Book Review

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Allgemeine Staatslehre. Über die konstitutionelle Demokratie in einer multikulturellen und globalisierten Welt
Berlin Heidelberg New York (Springer) 2004

Reviewed by Ulrich K. Preuss*

When Georg Jellinek (1851-1911) published his seminal Allgemeine Staatslehre (= General Theory of the State) at the very beginning of the 20th century – precisely: in 1900 – he built his doctrine upon the assumption, that “the single most important social phenomenon based on human will is the state”¹. Obviously he referred to the fact that statehood had become one of the hallmarks of modernity, creating a new kind of social order based upon the principles of territoriality², sovereignty³, and individuality⁴. In fact, modern statehood played a pivotal role in the development and the dynamics of modern society, its amazing scientific and technological achievements, its religious and cultural plurality, and its high level of individual freedom. Moreover, since the Westphalian peace treaties of 1648 statehood developed into the fundament of international order in that, as the leading scholar of international law at the turn to the 20th century, Lassa Francis Oppenheim (1858-1919) affirmed, “states and only states” became the legitimate actors in the field of international politics⁵.

Yet, during the lifetimes of both Jellinek and Oppenheim statehood was largely a Euro-Atlantic occurrence, and it took almost three quarters of the 20th century until all former colonies, dependent territories and para-state entities became members of the international community through their transformation into sovereign states. Obviously this development has been esteemed as a significant political, legal, and moral progress across the world. Thus, it is no exaggeration to claim that statehood has been an essential moving force in the advancement of modern civilization and its global extension.

However, as Karl Marx rightly observed, we understand the inherent character of social formations best at a stage of their development when they are in decay. Statehood is no exception. It is with the benefit of hindsight that we realize the

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pivotal role of the modern state for the present level of human civilization. Like all social institutions the state, too, has undergone significant historical changes, ranging from its incipient and embryonic kind as an oppressive absolutist institution with subaltern and passive subjects through different varieties of liberal constitutionalism combined with capitalist class domination where the status of citizenship was bestowed upon the propertied and educated classes to diverse types of mass democracy-cum-welfare statehood where equal national citizenship and the fair distribution of the benefits of social cooperation had become the source of political rule. In retrospect, this type of state appears as the perfect model of what a political community can achieve under conditions of advanced modern societies. Unsurprisingly, after 1990 it became the quintessential standard for many members of the new political elites in the post-communist countries. For the historian Eric Hobsbawm the liberal welfare state of the 50s and 60s of the 20th century represents the “golden age” of the modern state. The implication of this assessment is, of course, that our epoch is an age of the state’s demise.

As a matter of fact, there is a considerable amount of literature in which, depending on the perspective, the gradual fading away of the state is either deplored or celebrated. Other authors speak more cautiously of “transformations of the state.” In this view the role of the state has been considerably changed by the globalization of the movement of goods and services, money, ideas, and people, without being doomed to fade away. However different the assessment of the present condition of the state among political scientists, jurists, historians or sociologists may be, they converge in the observation that the golden age of the state in which it was in control of all essential social interactions within the boundaries of its territory has passed away. Actually, quite in line with Marx’ statement just mentioned, this reality has considerably augmented our retrospective knowledge about the modern state. But we need more than this. We badly need a political and state theory in which the state is not conceptualized as a phenomenon of decay which suffers from several deficiencies if compared with a past golden age of statehood. What is required instead is a theory which explains the role of the state in a theoretical perspective in which the extremely globalized, interdependent, and fragmented world of the foreseeable future of the 21st century is not viewed as an exceptional state of social pathology, but of normality. In other words, we are in search of a theory of the state of the 21st century.

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9 S. Leibfried/M. Zürn (eds.) Traanformations of the State. Cambridge 2005 (Cambridge Univ. Press)
The book under review is an impressive response to this demand. Its subtitle – *Constitutional democracy in a multicultural globalized world* - aptly condenses its focus: the authors – themselves socialized in different multicultural political settings and academic traditions – aspire to no less than a theory of the state which is able to adapt to the challenges of internal heterogeneity and to the pressures of its unprecedented globalized interdependency without giving up the principles of the rule of law and of democratic rule. The latter merits special emphasis since our conventional wisdom teaches us that modern democracy can thrive only in the institutional framework of the “classical” sovereign state in the social and the political space are largely congruent. The conceptual and political difficulties to develop constructions of supranational and, even more demanding, transnational or cosmopolitan democracy bear sufficient witness to the weight of this traditional idea of democracy. The authors do not deny the intimate affiliation between statehood and democracy, but they argue that in our epoch an unequivocal relation between different elements of the social fabric no longer exists. Assigning the symbol of the hierarchical pyramid to the society of the European Middle Ages and that of a wheelwork, in which the gears, driven by an invisible hand, interlock smoothly, to the era of the industrial society, they use the picture of multidimensional networks in order to typify contemporary societies. “Networks are characterized by complexity and a lack of transparency… Each node has its functions and comprises capabilities, to influence the network or to suffocate dangers in other threads of the network. But each nodal point is also vulnerable to being marginalized and isolated.” Obviously it is this metaphor which has inspired the authors’ way of reasoning. Rather than submitting a consistent and “pure” conceptual architecture of the state as an ideal type of political rule, they pursue the idea that the state of our time has to be conceptualized as a concrete response to the challenges of transnational interdependency (globalization), cultural fragmentation, and of the universality of human rights and solidarity. These new challenges are inherently connected with each other in that they, as the authors argue, form the three pillars of the three-dimensional construction of contemporary statehood.

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10 All citations of the reviewed book my translation - UKP
11 Leibfried/Zürn (N. 9), pp. 11 ff.
13 P. 673
The analysis of the emergence of those challenges is embedded in a setting of rich and amazingly erudite accounts of the social and intellectual history of past political formations – ranging pre-historical tribes through medieval feudalism to the modern state of the industrial age, from Saint Augustine through Hobbes, Locke, Rousseau, Kant and Hegel to Marx and Rosa Luxemburg, from the Magna Charta through the Mayflower Pact, the different meanings of the Rule of Law to Habermas’ discourse ethics, and many more insightful remarks from a host of multidisciplinary sources – and thus provides the reader with a stuffed intellectual tool-box for the understanding of the uniqueness of the modern-day challenges to statehood.

However, the core of the book is the authors’ concept of a state which is able to cope with the difficulties of the simultaneous appearance of globalization, cultural fragmentation, and of the universalization of human rights and solidarity under conditions of democratic rule. They reject the idea of a global or cosmopolitan democracy because the demos can only consist of a particular community. Even the political identity of the universalist demos *par excellence*, the French republican nation, is rooted in the particular national history, culture and language of the French people. The authors conclude, that a well established state must find a balance between the commitment to universal principles – they embody “what is good for all” – and particular values, which reflect the distinctive identity of the people and embody what is “good for us”. The authors argue that the modern type of constitutionalism, being largely founded upon the concept of the “universal citoyen”, is liable to failure in societies which encompass a plurality of identity-engendering cultures. Is it possible, the authors ask, to discover values which are not universal but nevertheless able to create a “We” that serves as the fundament of a common polity of different cultural identities? This question includes what the authors call the “challenges of multiculturalism”. Of course it would be preposterous to expect them to give one accurate response to a problem the definition of which is itself far from unequivocal like all questions which deal with the dynamics of societal evolution. What the authors do, however, is to put forward the direction where answers might be found.

Basically, they do not expect solutions in the framework of a liberal theory of state. First and foremost, the protection and promotion of individual rights is not the only objective of a multicultural constitutional state; equally, perhaps even more important is the safeguarding of peace among the diverse cultural communities that live together in one state. A state which copes with the challenges of multiculturalism must provide the institutional infrastructure for the societal cooperation between individuals most of whom live with multiple

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15 P. 282 ff., 283.
16 P. 520.
17 P. 520, 525.
18 P. 521.
19 P. 521 ff.
20 See esp. the summary on pp. 673 f.
identities and loyalties. Consequently, the principle of democracy cannot be
realized through the majority rule; rather, it requires institutional mechanisms of
accommodation of particular communities, including territorial decentralization
and decision-making through devices of consociational democracy. The
authors anticipate a tendency towards a local emotionalism which must be
balanced by the state’s transnational and global orientation in order to acco-
mmodate local needs with the requirements of the global community. This,
indeed, is the focal point of their vision of statehood which meets the
requirements of the 21st century. Since, as they maintain, 95% of the world
population live in states which are divided in different nationalities, cultures,
languages and religions, many of which suffer from an agonizing fragmenta-
tion, the appropriate principles of social cooperation and political rule must
find an answer to the conflict-prone challenge of multiculturalism. They contend
that liberal democracies, based upon the Lockean principles of individual
freedom, equality and universalist values must be complemented with the
recognition of cultural and ethnic diversity of particular communities. Obviously
this refers to an intellectual tradition which dates back to Johannes Althusius
(1557-1638) who can be regarded as the founding father of the consociational
theory of politics.

The answer which the authors suggest is what they call “ethnic federalism” – a
concept which “organizes multiethnic communities on a territorial basis and
aims at bringing and holding together the ethnic diversity of that community.”
To be sure, the authors neither advocate a politicization of ethnicity nor an
ethnification of constitutional conflicts both of which they, on the contrary,
regard as dangerous for the political integration of a polity. Rather, “ethnic
claims should be transformed into political principles and structures” – a
demand which the authors regard as so essential that they put it into italics, not
forgetting to add the sceptical remark that the liberal theory of state and
democracy is not prepared to provide political solutions for those claims. If
there is any example in the real world which fits the authors’ concept of ethnic
federalism it is the Swiss version of federalism because, as the authors claim, it
is open towards communitarian values and “has succeeded in developing and
sustaining a complex multicultural society amidst a conflict-ridden Europe
through federalism and direct democracy.”

Studying their elaborate chapter about the Swiss version of federalism and the concluding outline of “14
constitutional principles for a multicultural state” the reader is struck by the
observation that one of the essential characteristics of the state of the 21st

\[21\] P. 595.
\[22\] P. 513.
\[23\] P. 582.
\[24\] 578.
\[25\] PP. 583 ff.
\[26\] P. 590.
\[27\] P. 582.
\[28\] P. 596.
\[29\] PP. 656 ff.
century which the authors rightly emphasize in the other parts of the book, is missing here, namely its interdependency with the globalized sphere of inter- and transnational politics. Is this an involuntary indication that the Swiss political model may be a convincing solution for the problems of the relatively small Swiss society, but hardly for the partly extremely harsh conflicts of much bigger societies in other parts of the world, much less for the problems of governance on the global level?

However this may be, the book is full of profound insights, stimulating reflections and ideas, and creative provocations (such as the authors’ continuous scepticism towards the liberal political and state theory). It is certainly more than just another “General Theory of the State” – it is unique in that it suggests no less than a paradigmatic shift of our reasoning about the state. Defining the multicultural state as the essential political community of the 21st century and redefining the basic concepts of the theory of the state to that effect, the book may become a milestone in the history of political and state theory. It is the first treatise which responds to the emergence of radically new parameters of the political in a comprehensive, multidisciplinary and, which merits special emphasis, also readable manner. However, there is one major obstacle to its well-deserved career as a must-read in political science and constitutional theory classes: it is written in German, and it is long ago that this language served as an internationally recognized and used code among scholars. So, first of all the book is in need of a publisher who is ready to release its English translation.