis and not just those possessing the formal status of Roman citizens. Within these terms, it was also the final decider in such critical matters as in those of war and peace. In any event, there is no pragmatic reason for historians to be trapped within this mode of »high thinking« of Schmitt's idealist philosophical model. We deal with human matters in what Veyne has called the »sublunary« world in which approximate categories, reasonable fits, good estimates, and rather more mundane standards are most useful for achieving a better understanding of the human past. Generalizations, as Finley pointed out, rather than absolute rigid rules or high-flown concepts that mimic those of the scientist, are the practicing tools of the historian.¹²⁵ In this context, was Finley right in the end and the label – arguing, in this case,

124 Reynolds, *Fiefs and Vassals*, 26-27; see Esders and Schuppert, *Mittelalterliches Regieren*, 35, who note the importance of the words.

125 Still the »workaday« pragmatic concepts that work for this historian: see Finley, *Generalizations in ancient history*, which, although here directed against a different problem – that of the scientific »laws« in history – bears on Schmitt's drive to apply highly refined philosophical ideas to past realities.

about the meaning of the word »empire« – just doesn't matter? The man-in-the-street, he says, uses the term »empire«, somehow knows what it means, and that is sufficient.¹²⁶ This has logical implications for our historical analysis.¹²⁷ And since all historical research as a discipline – as is even admitted by some of the disputants of this question – is done in the present, we necessarily must use the words and concepts that are part of our mental toolkit of understanding. One of these is the early modern neologism of the *status* that described the peculiar historical »standing« or »condition« of the political and military unit, the »government«, that had a sort of »final« standing in the world that emerged in the fifteenth and sixteenth centuries as a way of describing the emerging modern »state« in western Europe.

The Roman imperial state was, admittedly, not a modern absolutist state, not a »constitutional« state, *Rechtsstaat*, nor any of the other modern variants, like the totalitarian states of Europe of the 1930s.¹²⁸ And long-standing debates about how »imperial« the republican polity was or how republican the imperial one was, are interesting, but largely irrelevant since in either case the Roman state remains a state.¹²⁹ Once this has been said, however, and even when all the theoretical caveats have been considered, the Roman *imperium* – and, indeed, the Greek *polis* as well – can rightly be seen as species of the genus. Indeed, over the whole trajectory of its existence, the Roman polity exhibited the typical features of at least three types of state.¹³⁰ This is so not only because we are justified in using the modern term »state« to refer to these earlier political entities, but also because the Roman *imperium* shares all the significant objective conditions of being the thing that we call a »state«. Not only this, but it also meets the Schmittian criterion of possessing the »essence« that typifies a state. To engage in the infelicitous and illogical semantical game of calling it »Lordship«, a »politically organized subjugation«, a *Herrschaftsorganisation*, or, Schmitt's choice, »a kind of political unit« – *eine Art der politischen Einheit* – rather than »a state« simply because it was premodern causes needless confusion and gains the historian nothing in terms of historical analysis.¹³¹

126 Finley, *Empire in the Greek and Roman World*, 1; roughly the difference, therefore, between the »der Purist der Quellsprache« and »der Pragmatiker der Alltagssprache« of Uwe Walter, *Begriff des Staates*, 9.

127 Finley, *Politics in the Ancient World*, 49: »... inquiry into the ancient state and government needs to be lowered from the stratosphere of rarified concepts, by a consideration not only of ideology... of DER STAAT (*his caps.*) ... but also of the material relations among the citizens or classes of citizens...«

128 Schmitt, *Leviathan in the State Theory of Thomas Hobbes*, 65, on the *Rechtsstaat* that succeeds »the Leviathan« (save for the problem of dictatorship, he rarely studied the totalitarian state as a serious type of modern state).

129 The debates are clearly recapitulated and the consequences analyzed by Winterling, *A Court without »state«*, 11-17 (and, more broadly, in the whole contents of Winterling, *Politics and Society in Imperial Rome*); the problem here, however, seems to be with too narrow a concept of »state« that then leads to unnecessary difficulties with the concept itself.

130 Namely a city-state, a territorial state, and an imperial state; to a certain extent, these can be co-ordinated with the finer chronological political periodizations of Roman history, as, e.g., that offered by Flower, *Roman Republics*.

131 »Politically organized subjugation«: Abrams, *Notes on the difficulty*, 63-64.

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COMMENT

PREMODERN STATES: CONCEPTS AND CHALLENGES

John Haldon*

Introduction

Brent Shaw's masterly survey and discussion of the long-running argument over the question of Roman »stateness« offers an excellent opportunity to move our attention away from the Roman empire to other premodern state formations and to raise the question of the degree to which this discussion impinges, or should impinge on, the ways in which we approach and understand premodern socio-political systems. Shaw lucidly describes the discussion about the nature of the »modern« state that originated in the later seventeenth and eighteenth centuries and was taken up by historians and legal historians and applied to Rome. He very effectively demonstrates once again the problems that accompany what he terms the »emic trap«, the notion that by grasping as far as the sources permit an understanding of the world of former cultures in their own terms, this suffices as a historical analysis of those terms, and that we should therefore not use any modern words or terms because they did not exist (or were used to mean something quite different) in the cultures in question. But he also shows very clearly how rooted this whole debate has been in a specifically European, indeed a specifically German philosophical and political-cultural context, and that there is no practical, research-related analytical justification for remaining boxed in by this context. As Shaw emphasises, the early modern neologism »state«, from Lat. *status*, was intended to describe a type of polity that had a specific (and radically different, from the perspective of 17th- and 18th-c. thinkers) standing or status that differentiated it clearly from what had preceded it and distinguished it still from most other political entities of the period, in particular its quality as a nation-state.¹

Shaw invokes Moses Finley and Susan Reynolds to emphasise that what we are, and should be, working with are plausible hypotheses, and to attempt to sum up a complex phenomenon such as any political formation in a single term that has only one very restrictive value inhibits such a process or even renders it impossible. To limit oneself only to terms that were used within the sort of cultures we are studying in order to understand them has always seemed to me to miss the heuristic wood for the terminological trees. As Shaw and many others have pointed out, such a restrictive – and entirely Eurocentric – approach is to exclude most political formations that are neither modern nation-states nor tribal or kinship based political formations. Analysis requires appropriate technical terms through which we can try to characterise the historical phenomena in which we are interested, for whatever period or part of the world we are studying, if only to be able to compare them with other, similar or less similar, polities – which is, of course, precisely why early modern thinkers came up with the term »state« in the first place. We need to find a language that helps us say something

* Correspondence details: Prof. em. Dr. John Haldon, Princeton University, jhaldon@princeton.edu.

1 See Giddens, *Nation-State and Violence*.

about the quality and dynamics of particular types of political formation. Perhaps more importantly, we need to move away from European legalist and constitutionalist approaches and think more, perhaps, of power relationships and how the structures of a polity reflect and also nuance and configure such relationships. I see no strong reason not to retain the word state when suitably qualified by terms such as »modern«, »early modern«, »medieval«, »ancient«, »tributary«, »city« or whatever, providing we agree on some really basic characteristics that differentiate »state« from other forms of social-political organisation.

Definitions abound, the majority in fact based on Max Weber's basic criteria: see the work of commentators such as Skalník and Claessen, Krader, Michael Mann or W. G. Runciman.² Walter Scheidel has produced a very useful survey of the state of the discussion about »stateness« – arriving at the end at a primarily pragmatic definition that offers a heuristic starting-point for thinking about states and what differentiates them from non-states and from one another.³ All commentators seem to agree on some basic points: a state represents a set of institutions and personnel, concentrated spatially at a single point, claiming and/or exerting a monopoly of legitimate authority over a territorially distinct area, the people who inhabit it and the human and material resources it includes. This says nothing about specific forms of rulership and governance nor about the effectiveness or not of institutions, the law, kinship, distribution of power and so forth, but it does something to differentiate a state from a tribe, group or temporary confederation of clans, tribes or other kinship-based social organisations; and it implies both institutional and functional elements pertaining to the appearance of organisational aspects of a state as well as to the impacts of these structures.⁴

I would add the following: (1) territorial identity includes the possibility of the lands being dispersed and geographically separated; (2) state authority is vested in a centre, whether geographically fixed or mobile, from which state-level authority and, at least notionally, state-level administrative management emanates; (3) the ruling authority and its agents should claim and assert a monopoly over the use of coercion; (4) states evolve mechanisms through which they can reproduce themselves institutionally and over more than one or perhaps two generations;⁵ and (5) they develop and maintain systems of recording information about resources – land, population, products, revenues and expenditures, the military and so forth; (6) states develop an ideological life not necessarily tied to their actual political and institutional efficacy or power. Such political and symbolic systems tend to attribute to the state (usually symbolized by the ruling house or set of public institutions) a degree of permanence. The state becomes in itself the logic of existence, and along with ideological/religious institutions represents the form through which the vested interests present in the social formation can be understood and given expression.⁶

2 Mann, *Autonomous power of the state*; Claessen and Skalník, *Early state: theories and hypotheses*, 3-29 with other chapters in section 3 of the same volume.

3 Scheidel, *Studying the state*, with extensive literature.

4 Mann, *Autonomous power of the state*, 112. The problem of »tribal« identities is complex and extended. See, e.g. Godelier, *The concept of the »tribe«*; and Khoury and Kostiner (eds.), *Tribes and State Formation*. Further discussion in Fried, *Notion of Tribe*; Sahlins, *Tribesmen*; Crone, *Tribe and the state*. See also the critical discussion of Tapper, *Anthropologists, historians, and tribespeople*, 48-73.

5 As a case study of the »bureaucracy« of the east Roman state, see Haldon, *Bureaucracies, elites and clans*.

6 See Goldstone and Haldon, *Ancient states, empires and exploitation*.

State formations clearly vary qualitatively in the degree of their »stateness«, and there are huge differences in the ways in which the institutional structures, patterns of administration, forms of surplus extraction and so on operate in different states. As Steinmetz pointed out, states are not static entities but constantly evolving, however imperceptibly.⁷ For this reason as well as because of the vast range of historical state-like political entities, I follow Scheidel in using the term »state formation« as a less restrictive analytical description of what we are dealing with. Human social organisation is never neatly bounded and functionally determinate. The zone of societal evolution between states and not-states or between effective premodern bureaucratic states and more recent nation-states involves both fuzziness and asymmetrical processes of institutional, social and economic development. How and whether tribes, bands and groups transformed into states has been the source of much discussion. As Crone pointed out, in the context of managing resources and risk, tribal organisation is generally as much an alternative to state formation as a necessary precondition for it.⁸

Quite apart from the distinctions drawn between the early modern state as understood by Enlightenment writers and what went before, an even more significant distinction has to be made between precapitalist state formations and societies and those with which we are familiar today in a globalised capitalist market economic system. In capitalist formations, it remains in the interests of states not to hinder or adversely intervene in the process of surplus extraction, and therefore in the fundamental relations of production of capitalist social formations – the sale of labour-power and its conversion into surplus value. While governments or rulers may therefore intervene from time to time to modify the particular institutional or juridical forms characteristic of capitalist production relations in a given state formation (in order to alter the relations of surplus distribution, for example), they normally also act in a way consonant with the fundamental mode of capitalist appropriation. Capitalist states use tax as a means of redistributing to themselves surplus produced by economic means through the operations of the capitalist labour market and the creation of relative surplus value. The extraction of tax, as an institution for the redistribution of surplus value, is therefore an indirect or secondary form of surplus appropriation, a form which can only occur after the process of primary appropriation through the creation of relative surplus value has already taken place. States in the capitalist world are maintained ultimately not through their power to tax as such, but rather through the maintenance of those production relations which promote the extraction of relative surplus value. The state itself might have little or no impact on these relations, except in a regulating or supervisory capacity, or in a period of temporary crisis.

In stark contrast to capitalist economies, precapitalist elites and states both function at the same level of primary appropriation, directly extracting surplus in various forms from the producers through their monopoly of various forms of non-economic coercion – the law, custom, threat of violence. It is this particular characteristic which differentiates them from modern states. Rulers and socio-economic elites more widely have an equally powerful vested interest in the maintenance of those relations of production to which they owe their

7 Steinmetz, Introduction: culture and the state.

8 Crone, *Tribe and the state*; Friedman, *Tribes, states and transformations*; see the summary in Scheidel, *Studying the state*, 9-14; also Cohen, *State origins: a re-appraisal*; Cohen and Service (eds.), *Origins of the State*; Khoury and Kostiner (eds.), *Tribes and State Formation*. See also Scheidel, *Studying the state*, 5-9; also, and from a different critical perspective, Perlin, *State formation reconsidered*.

position, just as in capitalist economies. But because of the direct nature of primary surplus extraction, the relationship between the ruler or ruling elite and those who actually appropriate surplus on their behalf (whether an aristocracy, a »noblesse de robe« or a salaried clerical establishment or a combination of these) is always potentially antagonistic. Both state and elites must attempt to appropriate surplus themselves, or ensure that an adequate portion of such surplus is passed on to them, to be certain of their survival. Direct coercive pressure exerted by the state and the elite determined the rate of exploitation and the possibilities for surplus extraction.⁹

The very existence of state formations means that surplus extraction and distribution are foci for competition. Precapitalist rulers and elites compete directly for control over the means of production, and hence the material basis for their continued existence, to the extent that one side may attempt (and even temporarily succeed) in destroying or so weakening the other that no further opposition is forthcoming. The direct and primary role of states and elites in the process of surplus appropriation informs both the nature of the structural tension between exploiting and exploited classes as well as the configuration of the political relations of distribution within the elite and state. The point of access to understanding the fundamental dynamics of any premodern state formation is through an examination of the relationship between rulers, government and court, and those upon whom these depended to maintain their revenues and authority.

9 Discussion in Haldon, *State and the Tributary Mode of Production*, esp.140-158.

COMMENT

THE ORGANISATION AND PECULIARITIES OF THE LOMBARD STATE IN THE 8TH CENTURY

Stefano Gasparri and Cristina La Rocca*

If we deny the Roman empire the qualification of »state«, we would deprive the early medieval kingdoms of a clear point of comparison against which historians can try to define the polities they deal with. This is one of the reasons why we subscribe to Brent Shaw's general conclusion, whose answer to the question – »was the Roman state a state?« – is clearly »yes, it is«. From this starting point, our examination of one of the early medieval polities, the Lombard kingdom, shall carry on taking into account some of the categories listed by Shaw, traditionally included as components of the definition of a state in the Western world. We are aware of the problems associated with a Eurocentric perspective, and consequently we do not consider this type of state an ideal model, nor of course the only possible one. We will do so for simple reasons of opportunity: comparing the Roman empire, the early medieval kingdoms and the modern Western state allows us to examine a chain of political constructions that took place – in part at least – on the same territory. Thus, they transmitted some of their experiences between each other, and are consequently mutually comparable.

Among all the post-Roman kingdoms, the Lombard kingdom appears to be the most closely connected to the Roman past. It is only a seeming contradiction that the Lombards are presented in many sources – and in much 19th- and 20th-century historiography – as the most barbaric of the barbarians, as the enemy of Rome par excellence. This is a distorting mirror that stems from the nature of the sources used, be they papal or Byzantine. If one uses sources from within the kingdom, instead, the resulting image is very different, and evidence of the connection to Roman heritage emerges. Moreover, if one considers that Italy was the heart of the western empire, this is not surprising: if anything, the opposite would be so.

The only word by which the Lombard political community is defined by the sources is *regnum*. Among its general features we can list a defined territorial sphere, albeit mobile in the course of time, a reference people (the *populus Langobardorum*), the exercise of power by a political centre, the kingship, represented by the king and his officials. To these elements we can also add the temporal duration of more than two centuries. However, it must be admitted that the Lombard kingdom certainly did not have the stable characteristics of the state as it was formed in the West both in Roman times and in the modern age.

First of all, the kingdom had no real borders: only in the mid-eighth century was there an attempt to introduce a form of border regulation. However, this very attempt was linked to a particular moment, characterised by exceptional external threats from the Franks. Another important issue concerns the nature of the *populus Langobardorum*, whose identity was defined by the law, since we have set aside the idea that the Lombards were a closed ethnic community. Actually, the Lombards were the men and the women, inhabitants of the kingdom, living according to Lombard law, issued by the kings in a series of edicts, in imitation of

* Correspondence details: Prof. em. Dr. Stefano Gasparri, Ca' Foscari University of Venice, gasparri@unive.it and Prof. Dr. Cristina La Rocca, University of Padua, mariacristina.larocca@unipd.it.

Roman provincial officials. We can therefore define Lombard law as territorial, even though in the 8th century there were groups living according to Roman law within the territory of the kingdom. These were the inhabitants of the regions of Byzantine Italy, conquered first of all by King Liutprand in 726/727, namely Emilia (with Bologna) and some cities in Romagna and Marche, and then by Aistulf, who conquered Ravenna and the exarchate in 750/751. As a consequence of this situation, problems could arise. For example, marriages between people who followed different laws could sometimes create complex situations, particularly for the status of women, which could change following a marriage: according to a law issued by Liutprand in 731, a Lombard woman marrying a Roman man became Roman. However, in the archival documentation there is no presence of Romans, except for one case in 758, which concerns a woman, Gundeperga *romana mulier*, living in Piacenza: it is safer to assume that cases similar to those envisaged by Liutprand in 731 were rare. Members of the clergy were also allowed to live according to Roman law, although this was probably not always the case: this is shown, at the highest social level, by the example of Walprand, bishop of Lucca, who in 754 – as was the duty of the Lombard freemen – obeyed the command of King Aistulf and left with his army to fight the Franks; moreover, on that occasion the bishop made a donation-testament in favour of his brothers drawn up according to Lombard law.

This legal diversity, which – as we said – nonetheless concerned very limited groups of the population and maybe specific situations, was unified by the actions of the king and his officials, dukes and gastalds in the first place. Actually, other powers besides that of the king were present in the territory, namely the local officers (the *actores*), who had to administer the royal *curtes*, the lands that formed the patrimonial basis of royal power. This was a fundamental task, since the Lombard state was a no-tax state. There was, at least in the final years of the Lombard kingdom, a clear distinction between public property and the property that directly served the sustenance of the royal palace; the latter was divided between the king's property and the part which was at the queen's disposal and which was administered by her officials (*gastalds* and *actores domnae reginae*).

The *actores* could try to act for their own interests in connection with the local élites, by handing over land to private individuals to build their patronage networks. Liutprand issued provisions against these illicit activities, the *Notitia de actoribus regis* (733). Subsequent kings (Ratchis, Aistulf, Desiderius), in order to protect royal property from the corruption of the *actores*, granted important assets of fiscal lands to monasteries of royal foundation (such as S. Salvatore di Brescia) or to already existing monasteries (such as Nonantola, Farfa, S. Salvatore al Monte Amiata), whose abbots could be easily controlled by royal power.

The landed wealth of the episcopal churches within the Lombard kingdom also grew considerably during the 8th century. However, this growth was due to a considerable number of donations from free landowners, as can clearly be seen in the case of the episcopal church of Lucca, and not to concessions of landed estates or immunities by the Lombard monarchy, as was the case for instance in the Merovingian kingdom of the 7th century, according to the model of the »temple society« described by Ian Wood; consequently, the Church's role in the redistribution of wealth was also minor.¹ Moreover, the bishops never exercised jurisdictional or administrative activities in their cities. Despite their wealth, and the existence of a dense network which linked the free landowners to the ecclesiastical institutions, the Church was not a political player of decisive importance within the Lombard kingdom.

1 Wood, *The Christian Economy*.

The archival documentation of the 8th century allows us to see the public officials in action in the different regions of the kingdom, where they judged disputes of a different nature, involving fiscal lands but also matters of ecclesiastical jurisdiction. In the face of royal intervention, the population appears homogeneous and not divided between Lombards and Romans: in a dispute about the borders between the Tuscan dioceses of Arezzo and Siena (714-715), the witnesses are only listed as »inhabitants of Siena« and »inhabitants of Arezzo«. In the same *iudicatum*, it is noteworthy what one of the many witnesses, the priest Romanus, says to the king's envoy, the notary Gunteram, »Now you have found me, and I cannot resist you«, before King Liutprand's envoy, Romanus is forced to tell the truth, despite the threats from the gastald of Siena, who wanted to influence his testimony. This means that sometimes the gastalds (and the dukes) too could try to act for their local interests. However, as is evident in this case, in the 8th century, at the height of the Lombard kingship's development, the local powers could not resist that of the king, whose authority was respected throughout the kingdom: only southern Italy (the Duchy of Benevento) had a more autonomous position.

At this point, we can try to answer to another important question: Did the exercise of power in the Lombard kingdom respond to criteria of impersonality, or was everything based on bonds of kin and lordship, that is, on personal relations between the king and his officials, and between these and their subordinates? This is the old problem of the »Roman« or »Germanic« nature of barbarian kingdoms. However, we do not believe it should be approached in this way. The low bureaucratic development of the public (impersonal) institutions did indeed also require the use of personal ties to consolidate them, but within political structures that were new creations and not heirs to an alleged tribal past. The process of militarisation is also a new phenomenon, taking place in the post-Roman era. The army thus became perhaps one of the most important institutions of the early mediaeval polities: in the Lombard kingdom even mere freemen were in a direct relationship with the king as members of the army.

The Lombard kingdom was not a *Personenverbandstaat*: the oath made to the king by freemen (*iudices* and *actores* in the first place) was proof of the public nature of his power. Moreover, the clearly Roman elements are prevalent. Here we can only list some of them: the existence of a royal seat, Pavia, which was a true capital with a *palatium*, which was also the seat of political assemblies; the extensive use of writing; the monopoly on the issue of money; the presence in the main cities of officials, the *iudices*, who had to ensure the continuous functioning of justice. Lastly, the impersonal nature of power was in part at least ensured by the (although difficult) functioning of the administrative machinery of the fiscal estate; by the existence of palatine offices (as shown by the existence of royal notaries) and court rituals, also linked to the king's election itself. The latter we unfortunately know very little about: we catch a glimpse of them behind the *obsequia palatina* (the palace staff?) and the *regia dignitas* (the symbols of royal power, perhaps the lance?) that were presented to King Perctarit when he returned to Pavia (672). Regarding the lance, the existence of a king's lance-bearer, that could even be at the head of the army in the king's absence, proves to some extent the impersonal nature of royal power, guaranteed by a symbol that went beyond the person of the king himself.

To conclude, the Lombard kingdom was an original creation, with many elements of Roman tradition reinterpreted, however, in the different social and economic context of the early medieval centuries. It was shaped by the process of militarisation, which involved the very identity of the royal powers and aristocracy, as well as that of large strata of the male population, and by the development of strong networks of personal ties. The kingdom was also confronted with the emergence of alternative poles of power, represented by ecclesiastical

institutions, yet managed to keep them under control and sometimes, as in the case of monasteries, to use them as instruments of government. Despite all its profound differences, both with the Roman empire and with the modern western state, we are driven toward the conclusion that the Lombard kingdom was indeed a state, at least in the 8th century. It was a state with a simplified functioning: a ›no-tax state‹; without a standing army, but one that had to be mobilised according to established rules; and capable of effectively exercising its sovereignty within its territory. Lastly, the Lombard kingdom was a structure that not only survived the (sometimes) violent succession struggles of its rulers, but also the Frankish conquest of 774: Charlemagne and his followers took the title of *rex Langobardorum*, and the kingdom retained its fundamental characteristics at least throughout the 9th century.

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COMMENT

Régine Le Jan*

Historians of the early Middle Ages may find the question of whether the Roman empire was a true state paradoxical, insofar as they take it for granted that it was, while questioning whether the state continued to exist and what forms of statehood took place in the post-Roman kingdoms, including the Carolingian empire.¹ Shaw's article is a timely reminder of the extent to which premodern periods still suffer from the historiographical constraints that lead historians of other periods to define the state exclusively in its »modern« form. He even demonstrates point by point that the republic and the Roman empire met the Weberian criteria defining the state: a permanent army and the monopoly of force, the control of the territory, a common law applying to all citizens, resources included in a global market, etc. Patronage itself was part of the Roman state structure, as a means of access to public resources.

There have been many discussions on the qualification of early medieval political entities. By defining the Ottonian and Salian empire (10th-12th centuries) as a *Personenverbandstaat*, Gerd Althoff did not deny it the privilege of being a state, but a state grounded on personal ties and rituality.² In contrast, the kingdom of France in the same period was defined by Patrick Geary as »a stateless France«, devoted to »private wars« and the settlement of disputes outside of any judicial context.³ Since then, with the help of anthropology, historians of the Carolingian period have emphasized the continuity of infra-judicial, mediation and intercession processes,⁴ but it remains difficult to qualify the Carolingian empire.

As early as 1939, Marc Bloch emphasized the primacy of personal ties in early medieval societies, firstly kinship, then fidelity in its vassal form.⁵ To this should be added friendship, which, in egalitarian and hierarchical, parental and non-parental forms, had largely contributed to the maintenance of the Roman state as well as of all medieval political constructions. If we consider France (and also Germany and Italy), it is true that the failure of the Carolingian empire led in the 10th and 11th centuries (Marc Bloch's first feudal age) to the progressive weakening of central powers, to a polarization of powers in castral lordships, before kings and princes reasserted their power in the 12th century by establishing a real feudal hierarchy and by the rediscovery of Roman law, leading to monarchies in the 13th century. But Bloch, Duby and other historians of the feudal period considered the Carolingian political construction as a strong one, a revival of the Roman empire; and that is only partly true: there was no permanent army and police, no general taxation, and even if there was a public justice with courts and judges, there was no strict separation between public and private, religious and secular. Nevertheless, in terms of ideological construction, the Carolingian empire was a real state.

* Correspondence details: Prof. em. Dr. Régine Le Jan, Université Paris1 Panthéon-Sorbonne, Regine.Lejan@univ-paris1.fr

1 Airle, Pohl and Reimitz, *Staat im frühen Mittelalter*; Pohl and Wieser, *Der frühmittelalterliche Staat*.

2 Althoff, *Die Ottonen*.

3 Geary, *Vivre en conflit dans une France sans Etat*.

4 Le Jan, *Politique et contrôle social*; Gilsdorf, *Favor of Friends*.

5 Bloch, *La société féodale*, translated into English as *Feudal Society* in 1961.

The Church was almost entirely absent from Marc Bloch's perspective, and also from that of Marxist and post-Marxist historians. But in the last decades, it took a central place in recent works without clarifying the reflection on the state and statehood. Mayke de Jong has perfectly demonstrated how Carolingian kings and thinkers defined the empire (*imperium*) as an *ecclesia*, that is an Empire-Church.⁶ *Ecclesia* as empire was both an ideal and structuring horizon, with a strong interpenetration of public and private, religious and secular spheres. Dominique Iogna-Prat has also insisted on the Carolingian matrix of changes that led to including all social relations in an ecclesial society (a Church society) in the 12th century.⁷ By contrast, other historians downplay the role of the Carolingian ideology and construction, affirming that the Gregorian reform at the end of the 11th century was a real revolution which drastically transformed society by separating the ecclesiastical and secular spheres and by claiming the absolute primacy of the spiritual over the temporal.⁸ The basic tendency of all these works is to leave aside the question of the State, which is replaced by the *Ecclesia*. Nevertheless, a discussion has developed in France on the almost antinomic relationship between kinship and spatiality, which is directly inspired by the work of Max Weber, for whom the spatialization of social relations was a fundamental element in the development of modern states, whereas in premodern societies kinship was the organizational element of societies. For French church historians, a process of territorialization and rooting of communities and powers, also concerning the Church, would have led to the inclusion of all forms of personal relations into an all-encompassing and inclusive whole, which the pope claimed to dominate alone from the end of the eleventh century.⁹ It assumes that a process of deterritorialization and of *parentélisation* worked at the end of the Roman empire, followed by a process of territorialization and deparentélisation in the feudal period, and that remains to be demonstrated.

Clearly, French and Anglo-Saxon early medieval historians have avoided the question of the State, whereas German historians have taken up the issue, while disagreeing on its definition. Shaw takes up Susan Reynolds' flexible definition that »a state is an organization of human society within a fixed territory that more or less successfully claims the control (not the monopoly) of the legitimate use of physical force within that territory«. Reynolds added that this definition was relevant to medieval kingdoms or lesser lordships in general, or even to those of the early Middle Ages. However, it does not help to understand the nature or essence of early medieval political constructions as states. Shaw rightly points out that global history allows us to consider other political constructions and other developments that do not fall under the model of the modern state. That is true. But from an anthropological point of view, we also have to consider the ontologies in which states developed. As Descola demonstrated, the »modern state« is itself part of an ontology that operates a separation and a dualistic opposition between nature and culture, material and spiritual, savage and civilized.¹⁰ He adds that this mode of identification is unique and only became definitively established in Europe in the second half of the 19th century, at the same time as the decline of religion and the triumph of science disenchanting the world, to use the Weberian concept.

6 de Jong, *Penitential State*; de Jong, Carolingian political discourse and the biblical past.

7 Iogna-Prat, *Ordonner et exclure*; Iogna-Prat, *La Maison Dieu*.

8 Mazel, *Nouvelle histoire du Moyen Âge*.

9 Morsel, *L'histoire (du Moyen Âge) est un sport de combat...*, Online lamop.univ-paris1.fr. Dominique Iogna-Prat, *La Maison Dieu*; Mazel, *L'évêque et le territoire*.

10 Descola, *Beyond Nature and Culture*.

In the rest of the world, the relationship of humans with the universe was governed by other analogies that didn't separate nature and culture. According to Descola, in premodern Europe, as in China or India, an analogical mode of identification made it possible to unify the cosmos by thinking of it as an organic and hierarchical whole made up of fixed segments but linked together by analogy, with deities being the object of worship in specific places where they receive offerings and prayers at specific times. Each analogical collective took diverse politico-religious forms, but tended to become a totalitarian whole, since it contained within itself all the relations necessary for its existence, and its elements existed only in relation to the whole, which is itself in order when it is closed in the manner of a dwelling.¹¹ It also presupposes the existence of a politico-religious power able to maintain each element in its assigned place by developing hierarchical links and ensuring peace and eventually expansion of the group, a program which was that of the great extra-European empires, but also of the Roman and of the Carolingian empires, deeply inspired by the Augustinian City of God. After the fall of the Carolingian empire, there was no change in ideology, even if political structures were weakening. Only Gregorian reformers diminished the role of the emperors and kings, giving the pope and his priests a dominant position. In any case, in medieval times, what we call a state cannot be separated from its analogical ontology nor the political from the religious power that gave it legitimacy and strength.

11 Marcel Granet on the Chinese collective, quoted by Descola, *Beyond Nature and Culture*, 517.

COMMENT

Nicola Di Cosmo*

Initially, my response to Walter Pohl's kind invitation to comment on Brent Shaw's essay was tentative, uneasy, and frankly unenthusiastic, for two main reasons: first and foremost, I do not feel qualified to discuss the Roman empire in any of its forms; second, any intervention on my part required a tremendous amount of work to trace most of the references, many unknown to me, and address a sprawling, unwieldy, massively overextended debate over »what is a state?« that historians, political scientists, sociologists and philosophers have debated for decades if not centuries. Pressed by Walter, I re-read the piece, seeking in it some foothold that might allow me to say something useful while still being conscious of my shortcomings. This requires a few caveats. The first caveat is that what I have to say may not seem to be directly relevant to the case presented by Brent, although it may lead to some peripheral reflections, and is offered exactly in that spirit. The second is that my comments are largely impressionistic, that is, they are not based on a systematic review of any of the topics touched on in Brent's essay and associated literature. The third is that my own area of research necessarily provides a set of references that may not be altogether familiar to a Roman historian, and that these are mostly running in the background because an accurate reckoning of them would require an extensive discussion on their relevance to the case at hand (the Roman state), which is not possible in the space of a comment. I should probably list even more caveats, but these may suffice.

The question posed by Brent, »Was the Roman State a State?«, could well be asked about any other premodern political formation. Such questions are often presented as an ontological controversy at the core of which is the question of the existence of the state and the status of the concept itself. Getting an answer may result in an exercise consisting of establishing what a state should look like, listing a series of components in the shape of as many boxes to be ticked and then proceeding to place green check signs on them. Except, this seems a rather futile exercise, given that definitions of the »state« – running the gamut from minimalist to maximalist – can fill any number of historical cases, and are easily tailored to fit just about every one of them. In fact, limiting the definition to Schmittian concepts is in itself a subjective choice that could be challenged in favor of other theorists. Moreover, historical cases, even within the realm of early modern Europe are likely to raise questions about the meaningfulness of the Treaty of Westphalia in defining the modern state. Was, say, the Republic of Venice a non-state before 1648 and a modern nation-state afterwards? I realize that this type of reasoning risks trivializing the matter, but that reasoning *ad absurdum* may still be useful to focus on a question that is, in my mind, more fruitful, namely »What kind of a state was the Roman state?«

Brent's essay, towards the end, indeed affirms as much, because when we add a qualifier to the term state (city, early, territorial, imperial), we indicate a qualitative difference. For instance, in the transition from the republic to the principate we assume a change in the nature of the state. If boxes need to be ticked, it may be more productive to look into such transitions, which are at the heart of historical periodizations, as Brent also reminds us by reference to Harriet Flower's work.

* Correspondence details: Prof. Nicola Di Cosmo, Institute for Advanced Study (Princeton, USA), ndc@ias.edu

Moving from time to space, there is no point, in my view, in repeating that global and comparative history have shown that, while certain political entities, processes, and phenomena have been registered and theorized *qua* European phenomena, they also apply to non-European experiences. The »early state« and the »city-state« for instance, have been studied in both European and non-European contexts.¹ The collective conclusions of these enterprises have long shown both the extensibility of certain concepts (such as »state«) beyond Europe and the profitability of comparative approaches. Therefore, for me the conclusion that the Roman state was, indeed, a state, appears, *prima facie*, as an antechamber to the broader question of how the Roman state changed over time, at least in light of the preponderance of evidence in favor of a broad and inclusive approach to what a »state« is.

Simply advocating to move beyond the picture of the Roman state and into the movie of how it changed, however, does not, in itself, provide an entryway into what I see as the heart of the matter. To flesh out what I mean, I will refer to a minor point mentioned by Brent – and a footnote – because it speaks to what is, to my mind, the real crux of the matter and the true watershed between the modern nation-state and other states, especially those which, like Rome, acquired an imperial dimension. The passage is the following: »Naturally, because the Roman state was not a modern European state, it could not be part of any Westphalian system. It had gradually developed into a premodern empire which had no boundaries and so it was not part of a system of peer polities or a system of competing states« (p. 16). Footnote 61 reads: »One can plead the exception of the Parthian and Sasanian states which did have a small land border with Rome; but it is a singular item that is an exception, not the rule.«

Indeed, the main significance of the birth of the modern nation-state at the Peace of Westphalia (1648) is the death of claims of universal rulership (at least in the secular realm) by a political entity. As I understand it, the two pillars upon which that »death« was predicated were (1) a sovereignty limited to the territorial borders of the state, and to its body politic; (2) a notion of legitimate rule that, even on the purely ideological plane, could no longer be universal. In political practice, these two critical developments sanctioned with the Treaty of Westphalia meant that any state depended on the recognition of other sovereign peer states as a condition of its own existence as a state. Furthermore, limited and non-exclusive sovereignty and legitimate rulership spawned deep changes in international relations and laws, and while divine right to rule could be and was claimed within a state, it did not prevent other rulers from claiming the same for their internal consumption.

This development separates modern conceptions of the state from older ones (but also some modern would-be states, if we consider the political claims of ISIS as an Islamic State), which never excluded the possibility of universal rulership, no matter how unrealistic it was. A competing authority may be tolerated in practice, but was ideologically incompatible with the very notion of legitimate rulership. Based on an analogy drawn from Chinese imperial history, I suspect that the claim to universal rulership expressed by Rome worked on a double track, the ideological and the political, and when it was patently untenable, it had to be modified, tempered, and rhetorically adjusted to the political reality. This was not an exception but something like »an ideology in reserve«. A similar situation can be found in the

1 For instance, the classic Claessen and Skalnik (eds.) *The Early State* and Hansen, *A Comparative Study of Thirty City-State Cultures*.

Chinese, Inner Asian, and Islamic political traditions. If we take the renunciation of universal rulership, which we may term »the Westphalian moment«, as the chief defining historical characteristic of the modern state, we can more securely separate it from appearances of the »state« in other contexts (ancient, early, non-European, etc.). In the Chinese case, this question has been explored for the past half century, starting with *The Chinese World Order* edited by John K. Fairbank, in which some contributors presented instances of the gap between the ideology of universal rulership and the political reality of a »treaty system«. There is a vast literature on this subject, which of course includes also the »tribute system« as another form of constructing a world order ideally aligned with concepts of universal rulership. Qing China was clearly not ready to abandon such claims in dealings with European powers, with the fraught consequences that we know, but the translation into Chinese of Henry Wheaton's *Elements of International Law* in the 1860s (an imperially supported project) indicates a profound change through the recognition that participation in inter-state relations depended on the recognition of other countries' sovereignty, no less full than one's own.

In the 1920s some scholars and legal historians began to look for a »Westphalian moment« in Chinese history, with the goal of showing that China, too, had a tradition in which a system of peer states emerged and prospered.² This was found in the pre-imperial period, when different independent states vied with each other. The question has been revisited more recently by Victoria Tin-Bor Hui, with specific reference to the Westphalian world order in *War and State Formation in Ancient China and Early Modern Europe* (2005). The comparative model she proposes is worth mentioning as an example of a direct comparison between ancient China and early modern Europe that may be germane to the concerns about »Rome as a state« in relation to the critical aspect of how it positioned itself *vis-à-vis* other states.

Moving to Inner Asia, the situation is somewhat more complex, because Inner Asian nomads excelled, in their regular existence, in »conflict resolution«, and steppe political traditions present a rich array of diplomatic instruments (pacts, oaths, treaties, marriages) that regulated relations among the different polities. One might imagine that in this context the emergence of a notion of »peer states« (or whatever we wish to call such political formations) would be the natural state of being, but nevertheless universal claims did appear in concomitance with »imperializing« projects. The most obvious of these is undoubtedly the Mongol empire. During the Mongol conquest the diplomacy of the khans, surely not a model of subtlety, was likewise based on notions of world dominance, in the name of all-powerful Tengri, the sky god. »Either surrender or die« was the default message to their opponents, usually followed by practical demonstrations of what that meant. These non-European examples seem to point to a situation in which claims to universal rulership surely existed but may not have been the only ways in which sovereignty and legitimate rule were constructed, and the same claims were often attenuated and muffled in favor of a *realpolitik* that required formal recognition of other peer states.

2 E.g., R. Britton, Chinese interstate intercourse before 700 BC; Shih-tsai, Equality of states in ancient China; Ch'eng, International law in early China.

Returning to the Roman state, the issue I am driving at is, in essence, one question: If »scale« or »type« ought to be considered as we try to qualify a state (again, the matter of what attribute we place before the word), how and when did a claim to universal rulership become part of the Roman construction of its »state«? I realize there is a vast literature on Roman foreign relations, diplomacy, frontiers and the like. What I do not know is whether that literature has been brought to bear on the question of what sort of a state Rome was at various stages of its history. On that account I would suggest that if, after having established – as Brent has – that the Roman state was indeed a state, the discussion should move to an analysis of the various instantiations of the »Roman state«, and start by looking into how Rome as a city-state, territorial state or imperial state interacted with other polities, with the purpose of exploring how the respective ideological underpinnings inflected the nature of the state. Put it in a different way, we may ask: What was the relationship between ideological claims and political practice in the construction of key elements of the state such as sovereignty and legitimate rule?

I thank Brent for his insightful essay, from which I have learned a great deal.

COMMENT

Hans-Werner Goetz*

One might think that the debate on the »state« in the Middle Ages has by now been exhausted. It had a long tradition resulting from the legal definition of the state in the nineteenth century that seemed hardly applicable to premodern times. Particularly in Germany, the so-called »New German Constitutional History« (*Neue deutsche Verfassungsgeschichte*), beginning in the late 1920s and dominating medieval history until the late 1970s, regarded »Herrschaft« (lordship) as the decisive element of the early medieval *Verfassung* on all levels of social and political life. Later on, therefore, many German medievalists avoided the term »Staat« (state) and preferred to use *Staatlichkeit* as a more open term, which, however, can hardly be adequately and unequivocally translated into English or other leading languages. That was probably one reason why *Staat* is being used more and more as an open (defining) term – in German this is called an *Ordnungsbegriff* – for any political order, while its concrete form and its political order have, of course, to be described for each epoch, region and level individually.

Therefore, somehow it comes as a surprise that Brent Shaw has now opened a new debate on this subject concerning the late antique Roman empire (which, compared to the Middle Ages, traditionally had been much more readily accepted as being a state). In fact, I have no great problems with Shaw's argumentation and no problems at all with his conclusion that the Late Roman empire should be accepted as having been a state, even from modern standards, although my agreement results from somehow different reasons.

That said and acknowledged, I shall not discuss his detailed arguments, but rather comment on some general implications of his essay. First of all, Shaw's question: Was the Late Roman State a state or was it »a peculiar type of premodern entity about which such questions are inapplicable«? On the one hand, it is compatible with the more or less recent insight that the development from Antiquity to the Middle Ages has to be seen as a longer (and in some respects even a very long) process of »transformation«.¹ On the other hand, however, it still implies subliminally that the Middle Ages were a »premodern« epoch to which the concept of *state* is *not* applicable. Such an assumption does not conform to the state of research of medieval studies. The result should rather be: as for the Middle Ages, thus as early as (or simply: equally) for the Late Roman empire, »state« is an adequate term.

Shaw attempts to prove that modern categories and elements of the state (such as a centralized army, a uniform fiscal system, a policing power over internal civil society, and a legal system) are also characteristic for the Late Roman empire. Granted this, one might nevertheless ask whether the definition by Carl Schmitt who (regardless of his involvement in the Nazi system) undoubtedly was one of leading experts on jurisprudence and constitution of his time, is the right »model« against which premodern epochs and other cultures should be

* Correspondence details: Prof. em. Dr. Hans-Werner Goetz, Universität Hamburg, Hans-Werner.Goetz@uni-hamburg.de

1 Cf. the volumes of the ESF project »The Transformation of the Roman Empire«; for political aspects and »states«, cf. particularly Goetz, Jarnut and Pohl (eds.), *Regna and gentes*.

measured. It would have been more appropriate, I think, to use current models, the more so as legal historians have also long since changed their perspectives and opinions on characterizing the early medieval »state«. Shaw finds all the essentials of Schmitt's definitions of the (modern) state applicable and fulfilled with regard to the Late Roman empire. For a medievalist such an answer is not really satisfying. In the final analysis, I would rather say that it does not matter if Schmitt's or anybody else's modern concepts are fulfilled. What is really important is the analysis of the political order of former epochs.

Thus, in this context, I would also like to contradict Shaw's opinion that the analysis of the terminology used by people in Late Antiquity and of *their* understanding of *their* world would not effectually contribute to solving the problem. Certainly, such an analysis does not provide a final solution, and medieval terminology is no substitute for modern denominations, as Otto Brunner thought. However, to check how far modern concepts are applicable to and appropriate for former epochs such as Late Antiquity or the Middle Ages and to what extent they accord with *their* perceptions is certainly the only (or best) method to comprehend a past political order through the ideas and concepts of the contemporary people of that epoch. For historians, this should be an indispensable objective of research.

The question of whether a former political order can be called a state is completely dependent on the pre-existing (and presupposed) definition of »state« and will be answered positively or negatively according to this definition. Even today the criteria for this are not self-evident (nor is it unambiguous whether certain modern states can really be comprised under this term). Therefore, I wonder how justified it is to judge former epochs by our modern standards (and what is to be gained by this). For me, this somehow resembles the attitude of former generations of scholars who thought that peoples hardly changed in the course of history (and thus, for example, assumed continuity from the Germanic peoples to the modern Germans). In my opinion, historians should rather try to analyse and judge former states by their own standards, certainly not neglecting similarities, but also deliberately emphasizing the existing differences. It is much more important for our present times to learn from historical studies that our systems and our standards are not the only ones possible (and certainly not the best ones). In any case, the most important question is how the political order of former times, such as Late Antiquity (or the Middle Ages), and former civilizations were shaped and politically organized and how they »worked« in practice, independent of the question of what we call them and how far they conform to present concepts.

COMMENT

THE ROMAN STATE FROM A BYZANTINE PERSPECTIVE

Yannis Stouraitis*

It is always a pleasure to read an argument whose main premises one agrees with. It can become rather challenging to provide a useful comment on such an argument, however, since there is always the danger that one might just end up eulogizing it. For me, there is little doubt that Brent Shaw's thesis that the Roman empire fulfilled all basic criteria for its characterization as a state is correct. As someone who is not specializing in ancient imperial Rome, but in what is in fact the unbroken continuation of the ancient Roman empire in the Middle Ages, the so-called Byzantine empire, I have nothing to add to the specific historical arguments in favour of the view that imperial Rome was a state. For this reason, I have decided to contribute to the discussion that his paper seeks to open in two ways. Firstly, I would like to offer some thoughts on the issue of how historians should make use of categories of analysis, an issue which Shaw's argument raises emphatically in my view. This is an important issue insofar as it is interrelated with the question of to what extent and how historians want to work in a comparative and interdisciplinary manner; that is, to engage not only in cross-cultural research in time and space, but also in direct dialogue with the social sciences – in particular, with the very relevant field of historical sociology. Secondly, I intend to add the perspective of my own field of specialization, since I believe that the medieval Roman empire of Constantinople offers a very good counterargument to a myopic Eurocentrism when it comes to the application of the concept of the state to medieval cultures.

At the epicentre of Shaw's argument is Schmitt's definition of the state. While showing that even by Schmitt's narrow definition imperial Rome could still be counted as a state, Shaw criticizes modern arguments that tend to bind a social phenomenon to the period in which a term was invented for the first time to conceptualize it. This points at the heart of the problem of Schmitt's approach, which is one endorsed by some present-day historians as well. They tend to make the »state« as an analytical category dependent upon the very characteristics of the states that emerged in Europe in the course of early modernity; the very period when the term »state« appeared as a lay category, a category of practice, to designate those political entities. If a historicist approach can be useful in helping us understand when, how, and why the term »state« came into being, it can hardly be of any help if we want to use »state« as an analytical concept for heuristic purposes.

Shaw gives a series of examples of other modern concepts that did not exist in the vocabulary of premodern societies but are nonetheless broadly used by historians today to help us think about and explore heuristically the existence of relevant phenomena in the past. This is a compelling argument which, in my view, could have profited from a reference to large-scale works of historical sociology. For instance, both Walter G. Runciman and Michael Mann in their respective large-scale analyses of the function and historical evolution of human societies seem to have no doubt that imperial Rome should be viewed as a state in terms of socio-historical analysis.¹ In his own theoretical approach to the state, Michael Mann has,

* Correspondence details: Dr Yannis Stouraitis, University of Edinburgh, yannis.stouraitis@ed.ac.uk

1 Mann, *Sources of Social Power* I, ch. 9; Runciman, *Treatise of Social Theory* II, 11.

in fact, suggested a heuristic distinction between four types of state: *feudal*, *imperial*, *bureaucratic*, and *authoritarian*.² One may agree or disagree with that typology, but it shows one thing: for historical sociologists there is no direct link between the historical existence of a social phenomenon and its terminological conceptualization.

In light of this, the real question seems to me to be not whether we are allowed to apply the analytical concept »state« to premodern societies, but rather how we can define the concept in a fashion that does not render it analytically toothless. There are numerous modern definitions of the »state«, and we can be fairly certain that scholars will never agree on one single definition that will be universally accepted and applied.³ Given that Weber's definition has probably been among the most influential ones – if not the most influential – it is worth pointing out that many scholars have sought to provide nuanced versions of that definition in order to make it less narrow for heuristic purposes. Michael Mann, for instance, has argued that a more flexible approach to the issue of the state's monopoly of the means of physical violence is needed.⁴ Another good example is John Haldon's definition: »a set of institutions and personnel, concentrated spatially at a single point, and exerting authority over a territorially distinct area«. ⁵ Haldon has qualified that short definition further by adding that the central point of the state may be mobile, that state authority ultimately relies on coercion, and that the degree of its effectiveness is dependent upon the territorial extent of the state as well as the existence or not of a central bureaucracy.

The reason I am drawing attention to Haldon's definition here is that it comes from someone whose expertise is in Byzantine history and culture. Byzantine Studies has been a field where, contrary to Medieval Studies, the existence of the premodern state has been taken for granted and has never been an issue of debate; not least because the so-called Byzantine empire had inherited the sophisticated institutional and administrative culture of imperial Rome. Suffice it to mention that one of the classics of Byzantinist scholarship, the first comprehensive history of the Byzantine empire from the fourth to the fifteenth century published by Georg Ostrogorsky in 1940, bears the title *Geschichte des Byzantinischen Staates*. This general stance was also one of the main reasons – besides a certain aversion to theory within the field for most of the previous century – for which Byzantinists rarely considered it necessary to provide their own, or to employ existing, definitions of the »state« when applying the concept to the Byzantine empire; Haldon being a notable exception in the context of a scholarly paradigm shift that started taking place within the field in the last quarter of the twentieth century. The only issue of discussion and debate was and remains the Byzantine imperial state's bureaucratic nature.⁶

2 Mann, *Autonomous Power of the State*, 115; Mann, *Sources of Social Power II*, 54-63.

3 A good sample of the various modern definitions of the »state« can be found in Scheidel, *Studying the State*, 5-9.

4 See Mann, *Autonomous Power of the State*, 112; but see, also, the relevant comment in Scheidel, *Studying the State*, 5: »Weber speaks very specifically of a claim to legitimate force in the enforcement of state rules, and does not envision an effective monopoly on physical coercion *per se*.«

5 Haldon, *The State and the Tributary Mode*, 33-34.

6 Lilie, *Zentralbürokratie und die Provinzen*, 100-123; Cheynet, *L'efficacité administrative*, 7-16. Neville, *Authority in Byzantine provincial society*, 99-135.

For most of its history after the fall of the western parts of the Roman empire and up to 1204, when it disintegrated, the medieval East Roman empire fulfilled the basic criteria of many heuristic definitions of the »state«, since it consisted of a complex set of institutions and administrative offices through which the emperor enforced centralized judicial, economic, and military authority over a territory that was demarcated by the limits of that authority. A number of treatises, the so-called lists of precedence enumerating titles and offices, from the ninth and tenth century testify to an established hierarchy of a salaried officialdom that held administrative positions which outlived the individuals that served in them.⁷

If Byzantium is certainly not a unique such case in the medieval period, it is nonetheless an interesting case study because in Byzantine terminology the content of certain terms, such as the term *politeia*, seems in certain instances to come very close to that of the modern term state. As is well known, *politeia* is a term that Byzantine authors often used as a translation of the Latin term *res publica*.⁸ That the meaning of the term changed considerably over the centuries, that is from the time of the ancient Greeks through the Middle Ages and up to the modern times, becomes evident if we consider that in modern Greek *politeia* literally means »state« – another, more frequently used, term for state in modern Greek is *kratos*, whereas the term *dêmosio* is also used to refer particularly to the ensemble of the state apparatuses. While *kratos* in medieval Greek translates as power or authority, in certain contexts *politeia* could acquire a nuanced meaning from that of a *res publica* as a type of political regime.

The early tenth-century military handbook *Taktika*, written by the emperor Leo VI, provides an interesting insight into such a nuanced meaning of the term. When referring to the archenemy of his empire at the time, the Muslims, the emperor stated that »this people that borders on Our *politeia* causes us no less trouble now than the Persian people of old did to former emperors. They cause harm to Our subjects every day. It is for this reason that we have undertaken the present task of formulating instructions for war.«⁹ *Politeia* here acquires a distinctly territorial image, designating a political-territorial entity within which the emperor exercised sovereign authority over his subjects and was responsible for their protection. If this points to an overlap of the concept of *politeia* with that of empire, since the emperor refers to His *politeia*,¹⁰ in other parts of the text it is made clear that the governance of this political-territorial entity was carried out through a set of apparatuses of public administration (*dêmosies dioikêseis*), which are explicitly mentioned as responsible for the building of public works such as fortresses, ships, bridges, and roads.¹¹ On top of that, it is stated that the soldiers of the imperial army, one of the central institutions of the imperial

7 For the nature and function of the imperial bureaucracy, see Haldon, *Bureaucracies, elites and clans*.

8 Beck, *Res Publica Romana*, 13.

9 Leo VI *Tactica* 18.135, ed. Dennis, 488.

10 Haldon has pointed out that, often, there was little conceptual differentiation between *politeia* and empire in Byzantine thinking, see Haldon, *The Empire That Would Not Die*, 60.

11 Leo VI *Tactica* 20.71, ed. Dennis, 560.

state, were entitled to »rewards and benefactions from the emperor and to a salary for their loyalty to the *politeia*«. ¹² This distinction between a personal reward by the emperor and an ordinary compensation due to their loyalty to the *politeia* seems to be interrelated with the established distinction in Byzantium between the emperor's privy purse and the public treasury (labelled *dêmosios* in Byzantine terminology). The soldiers here are presented as servants of the imperial *politeia*, whose regular pay came from the public resources due to their loyal service.

To sum up, in the context of the *Taktika*, *politeia* seems to have been used by the author to conceptualize a demarcated political-territorial entity which was autonomous and distinct from others, and which consisted of a set of centralized institutions and administrative apparatuses that enforced rules. This is a concept whose content aligns with the content of the modern concept »state«. Based on that, one might rightfully argue that Byzantium is not simply a premodern social order to which the concept of the »state« can justifiably be applied in heuristic terms. It also provides a good case study about the potential use of termini in premodern cultures, which came very close to conceptualizing the phenomenon »state«.

12 Leo VI *Tactica* 13.4, ed. Dennis, 278.

COMMENTS ON THE COMMENTATORS

Brent D. Shaw

A good point of departure is John Haldon's historically useful definition of the state as a kind of large corporate body that aims at controlling peoples, lands, and resources by means that are different from alternatives, like those found in so-called »tribal« social orders. Although in some instances this definition might also apply to large private business enterprises, it is sufficient for our purposes here. As he emphasizes, the institutional arrangements forming this peculiar human organization construct »the state« as an autonomous entity that generates the logic of its own existence and, usually, an attendant ideology. The autonomous nature of the state is also emphasized by Stouraitis in his consideration of the Byzantine polity. The fact of this autonomy raises questions about the state's relationship to other systems of exploitative domination. Haldon rightly draws attention to the need to understand the relationship of the state to other systems that stand outside its structures – economic forces and personal relations being among the more important amongst them. Given the definition he offers, one can add other externals that the state's managers strove to control. These include, at least, demographic resources and the communicative instruments necessary to overcome spatial constraints, both of which any state must attempt to control. This relative autonomy must therefore be a fundamental essence of the state and must also define its modes of operation.

If Haldon's model and his list of additional criteria might be disputed in part or revised by some, Stefano Gasparri and Cristina La Rocca justify the use of its parameters as a good heuristic tool or, as they put it, »for simple reasons of opportunity«. Within this context, and with specific reference to the Lombard regnum, they raise another important Haldon-like question. What is the relationship of the state to the realm of personal relations and powers? The question is complicated by the emergence of new institutions, like churches, often created by individuals independently of the state. The existence of these other corporations logically raises Hobbes' question about the status of »worms in the entrails« of the body politic. They rightly argue that a measure of »state-ness« is delimited both by the role of competing corporate bodies and by the exercise of personal powers. If the effect of the state's impersonal institutions is to create a structure whose existence is somehow separate from the personalities, friendship links, and patronage influences of individual power holders, then the relationship between the two should provide a sharper idea of the state's configuration. The state does not obviate personal powers, however. It restrains, harnesses, and exploits them. The integration of the personal with the state is demonstrated, for example, by the continuing presence of oaths, which in the Roman state anchored everything from court procedure to the emperor's power. In cases like these, however, the personal elements function within the state, which effectively uses them for its own ends. As Régine Le Jan points out, since Marc Bloch, at least, this has been one of the main axes along which the degree of »state-ness« or of its absence has been postulated for the post-Roman states of western Europe. The problem, again, is that kinship – just one of the forms of personal power – has serious functions not just in premodern societies but also within modern ones, including the operation of state structures. Sorting out the relationship between the relatively impersonal structures that define states and the function of various types of personal powers and ideologies is critical. I must confess that I am rather unconvinced of the utility of Descola's ideas on the supposed non-separation of nature and culture in premodern societies, an »organic

wholeness« already postulated long ago by Collingwood, as offering a solution to this problem. Even if one concedes this ontology, it is difficult to explain the significant variety of state structures, the intense bureaucratic-administrative structures that some of them developed, or, to consider religion, the emergence of a mass unitary ideology like Christianity in the Roman empire – an ideology which Haldon has elsewhere accepted as critically important to the survival of the Byzantine state. The utility of investigating the nature of the separation between the impersonal structures of the state and various types of non-state organizations and personal powers, however, should be testable in the context of extra-European and pre-modern states, like that of China.

There are at least two ways in which I strongly empathize with Nicola Di Cosmo's anxieties. If someone asked me to join in debates amongst historians of China about concepts, say, of rulership in the Tang or Song dynasties, I would not just be unenthusiastic, but riven with a real fear and would surely desist. I also share his justified apprehension of questions that are just too immense and too baggy to be useful in historical analysis. For the most part and for most of my practice as an historian – consider how I write – I must agree. But sometimes even the hardest of hard-edged fact-oriented researchers, physicists amongst them, still engage with »big picture« questions. They deal not just with sub-atomic particles, the neutrinos and quarks, but with the much grander matters of cosmology. Even if we historians, in our sublunary world, have reasoned doubts about the utility of doing so, we must also grapple with these big issues on occasion. In my eyes, Nicola's intervention shows the utility of seeing our problems from another historical perspective. I select just one of his main insights: his focus on the problematic link between »state-ness« and concepts of universal rule. This is surely important because concepts of universalism reflect the ideal of achieving a peculiar type of state power and also the relation between the polity aiming at that achievement and »the universal«. An awareness of universal rule as a possibility can be projected by different types of state powers – as it seems to have been by thinkers of »cosmopolitanism« in the post-Alexander the Great kingdoms in the Mediterranean. Chinese thinkers of the similarly fragmented and competitive powers of the Warring States period could envisage the possibility, indeed desirability, of a power of *tianxia* or »All-Under-Heaven«. In the Roman case, by contrast, the concept of »ruling over everything« seems to have emerged only after the empire had already been formed. In any event, whether proleptically or after-the-fact, very large premodern states configured their existence in this fashion in a world where there was no longer a formally well-defined »sovereign area« of their own that could be defined in opposition to that of others. They had everything that mattered to them. Most of the more modest city-states of the time, Greek and Phoenician amongst them, however, did have clearly defined borders, even if the presence of borders seems to have encouraged constant struggle and warfare. Indeed, it is the existence of comparable constellations of competing states that made Victoria Tin-Bor Hui's insightful study of state formation in the Warring States-Qin transition and the states of early modern Europe so do-able. It appears that reaching a point of »having no borders« is a signal that what we call a »state« possesses something that we call an »empire« – although the latter could morph into the former as, I think, happened with both China and Rome. In this case, however, it seems that we are at the »upper end« of the problem: the point at which major states are transforming into a single state that dominates all other states in their own ecology. This proven capacity to morph does raise Nicola's »more interesting« question about the changing nature of a state over time and our willingness to tolerate changing terms to describe the different phases.

But no objective set of terms or definitions alone will bring us full historical understanding. I could not agree more with Hans-Werner Goetz. The emic or local expressions of what they were experiencing, in this case the instruments and aura that we define as a »state«, are very important for us to understand, if only because how they conceived their governance must have considerably affected how they acted. This is certainly »an indispensable objective of research«. And the fact that they did not have concept words that we have does also matter in historical analysis and might well impair our liberal use of the word »state«. I could take the Romans and our concept of »teenager«, which emerged first in the 20s and 30s or the last century, but only took hold in a big way in America in the decades after the 1950s. The Romans certainly had young people between the ages of 13 and 19, a simple demographic fact, and had ideas about them which are found in both literary and epigraphical texts. But it is safe to say that they lacked an equivalent to the modern word and concept and, in this case, the verbal absence tells us that the thing itself did not exist. Such matters must remain constantly under review. Every time the eminent Roman historian Fergus Millar used the modern word, and therefore concept, of »sovereignty« to describe the nature of the Roman republican state's authority, I always stopped in my tracks and hesitated. It just didn't feel »right«. I remain dubious, although somewhat less so than I once was.

The operational difficulty here perhaps is less with the concepts themselves, as Yannis Stouraitis makes abundantly clear from his useful outsider's perspective, than with a peculiar historicizing of them. As he shows, the Byzantine Greeks used the word *politeia*, an inherited concept which was itself undergoing change and which only has a partial overlap with our term »state«. The same has been remarked of the Latin *res publica*. The problem here, I think, is not the simple one that exists with »teenager«, but rather one of measuring the gap that exists between the concept, both emic and our modern one, and the actuality of the state »out there«. As with the concept and word »empire«, however, there is another dimension of this problem that is implicit in Stouraitis' argument, namely the moral and emotional content of the words as they were spoken and written by the persons at the time. The claim to have a thing like a *politeia* had an emotive element to it that cannot be ignored. So this, too, bedevils our analyses. Someone might claim the Central African Republic to be an »empire« and its ruler to be an »emperor«, as Jean-Bédél Bokassa did in the latter decades of the twentieth century. He wished to have an empire and to be an emperor, both very desirable things in his eyes. On the other hand, others, while actually possessing such a thing »objectively«, like America or the Russian Federation, for these same moral and emotive reasons might wish to abjure the fact. Like »empire«, the concept of »state« is similarly fraught because it signals a certain highly valued status that everyone, from the tiny islands of Vanuatu and Tuvalu to the People's Republic of China, desires to have. Emic claims, or the lack of them, might not be a fully reliable guide to the reality.

Finally, I sense that there is another emic issue at play, one that I alluded to in my essay. To say the obvious, it is that we ourselves have emic issues with our own concepts. One that is certainly at issue here is not only the difference between Euro-American ideas and those found elsewhere in the world, but within the confines of our own concepts. When discussing this problem with colleagues and friends from German-speaking lands, I felt that we were always speaking at cross-purposes, that the ways that they and I saw this problem were not converging in the same conceptual circle. I conclude by quoting from comments made in an e-letter to me on this issue by a fellow Roman historian, Lisa Pilar Eberle from Tübingen (I thank her for her permission to replay her words here):

As I contemplate calling the Roman polity a »Staat« in German, I still shudder. And not because I am a Schmittian, but because, unlike the English »state« (at least to me), the word simply has such concrete, modernist connotations. In German something is »ein Staat« because there is something that one can identify as »der Staat« (which anchors the concept firmly in the present). It's where the emic and the etic intersect and make »Staat« as a category of historical analysis so strange for me, I think. That being said, my English mind completely agrees with you. I think there was a time when in my research I also stopped speaking of »the state« (especially as the subject of a clause) because that seemed to elide too many interesting questions...

With Lisa, I now also shudder. In other words, our terms require their own internal translation, a process which itself might indicate that equivalent usages are not possible. I, too, am no Schmittian, either as a devotee of his values or as an admirer of his public career. I selected him for a number of reasons. One is that, whether one likes it or not, he has been central to the best-developed historical arguments that have been carried on mainly amongst German-speaking scholars, principally medievalists, but which ought to be more widely known, especially among Roman historians who are my special concern. He is also – in my judgment only – the most acute analyst of the nature of the particular type of state that was the focus of his inquiries, of the complex deliberations about it in the past, and of what are the »essences« that characterized it. So although his ideas are Eurocentric (they surely are), they are still the most coherent and incisive analysis of a given type of state that can guide our understanding of other types.

I cannot sufficiently thank all of the respondents. I have learned from them all. Much more could be said in further discussion of each of their responses, but to go on at length would try the endurance of the most patient reader. I am reminded of a graffito from Pompeii where the wit wrote that he wondered at the strength of a wall able to bear the strain of so much scribbling.

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