

The Tragedy of the State

Prolegomena to a Theory of the State in Polycentric Society
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From Hobbes and Hegel continental theories of the State inherited a preoccupation with the separation of State and society. Liberal and socialist critique answered with simple negation, that is demanding or predicting the blurring of the distinction between State and society or even expecting the vanishing of the State. The emergence of the interventionist and welfare State in all modern societies during the past hundred years¹ didn't resolve the issue either. For the question remains whether the welfare State, being deeply involved in the intricate operation of society, still is a separate and autonomous entity, whether it governs society or is governed by the operational exigencies of society.

My point is, that this framework for discussion and analysis is outdated. The welfare State has enhanced the distinction between State and society by considerably expanding the use of law and regulation² and thus putting societal processes under authoritative legal constraints; and it simultaneously has blurred that distinction by expanding State functions to the provision of social infrastructure and social benefits, thus committing itself pervasively to the functioning of society.

What, then, is the position of the modern State? As soon as we reject the dichotomy of either juxtaposition or meshing of State and society, a variety of productive alternatives come into focus: simultaneous enhancement processes, e.g. of independence and interdependence, of exclusion and inclusion, of differentiation and reintegration, of hierarchy and heterarchy, of self-reference and other-reference. This leads to most interesting and important aspects of an emerging evolutionary theory of law and State³ which presently is gathering momentum.

I would like to concentrate my argument on just one aspect within this context of the changing role of the State in highly complex societies. It is the aspect of a tragic double-bind of the State resulting from necessarily contradicting expectations that presently confront the State: to represent the hierarchical top of society in order to be able to direct and govern society; and at the same time to abdicate authoritative decision making in order not to interfere with the autonomy and self-organization of society. To be sure, "tragedy" of the State is not concerned with the impression that the State seems to be everyone's most liked enemy. Nor am I dealing with the fact that the theory of the State is a much neglected area of political and sociological reasoning. Rather, my aim is to show that in the context of modern societies, the State exhibits characteristics of a classical tragic hero: the State becomes a victim of its own success,⁴ in that it creates or induces effects which backlash on the causes which have constituted the evolutionary emergence of the State.

Let me recapitulate the essence of antique tragedy. Tragedy stems from the inversion of the "natural" cause-effect-relationship. For human thinking and

human action it seems natural and ubiquitous that certain causes lead to certain effects in an irreversible direction of time. Therefore, effects cannot feed back to their causes. In antique tragedy we witness the incomprehensible fact, that effects somehow creep back to their causes, creating a situation which is beyond the control of humans and thus calls for the intervention of the Gods. So, for example, in the Oedipus tragedy, we see that the fact that Oedipus is expelled from home because it was feared he might murder his father and marry his mother becomes the very cause for exactly this course of events⁵.

Now, of course, the question is, what this has got to do with the State. In order to see the analogy, we have to consider three aspects:

- Firstly, we have to delineate the problem to which the emergence and institutionalization of the State seemed to be the solution. Here we need to reflect on the functions of the State in the beginnings of modern society.

- Secondly, albeit in a very abstract way, we have to discuss some properties of complex systems - mainly selfreference, self-description and "strange loops". This serves to derive from some general premises the specific argument that the separation of State and Society necessarily sets the State on a tragic trajectory, if the problem of levels is not controlled.

- And thirdly, I would like to outline some ideas on how tragedy might be avoided in spite of the absence of benevolent Gods.

1. A new societal problem: secularization and the organization of contingency

What was the new type or new quality of the problem in the evolution of late-medieval societies, to which the State appeared to be a solution? This wording of the question of course, implies functional thinking. And this means that for an adequate answer it is not so important to fix a specific historical date for the formation of the State in Europe. Rather, the point is to specify the conditions of the possibility and the conditions of the necessity of the State in the context of representing and stabilizing the unity of a specific society. One major factor undoubtedly, was the religious schisms or differences which lead to a variety of external and internal wars in the 16th and 17th centuries. The question to be answered, was whether the sovereignty of a political unity was to be based on religious or on secular power. The answer can be found in the formula of the Peace of Augsburg: *cuius regio, eius religio*. (Augsburger Religionsfriede 1555).

This formula highlights an historical trend of secularization which gradually eroded the medieval idea of order - that is the idea of the possibility of political order by referring to an external (and eternal) authority: the authority of God. In sociological terms the unity of medieval society was based on concurring transcendental reference or other-reference, not on self-reference. This idea of a transcendental legitimacy or order had to be adapted to structural innovation when - notably in France and England - the kings

succeeded in centralizing political authority. A first solution was to base the authority (Herrschaft) of the king and the legitimacy of political power directly on divine authority - a device that even today is far from being inoperative. When religion had to retreat further from politics because religious reasoning couldn't solve the problem of unjust power (in the sense of Weber's "domination") and legitimate resistance, a second solution was needed. The second solution to reconcile transcendental reference and structural variation was to base authority on nature. If not God, then at least natural law and the Nature of Man were to guarantee justice of order and containment of power.

However, the formula of "nature" only bridges the opening gap between transcendence and immanence, between religion and secularization, between other-reference and self-reference of the political system for a while. The more serious beginnings of occidental rationalization (as analyzed by Max Weber) and of functional differentiation unleash the internal dynamics of positive science and industrial economy, the very two factors Saint-Simon later refers to as the real revolutionary and revolutionizing forces of the new era⁶.

However, it is in the realm of politics where the most obvious changes occur. When the American revolution puts an end to monarchical authority and dominance, and the French Revolution over-throws the "Ancien Regime", the stage is set for a new foundation of political order: neither God nor Nature, but the human being itself as bourgeois and citizen is now the measure of perfection.

Within the next few years however, the terror in the aftermath of the French Revolution radically shattered the belief in human rationality as a guaranty for the "bonum commune". So what was left? I think it is safe to say, that in Europe around 1800 a uniquely anomic situation emerged: the old foundations of societal order were discredited, and the new hope, the idea of rational Man had failed. At the same time, the dynamics of industrial economy, of science, technology, and education pushed for more functional differentiation, for more diversity and interdependence and in combination created a new quality of societal complexity.

But which authority was to contain, control and guide this complexity? Which institution - after God, Nature and Man - was capable of structuring this anomic complexity?

Some of the most eminent thinkers of that period tried to answer this question. Saint-Simon thought of industrials and scientists as those best equipped to direct the course of society intentionally. Tocqueville on the other hand, realized - with "terreur religieuse" - the advent of egalitarian democracy. But he could not find that desperately needed invisible-hand-mechanism, which might have been able to reconcile equality as a form of citizenship and democracy as a form of government.

From my point of view however, the most problematic and most consequential answer came from Hegel. Around 1820, he realized the

necessity to break with two thousand years of Aristotelian tradition and to react theoretically to the fact of the separation of State and society⁷.

In the Aristotelian model the "koinonia politike" or "societas civilis sive politice" as the sphere of politics and public discourse was set against the "oikos", the household as the sphere of the family, the private, and - as Max Weber says - of "organized want satisfaction"⁸.

It is important to realise, that the oikos included an economic function. Structural innovation by differentiation set in, when gradually household and enterprise became separated and the rationality of the economic function shifted from want satisfaction to the profitability of capital investment.

Hegel sees most precisely that the classical term of "societas civilis" has become misleading, and even disguises the fundamental change in societal structure which definitely establishes itself during the 18th century: the functional differentiation mainly of politics, economy, and family. Political economists such as Adam Smith or Ferguson reintroduce the term "civil society" in an effort to integrate industrialized economy into the Aristotelian model. However, they substitute economic society for political society, and notably Adam Smith omits the problem of control, authority and political domination⁹.

Hegel instead, takes a radical stance: he coins a new meaning of civil society ("Bürgerliche Gesellschaft") by defining it in sharp contrast to the Aristotelian tradition. To him, civil society is the system of particularized needs and interests, as sphere of universal egotism¹⁰. Civil society, Hegel says, is the difference which establishes itself between family and State¹¹. In an impressingly lucid analysis Hegel takes account of the consequences of the division of labor, of industrialized economy, and of the differentiation of societal functions. Rejecting all theories of societal contract as a way to structure and organize the resulting complexity, Hegel rigorously presents the problem: What is there to represent the identity of society in the face of the diversity of its parts? And he comes up with his famous (and many say: infamous) answer: the State as the sphere of universal altruism.

So, here it is, the noble hero of the new era, ready to defend the common good, the common identity, the common welfare against the contradictions and contingencies of a civil society which is built in the inherent instability of private interests. And the tragedy of the State begins with the fact, that Hegel's Philosophy of the State epitomizes the idea of the State as a solution to the problem of civil society at an historical moment, when the solution itself begins to aggravate the problems it was intended to solve.

In order to make this hypothesis more feasible, we have to change our frame of reference and turn to a short reflection on certain properties of complex systems.

2. Some properties of complex systems: Self-reference, Self- description and Strange Loops

For very general constructivist epistemological reasons, we have to assume that complex living or social systems are self-referential systems¹². Self-referentiality means that a system operates in such a way that each operation refers back to the system itself, and therefore, so to speak, only makes sense in the context of this system. Since the human brain is undoubtedly a self-referential system, all human observation is based on self-referentiality. Therefore, it seems epistemologically unavoidable to conclude that systems can be observed and described only by taking into account that they operate self-referentially. More precisely: only by assuming self-referentiality in the standing operating procedures of social (or other) systems can an observer avoid creating an oversimplified description of a social system, and thus fail to realize the internal complexity of the observed entity¹³.

It seems that social scientists are now beginning to learn this lesson and so follow the lead of all those scientists - from sub-atomic researchers to biologists to astronomers - who have realised that they are bound to think in terms of systems and system-references.

To observe in terms of systems, means to create or reconstruct boundaries in order to demarcate the units of observation. These units make sense as units, if they themselves recreate or reproduce their units and their unity. It is easy to see that right here the notion of selfreferentiality is central. For it means that in all its operations a system is bound to refer back to its own identity on the level of system, of structure and of it's elements - which means that it operates as if it were a system.

There is an impressive amount of interdisciplinary evidence (e.g. from the theory of "autopoiesis", from "second order cybernetics", from black-box theory, or from cognitive sciences) for the assumption that self-referentiality is necessary and functional for a system to cope with its own complexity¹⁵. Of course, in the first place, any system is a problem for itself, and this problem spells out: continuation and selfreproduction in time and space. This is the somewhat paradoxical foundation of complex systems: that they can become operative as systems only in the form of complex systems (that is: as systems with a high internal complexity) and that, on the other hand, this very complexity continually threatens to overwhelm and disorganize the system. Indeed, the most general explanation of the possibility of the evolution of systems today, is to base operative cycles or the cyclical structuring of events¹⁶, on a recurrent recombination of order and disorder¹⁷, on the recurrent processing of differences in identical (closed) circuits¹⁸ or on a recurrent recombination of complexity-production and complexity reduction.

In order to cope with its own complexity, a system "uses a simplified model of itself to orient its own operations"¹⁹. It uses a selfdescription, a sort of internal blueprint, to inform itself and thus control the validity of possible

operations. Without this self-description a living or social system simply would not be able to decide which of the myriads of contingent operations fit into its own self-reproducing procedures and which would go awry.

Any self-description is necessarily based on self-observation, that is, on gaining information about the system's own functioning - and this, of course, within the functioning of that very system. This implies that any self-observation and self-description as functions of the system within the system necessarily produce simplified models of the system. For we not only know by now, that any good regulator of a system must be a model of that system²⁰; we also know from Gödel's work, that the complexity of a system cannot be represented in full within that system²¹.

On the one hand, we now see, self-descriptions are necessary for the self-reproduction of living and social systems in that they organize the systems' internal complexity. On the other hand, self-descriptions depend on selective reductions, and in the case of social systems that selectivity shows some degree of contingency, because the selection patterns are not fixed, but they are contingent on optional identities.

Again this gives us a glimpse at the constituting paradox of complex social systems. It is the paradox of the necessity of self-simplification and the contingency of self-simplification, or summarized, the paradox of the necessity of contingency²². For example, this means that any self-description - based on self-simplification - is open to debate, because other self-descriptions are possible. But there can be no debate on the necessity of some self-description, because without it, the system would be without orientation to itself.

Paradox is just one side of organizing complexity. This side is well captured in Piaget's phrase: "L'intelligence ... organise le monde en s'organisant elle-même."²³, because, then, of course, any intelligent brain can turn around that phrase. And, for example, Spencer Brown has done so by saying that the Universe has created physicists in order to be able to observe itself. So paradox is the one dark side.

The other dark side of complex systems is the possibility of strange loops. A "strange loop" or "tangled hierarchy" occurs "when what you presume are clean hierarchical levels take you by surprise and fold back in a hierarchy-violating way."²⁵ For example, the famous Escher-lithograph "Drawing Hands" constitutes a tangled hierarchy which can only be solved by adding an external level, that of the drawing artist. Another example would be the Secret Service of a State examining its own secret services.

After this very short and condensed exposition of some properties of complex systems, including self-reference, self-description, contingent simplification and strange loops, again the question arises: What has all this got to do with the State?

3. Political System and State: From Tangled Hierarchies to the End of Hierarchy

The strategic junction where - so to speak - Hegel and Hofstadter meet, is a very well considered hypothesis presented by Luhmann. He argues that the modern State can be understood as the self-description of the political system²⁶. Just like any other complex systems, societies develop a need for self-descriptions with increasing internal complexity; and historically that means with increasing functional differentiation. Self-descriptions reconstruct the complexity of a society in a simplified form - leaving "windows" for epigenetic accommodation. This simplified internal model of the system which somehow seems to stand outside of the system, can then be re-introduced into the system ("re-entry" in Spencer Brown's sense) to serve as a means of orientation and control.

As we have seen in Part 1, in Europe around 1800, the State emerges as an idea, meant to control the turmoil and turbulences of civil society, and above all of the economy. Particularly in Saint-Simon and Hegel the concept of the State is distinguished from its classical Aristotelian background and begins to be used as an idealized normative model and reference point of practical politics, political responsibility and political theories. Seen in retrospective, this new concept of "State" indeed seems to be a reaction to the increasing complexities of the public sphere, of politics in the traditional sense of the word. Quite similar, during the 18th century, the idea of money and market begins to organize the complexities of a functionally specialized (industrialized) economy; or the idea of experiment and truth aim at organizing the disturbing complexities of the positive sciences.

The dominant principle of evolutionary change from feudal to modern society is the functional differentiation of society into subsystems. The process of functional differentiation is quite well understood and analysed as an historical process²⁷. Much less understood seem to be the consequences of this fundamental change in societal structure. Even today, we tend to think of modern societies as hierarchically structured systems, with State and politics as the top of the hierarchy, providing for binding decisions for the whole of society. However, in a strict sense, functionally differentiated systems are characterized by interdependence, not by hierarchy: Functionally differentiated societies have no established rank order between functions, subsystems or rationalities. "They have to rely on changing priorities and can institutionalize functional primacies only on the level of subsystems. They cannot describe themselves as 'hierarchies'... they have no top and no center"²⁸.

Taken seriously, this gives an entirely new picture of the prospects and problems of modern societies. Before taking up this point in the following section, some comments on the relation between political system and State are due, in order to show how a successful construction turned into tragedy, because its very success obfuscated the limits of its purpose.

When, during the 18th century, the first full tide of functional differentiation shattered the religious and natural legitimacy of a hierarchically structured feudal society, a functionally equivalent principle of order was indispensable. Egalitarian democracy seemed to be one way out, but we know from Tocqueville that this was not yet a solution for Europe. Another way out was outlined by Hegel: his idea was to accept the differentiation of the political sphere from society, particularly from the economy, and to overcome this differentiation by postulating the integrative primacy of the State. With the help of this dialectical "cunning of reason" (List der Vernunft) Hegel was able to take account of an historical movement which had created a new type of differentiated civil society and yet, at the same time, he was able to offer a solution to the problem of the unity of that society. This unity, Hegel wrote, was to be represented by the State and maintained even if this called for interventions of the State into the economy²⁹.

In all its dialectical refinement, this construction prototypically fulfills the requirements of a "strange loop". By putting the State in juxtaposition to civil society and then recombining both sides via the dialectics of unity and diversity, Hegel creates the paradox of the State. It is the paradox of a State which represents unity in the face of diversity and then has no way to avoid the necessity to also represent the unity of unity and diversity and so on, in an endless spiral.

At the logical level of the State, there is no solution to this paradox, and probably this is the prize Hegel had to pay for daring a self-referential construction of the State and for renouncing a higher level reference, or other-reference, e.g. in God or Nature. This precariously constructed self-referentiality of the State invited tragedy in two ways: one way was to define the State as an absolute authority and cut off its dialectical relation to society. This is the tragedy of the total and totalitarian state. It negates the very differentiation of society and "civil society" as the difference between State and family. The second way was to operationalize the State as an instrument of societal problem solving. This is the tragedy of a spiraling Welfare State, which today in many respects seems to aggravate the problems it was meant to solve.

From the fiscal crisis of the State to the legitimation crisis of the State, from the crisis of democracy to the crisis of the welfare state, from the limits of liberty to the limits of growth, from the imminence of continuous conflict to the dangers of self-destruction, there is no lack of descriptions for the profound failure of our former hero: the State.³⁰

This failure seems to be tragic because it builds on the misconception of the State as a general societal problem solver. In this role, the modern State necessarily must become overburdened; it must assume responsibilities it cannot bear; it must elicit hopes it cannot fulfill. In highly developed, functionally differentiated societies, there is no single hierarchical top instance or central institution which can adequately represent the complexity

of the whole of society, or which would be able to build up the requisite variety (internal complexity) for overall societal problem solving. The analogous lesson for example has been learned in organization theory and organizational practice. This has led to remarkable efforts in organization development to overcome hierarchical structures and centralized problem solving³¹. In the case of the theory and practice of the State, progress has not been so overwhelming. However, one major step in untangling the paradox of the State and its tragical implications appears to lie in realizing three points:

1) The image of the State as an entity in juxtaposition to society in general, confounds logical and also empirical levels. The political system of a society is one of the many subsystems following the functional differentiation of society. Its rationality is a partial one, just like that of all other societal subsystems and it has an "inclusive" dynamic³² just like all other subsystems. And this is the reason why on the one hand as a subsystem it cannot transcend its particularity and its partial rationality; and why on the other hand, the State has to fill in the gap and satisfy the quest for societal unity. Untangling this tangled hierarchy means to realize, that the State cannot fulfill the function of the superstructure of society, but instead operates as the infrastructure of the political system. This is what is meant by conceptualizing the State as the selfdescription of the political system. Mixing up the levels of society and the level of societal subsystems means to overburden the State with the sum of societal problems, whereas as an institution it is built to handle the problems of the political system alone.

2) Of course, this leaves the question what, if not the State, is there to represent and organize the unity of society. As long as there is no answer to this question, the State necessarily fails to fulfill a commitment which it cannot avoid to assume within the present context of conceptualizing and describing the Welfare State.

3) So, I think that one way to avoid tragedy is to accept the partiality of the State as the institutional core of the political system and prepare for the necessity of a much more complex construction for realizing the unity of society.

A central part of this more complex construction seems to be the idea to take into account the consequences of the formative principle of modern "western" societies. This type of societal formation is characterized by the primacy of functional differentiation, ensuing complex interdependencies between the specialized subsystems, overproduction of specialized options (including externalities) within the subsystems³³, a high degree of autonomy of the internal operation procedures, and, following from all this, an evolutionary trajectory of the whole of society which ranges - depending on observer - from suboptimality to irrationality³⁴.

To rely on traditional concepts in trying to "solve" this problematic situation - be this a neo-conservative primacy of the State or a neo-liberal primacy of

free markets - means to propagate "fatal strategies"³⁵. The structuring of modern societies follows an architecture of complexity which demands major revisions in describing the logic of societal control, coordination and guidance. Above all, the traditional concept of hierarchy has to be redefined as a sequence of primary functional differentiations and subsequent internal differentiations that produce layers of "nested"³⁶ concatenated system-subsystem-relations³⁷. It would be an heroic simplification to expect that these relations permit authoritative control e.g. by the State. The overall design of societal complexity much more resembles McCulloch's "heterarchy"³⁸, that is a design where control becomes a relational and conditional concept.

4. The semi-sovereign State

What exactly is it, however, that needs to be controlled? This question is far from being trivial. If the basic function of the State has been to avoid anarchy by protecting its subjects, maintaining territorial integrity, enforcing law, and levying taxes³⁹, then control was operative at the level of individuals, either as non-members or as members of a "dominant protective agency". In essence, this hasn't changed very much, although at present most modern States have transferred some aspects of their sovereignty to international or supra-national agencies. Much more important seem to be changes within societies that challenge the control capacity and thus the internal sovereignty of the State.

First of all, there is that fact, that - contrary to an individualistic conception of society - "organized groups, and not individuals are the protagonists of political life in a democratic society"⁴⁰. The rise of the great associations, organizations, trade unions, professions, and corporations indicate the powerful thrust of functional differentiation of modern societies, and it indicates a profound change in the level and scope of possible and possibly necessary control in society. Initially crystallizing around focal organizations like factories, banks, hospitals, schools, universities, voluntary associations, political parties, etc. the present fullyfledged societal subsystems (e.g. economy, health system, education, science, technology, culture, political system, etc.) demand an altogether different relation with the State for power and control and they continuously increase their internal differentiation, complexity and autonomy in a selfreinforcing way.

On the one hand, this means, that indeed "society consists of a constellation of governments, rather than an association of individuals held together by a single government"⁴¹. These 'private governments' have their own interests and goals, their own rationalities and resources. And within their niches these subsystems follow their specific evolutionary trajectories which, taken together, give modern societies a definite centrifugal drift. There is no way for the State (and with it for the political system) to penetrate the eigencomplexities of developed subsystems. Which courses science and technology should take, which new medical methods and treatments should be pursued, which measures taken against dying forests, which new academic courses to be offered, which biochemical experiments forbidden, etc., all this is beyond

the control and guidance capacity of the State. Even if the State wanted to guide, it would necessarily rely heavily on the professional judgement of the very subsystems that supposedly were to be guided. This amounts to the very consequential argument that under present conditions the traditionally basic controlling function of the State is severely limited because any type of societal control predominantly means selfcontrol of resourceful organized actors.

Yet, this is only part of the story. The limitations on the sovereignty of the State that just have been outlined, are aggravated by a peculiar discrepancy between the particularistic scope of the State and the global scope of most other societal subsystems. Being a territorially defined concept, the State has thrived on guaranteeing boundaries and setting limits. Today, this very *raison d'être* of the State limits its function. Subsystems like economy, science, technology, religion, even sports and aspects of popular culture transgress territorial boundaries and are on their way to forming lateral world systems. This, of course, multiplies interdependencies, opportunities, and options within these world-wide operating systems. However, it also severely limits the possibilities of a territorially confined political guidance of economic, scientific, etc. affairs. So, in this respect the State loses ingredients of its sovereignty also. Subsystems wishing to evade political control e.g. in form of State regulations "go international". Organized societal actors wishing to delude the control of responsibilities or externalities point to far away external, international or 'uncontrollable' events that force them to do what they want to do.

Again we witness a tragic countermovement. By maintaining territorial integrity the European States of late Feudalism and early Modernity have stabilized and fostered a highly productive internal milieu for societal evolution. In an almost literal sense the State boundaries can be linked to membranes or other forms of compartmentalization which were the preconditions for operational closure, autopoietic cycles, and internal evolution. The State, so to speak, was the "external skeleton" of early modern society, shielding it from external perturbations and confining internal conflict⁴². Within this societal "egg shell" functional differentiation has propelled the morphogenesis of modern society. And the very structure which has made possible the emergence of this societal formation now stands in its way. What seems to be necessary in order to realize the evolutionary potential of modern societies is a transition from an external to an internal skeleton, or, less figuratively speaking, the transition from outerdirected to self-directed guidance. The State ceases to be the top or center of society because with the help of the central State society has outgrown the need for a top or center: "The ideal model of democratic society was that of a centripetal society. The reality is that of a centrifugal society, having not one center of power ... but many, meriting the names preferred by scholars of politics: polycentric or polycratic society."⁴³ The State has fulfilled its function of organizing the take-off of modern society. For some time now, it has carried on peddling on past fame. In spite of imperious and perfunctory symbolics the State has lost its classic function of control and guidance. But yet nobody

really dares to call out loud that the king is riding without any clothes on, that central control is impossible and hierarchical guidance detrimental to the task of processing organized complexity.³³

The crowd of observers didn't see the changes in the practice of politics beneath the surface of the symbolism of the State, because the contradiction between democratic-corporatist politics and an autonomous, sovereign State was hidden by a symptomatic division of labour: the theory of the State was left, albeit in a lamentable state, to the legal profession which would continue to celebrate the State as symbolizing the center and unity of society.⁴⁵ Social scientists, on the other hand, following the lead of David Easton⁴⁶, replaced the State by the political system as if they believed that if you don't mention the devil's name it somehow will disappear. This peculiar separation of the State and political system of course obfuscated the very need to clarify the problematic relation between the two concepts and realities.

In legal theory and philosophical discourse the State was analyzed mainly in terms of criteria of justice as conditions of legitimate State action⁴⁷. There seemed to be little doubt that justice denotes an universalistic principle and that the State can be based on consensus and, therefore can represent the whole of society. For example, this is particularly striking in Nozick's theory of the State⁴⁸. He reconstructs the genesis of the State as an idealtypic process of the formation of a "dominant protective agency". With great care he argues - in my view correctly - that his minimal State does not claim to possess or demand any rights uniquely which go beyond the rights each individual possesses. Insofar Nozick indeed arrives at an invisible-hand explanation of the State.

The crucial point is, however, that his analysis stops right there. It deals with the conditions of the possibility and legitimacy of the (minimal) State, but it doesn't address the important question: what happens then, after the fact of the emergence of the State? Of course, the institutionalization of a State out of the interaction of individuals and built on the transferal of rights to the dominant agency creates bundles of expectations (structures) which permeate and influence the further interaction of the members of that agency. Any societal institution produces secondary and eventually recursive effects; and so did the State. It gave rise to powerful societal actors, specialized agencies, so to speak, which intermingle and intermeddle in collective bargaining, collective decision-making and collective communication. The State covers but one aspect of social life - mainly the protection of basic rights - and there are many more aspects that are taken care of for example, by the health system, science, economy, technology, religion, family, education, etc. The grounds for giving the State a special status have crumbled. It is a part of a differentiated entity 'society'; it is one societal actor among others and, at best, *primus inter pares*.

Seen in historical perspective this process exhibits a certain tragic quality. The State has been promoted from minimal (liberal) to managerial (welfare) State without respecifying its span of control. So clinging to its original

function of societal control, the State has become dramatically overburdened in modern societies.

One way out of this tragic contraption seems to be to realize in State theory as well as in sociological theory that modern complex societies definitely have become polycentric societies. There are no a priori reasons for the primacy of any one of the many centers. There are functional primacies, to be sure, but which function in an interdependent network would be dispensable? The concept of polycentric society provides the perspective, I think, to reconstruct State theory - and eventually democratic theory as well - on a more adequate basis. In practice, particularly neo-corporatist arrangements⁴⁹ and new forms of ascertaining autonomy⁵⁰ clearly demonstrate adaptations of societal actors to changes in the actual architecture of advanced societies from a predominantly hierarchical to a basically heterarchical structure. It might help to understand some crucial aspects of these societies, if theory caught on.

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Footnotes

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