

ARTICLES

## The Making of the State

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## THE ORIGIN OF THE STATE

What needs to be asked is, How have things gone historically? What is the *historical* origin of the state?

A realistic vision of the state must start from the assumption of the historicity of the state. The state has not always existed. It has its own place of origin and history: its birthplace is Continental Europe, and its origin roughly coincides with the beginnings of the modern age, between the fifteenth and sixteenth centuries. Three major events mark the entry into the modern age: the fall of Constantinople on May 29, 1453, which marked the end of the Eastern Roman Empire; the discovery of America in 1492; and the Protestant Reformation, which was sparked by Martin Luther on October 31, 1517. The modern age was a break with the Middle Ages and in particular with that structure of political power which had characterized European history for almost a millennium, a structure in which power was not centralized but dispersed among multiple centers of power. The state is modern. The Middle Ages and the ancient age didn't know state forms, because political organization of those periods was not even remotely comparable to that of the modern age. It is therefore necessary to be aware of the fact that, as Gianfranco Miglio (1918–2001) writes, “the type of political order in force today, far from being the only and inevitable product of universal reason, is only the result, basically quite occasional, of a series of historical conjunctures” (Miglio 1988, 803).<sup>1</sup> There can certainly be no doubts about the typically European origin of state institutions. The model of political organization called the state spread around the world, but it started in



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Europe. The theory that situated the birth of the state in modernity alone is now largely accepted, but it developed only in the twentieth century thanks to a group of scholars in Germany: Max Weber (1864–1920), Carl Schmitt (1888–1985), Otto Brunner (1898–1982), and Otto Hintze (1861–1940). Until the beginning of the last century, in fact, the term *state* was a sort of super concept used to indicate any type of organized political community, and it must be said that this use of the term has not completely disappeared.

The birth of the state was everywhere marked by the attempt at territorial pacification. If we look at the internal problems of the territories, we are faced with the problem of order. To the ancient problems of concentrating judicial power in the hands of the king to prevent feuds and of acquiring or eradicating feudal principalities and lordships in order to achieve the territoriality of the state was added a new modern problem: the wars of religion, which in fact were civil wars. In France, there was the struggle between Catholics and Huguenots (1559–98); in the German Empire, the conflict between Catholics and Protestants during the Thirty Years' War (1618–48); and in England, the civil war (1642–51) between Anglicans, Presbyterians, Congregationalists, and Independents. There were also the pressures of the international environment: the wars for domination over Italy (1494–1559); the Thirty Years' War (1618–48); the War of the Spanish Succession (1701–14); and the Seven Years' War (1756–63).

In order to establish peace and to protect the people, a state must establish itself as the sole holder of power in a territory and must not tolerate competitors. To be successful, the state must prohibit the private use of force and credibly present itself as the sole repository of the power to use violence. Max Weber, whose definition of the state is one of the most famous in the history of the social sciences, was among the first to highlight this aspect of modern statehood. Weber seems to be well aware of the genuinely modern nature of the state when he depicts its emergence: “The spread of pacification and the expansion of the market thus constitute a development which is accompanied, along parallel lines, by (1) that monopolization of legitimate violence by the political organization which finds its culmination in the modern concept of the *state* as the ultimate source of every kind of legitimacy of the use of physical force; and (2) that rationalization of the rules of its application which has come to culminate in the concept of the legitimate legal order” (Weber [1921] 1968, 909). But the state must make its protection an offer that cannot be refused. And to do that it must first disarm society. The unilateral offer becomes binding if the population is deprived of weapons—i.e., if it is unable to defend itself, either from private individuals or, of course, from state officials. Otto Brunner, in his classic study *Land und Herrschaft (Land and Lordship)* (1939), identified one of the keys to interpreting the emergence of the state in the gradual abolition of the feud of the Germanic populations in the Austrian area. He showed that the legal and political rationalization of modernity implied the disarmament of citizens,

followed by the creation of a caste of armed servants of the state. All the classical functions of the state, starting with the monopoly of legislation, arise from the imposition of disarmament on the whole of society. The offense to a citizen becomes an offense to the state interest, which is to preserve order in order to acquire greater control over the territory. The state represents itself as the only possible synthesis for modernity.

We can see the cradle of the state in the Italian system of states after the Peace of Lodi (1454), but the true cradle of the modern state was sixteenth-century France. It is precisely in the absolute French monarchy that emerged from the religious wars between Catholics and Huguenots that it is possible to observe that bureaucratization and centralization of the exercise of power which is a fundamental characteristic of the state. The beginning of the state can be placed in the second half of the sixteenth century. If the state is an eminently political fact, politics are the cause of its development: it is born to give precise answers to precise political problems, to challenges that come both from the international arena and from the territory over which it wants to exercise its sovereignty—in short, from the need to build its borders, to decide between peace and war. The state has to aim above all at its own survival in an unstable world where it was perpetually exposed to risk; and to survive means to enlarge and strengthen its dominance from within.

The political form of modernity is the principality which then becomes the modern state. To consolidate itself, the principality led a struggle against the remnants of feudalism still present in the modern world. The architects of this new construction were essentially the assistants of the absolute monarchy, who were almost always legists—that is, technicians of law. The keystone they devised is the production of the law by the prince. Then, the nobility of the toga was also born—that is, the small nobility who dedicated themselves to administrative and judicial tasks beside the traditional nobility of the sword. The other problem of the modern state concerns the finding of the financial means to implement policies and to sustain the machinery of government. In the ancient regime, the assembly of the estates in France took the name of the States General, and in the view of the champions of absolute monarchy, it was an obstacle to the full deployment of the king's power and his organizational action. On the one hand, we have feudalism, which was opposed in every way to the financial strengthening of the monarchy, and on the other, the latter's thirst for money, at the basis of which modern taxation lies. An important fact to which attention must be drawn is the legal fact: the king relied above all on a judiciary, creating a unitary legal system and investing the royal courts with the role of judging cases related to sovereign law. The judges employed by the king ended up prevailing over the feudal lords who had judicial functions in the feudal system and over legal experts as private judges. The king's courts spread to various countries: the Cour de Parlement in France, the King's Bench in Great Britain. The new judges reporting directly to the king declared justice in the name of the king.

The prince is the crucial figure of the modern state. He manages to centralize power with the help of his officials and through a new administrative system, the machinery of the state. As Federico Chabod pointed out, this machinery is created through the establishment of a series of functions that acquire a character of stability in the territory. First, standing armies that exist even in peacetime and are made up of mercenary soldiers dependent only on the king; then, stable diplomacy and an ever-growing state bureaucracy. The state, however, is not separable from its ideological construction. All modern politics are reformulated with the vocabulary of the state. On the one hand, the state appears to be a historically determined concept that marks the period from the era of absolute monarchies to today's democracies. On the other hand, the state positions itself as the greatest and only possible form of political order: the political cannot be thought of outside the framework of the state and its paradigms. The state represents itself as the sole and unequivocal answer to the problem of political order. This construction that has accompanied us for five centuries also exercises conceptual tyranny over us because it tries to prevent us from thinking about politics differently, outside the framework of the state.

## **THE REASON OF STATE AS A POLITICAL SCIENCE**

The heart of all the novelties introduced by power organized in state form lies in the principle of sovereignty—unique, absolute, indivisible, certain, and perpetual, as defined by Jean Bodin (1529/30–96) in his *Les six livres de la république* (*The Six Books of the Commonwealth*) (1576). The instrument used by the king is the law to which he alone is not subject (*legibus solutus*). Here we see the modernity of Bodin: the sovereign power is the power to decide for everybody without restrictions. The sovereign authority is not limited by law or by consent. The term *state*, roughly as we understand it today, appears in the writings of Niccolò Machiavelli (1469–1527), in particular in *The Prince*: “All the states, all the dominions under whose authority men have lived in the past and live now have been and are either republics or principalities” (Machiavelli [1513] 1961, 33). At this point, the medieval period was definitely over.

The political writers of the mid-sixteenth century had to take note of the new institutional situations and the conditions under which political life in the Italian Peninsula and in the Catholic states actually took place. There were monarchical regimes of ancient origin and well-established principalities, so the writers generally took for granted the form that states had assumed in the second half of the sixteenth century, posing only the question of the best form of government. The fact that the Reformation, in its Calvinist component, had chosen republican forms of government, as in Switzerland and the United Provinces of the Netherlands, generated in the climate of the Counter-Reformation a prejudice against the republic and favor toward princely government as a regime more suitable for preserving religious unity and respect for traditions. These writers worked, therefore, for their princes

and for their states, mostly with encomiastic intent, helping to consecrate the model of the absolute principality and to secure the professional role of the prince's agents and advisers, the future bureaucrats. Once the papacy occupied the center of the political scene, the culture of the Counter-Reformation was also presented with the problem of elaborating a theory of the state and a political ethics consistent with the program that emerged from the Council of Trent (1545–63), which sought to recover conscience, to control intellectual production, to educate rulers, and to guide the practical morality of the masses. The new times were characterized by the affirmation of absolute states.

The political theories that had begun to respond to the need for political realism—foremost, the thought of Machiavelli—began to separate the political sphere from the religious and moral one. In fact, affirmation of the principality and of the modern state meant that the society of the Counter-Reformation had to confront the objective autonomy and unscrupulousness of politics. There were writers who evinced a political realism or, if you like, that practical Machiavellianism which was constantly present on the flip side of the Counter-Reformation. The men of action gave suggestions with which they showed they believed in the truth of Francesco Guicciardini's saying that "political power cannot be wielded according to the dictates of good conscience" (Guicciardini [1576] 1972, 54) and of Cosimo the Elder's that "the power of states was not maintained by Paternosters" (Machiavelli [1520] 1845, 123).

Among the Catholic intellectuals who were able to satisfy the need for realism in the management of states, we find the Italian Giovanni Botero (1544–1617). Forced to abandon the Society of Jesus in 1580 due to disagreements with his superiors, he entered the service of the cardinal of Milan, Carlo Borromeo. In 1583, he published in Milan his first political work, *De regia sapientia* (On kingly wisdom). His major work, *Della ragion di stato* (*The Reason of State*), was published in Venice in 1589. The work referred not to a strictly Italian princely model but to the dominant "state" form in Europe in the late sixteenth century: the absolute monarchical state. Botero mentioned in his treaty the sixteenth-century political literature that had realistically described and discussed the actual policy of states on the level of pure political art, interests, and the maintenance of states—that is, of the "raison d'état." Botero defines the reason of state as follows: "Reason of State is knowledge of the means suitable to found, conserve, and expand dominion" (Botero [1589] 2017, 4). Botero intended to rescue the reason of state from its condition of immoral and unscrupulous political praxis and elevate it into the objective sphere, giving it the neutral character of political science.

The reason of state is connected to the birth of the modern state. At this stage, the object of the reason of state will be the formation of the state; once the state has been formed, its object will be its preservation. As Botero puts it, “the conservation of a state consists in the peace and quiet of the subjects,” and “the principal purpose for which the people pay tribute and taxes to the prince is that he maintains peace and quiet through the administration of justice” (Botero [1589] 2017, 13, 28). The stability of states depends on the obedience of the subjects, and obedience is achieved through the virtues of the prince—that is, through political prudence and valor. Prudence must be applied to the waging of war; to the control of internal order and external security; and to the regulation of the monetary, agricultural, and commercial economies. Botero expands the *raison d'état* into the economic terrain, thus opening up to a more advanced reality than does Machiavelli.

Botero's purpose of taking political reality into account—of not falling into the vacuous idealization of the just and therefore beloved prince—can be seen throughout *The Reason of State*, in which a practical mentality dominates and the interest of the state is taken into account. The doctrine of the reason of state affirms that the security of the state is a requirement of such importance that, in order to guarantee it, the rulers of states are forced to violate the juridical, moral, political, and economic norms which they consider imperative when the security of the state is not threatened. The reason of state is the need for state security that imposes certain conduct on rulers. The thinkers of the sixteenth century ended up convincing themselves that politics could be reduced to that set of methods, means, and decisions put in place by governments regardless of laws and moral values. In the states of the sixteenth century, the rule that allowed exceptions to law and morality during a state of emergency seems to have become the ordinary practice of government.

In the subsequent treatises of the modern age, the ethical disagreement about the division between political utilitarianism, on the one hand, and law and morality, on the other, remains unresolved. For Scipione Ammirato in his *Discorsi sopra Cornelio Tacito (Discourses on Tacitus)* (1594), the reason of state derogates from civil law according to a superior interest: the public good, the preservation of the state. The analogy between the positions of these writers and the theories of monarchical absolutism of Jean Bodin, of the sovereign *legibus solutus*—that is, not bound by the laws—is evident.

In France, precisely in the context of the affirmation of the central power of the state, with Henry IV and then with Cardinal Richelieu, political literature was oriented toward political realism. “Richelieu's *raison d'état*, which insists a lot, like his contemporaries, on the rational character of government action, is configured as a global intelligence concerning society, which responds only to the criterion of state utility. The *raison d'état* is no longer administered directly and only by the prince, but by the prime minister and his agents:

it is the science and practice of an apparatus” (Comparato 1993, 132). Subsequently, Cardin Le Bret (1558–1655) argued in *De la souveraineté du roi* (On the sovereignty of the king) (1632) that the public utility, understood as the interest of the state, should prevail over all other considerations.

The absolutist Europe of the seventeenth century was about to put aside the ethical problem without solving it. Each state would move according to the criterion of interest in the domestic sphere and in international politics. The “Italian and Machiavellian” reason of state that the writers of the Counter-Reformation had tried to tame and exorcise was evoked in the seventeenth century by Gabriel Naudé (1600–1653) in a clandestine publication entitled *Considérations politiques sur les coups d’état* (Political considerations concerning coups d’état) (1639). It was a work written in Barberinian Rome, the scene of the maneuvers of the ambassadors of all the Catholic states: a text of provocative frankness in enumerating the crimes committed by governments in the name of the interest of the state. Naudé did not even try to judge these crimes from a moral or religious point of view: the effectiveness of political action was the only criterion for judging politics.

Thus, over time, a double morality has been established in judging the same actions when carried out by the state and when committed by private citizens. That double standard, condemned without appeal by Murray Rothbard, leads people to consider legitimate acts, carried out by the state and its officials, which would be considered crimes if committed by private citizens.

In contrast to all other thinkers, left, right, or in between, the libertarian refuses to give the state the moral sanction to commit actions that almost everyone agrees would be immoral, illegal, and criminal if committed by any person or group in society. The libertarian, in short, insists on applying the general moral law to everyone and makes no special exemptions for any person or group. But if we look at the state naked, as it were, we see that it is universally allowed, and even encouraged, to commit all the acts which even nonlibertarians concede are reprehensible crimes. The state habitually commits mass murder, which it calls “war” or sometimes “suppression of subversion”; the state engages in enslavement into its military forces, which it calls “conscriptio”; and it lives and has its being in the practice of forcible theft, which it calls “taxation.” The libertarian insists that whether such practices are supported by the majority of the population is not germane to their nature: that, regardless of popular sanction, War is Mass Murder, Conscriptio is Slavery, and Taxation is Robbery. The libertarian, in short, is almost completely the child in the fable, pointing out insistently that the emperor has no clothes (Rothbard [1973] 2006, 28–29).

Thus, the state, born at the dawn of the modern age for the needs of pacification—to protect people—has in reality become, as Rothbard writes in *For a New Liberty*, “the supreme, the eternal, the best organized aggressor against the persons and property of the mass of the public” (Rothbard [1973] 2006, 56).

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