

THE CONCEPT OF THE STATE IN INTERNATIONAL RELATIONS

Philosophy, Sovereignty,
Cosmopolitanism

EDITED BY ROBERT SCHUETT
AND PETER M. R. STIRK

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Cosmopolitanism**

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Introduction: The Concept of the State in International Relations

Peter Stirk

Few concepts in International Relations are as controversial and enduring – yet as neglected and under-theorised – as the concepts of the state and sovereignty. This awkward tension is most evident in contemporary political realism, although it is far from being confined to it. Initially it was not clear that this would be the case. Insistence on the centrality of the state did not have to be accompanied by the paradox of its neglect. Morgenthau, for instance, together with other mid-twentieth-century realists such as Herz, Niebuhr and Carr, was troubled that the modern state had become a ‘mortal God’, the ‘most exalted object of loyalty on the part of the individual’, through which all sorts of aspirations, be they psychological, ideological, economical or political, are relentlessly pursued, often as if the international order, fragile as it is, was without any law or ethics.¹ Yet he and other classical realists saw the state as a historical product capable of taking on different shapes. Understanding the modern state with its claim to sovereignty seemed central to understanding politics but understanding international politics also meant understanding the phenomena that threatened to bring about the death of the mortal god.² Understanding the state was the precondition for a nuanced appreciation of the predicaments and potentialities of international relations.³ It was a precondition of the art of foreign policy-making.

The subsequent development of International Relations, the

story of which is still being unravelled,⁴ stripped out the nuances of classical realism while perpetuating the idea of the centrality of the sovereign state to the discipline. This development was bound up with broader patterns in American academia, especially the dominance of an understanding of International Relations as a science that was incompatible with the qualifications and uncertainties that abounded in the ideas and attitudes of the classical realists.⁵ It issued in the dominance of neo-realism or structural realism, which was so certain about the centrality of the state that it said little about it, tending 'to treat states like black boxes or billiard balls'.⁶

Yet the triumph of neo-realism within the American academy is only one reason for the peculiar ambiguity about the sovereign state. Sociological and normative critiques of the state have grown in strength since the end of the Cold War. Various cosmopolitanisms have challenged the normative claims on behalf of the sovereign state, marching hand in hand with advocates of global regimes and critics of the archaic armoury of the state exemplified by the idea of sovereign immunity. The brief enthusiasm for 'state-building' was soon discredited by well-known debacles (Somalia, Iraq, Afghanistan), tainted by association with American hegemony. Alongside these trends, a more sociological analysis has called into question the Westphalian system of the sovereign state, arguing that it is historically obsolete, morally bankrupt or both. Finally, there is the assumption, even where it is argued that the assertions of the end of Westphalia are premature, that the persistence of the state is evidence of the intractability of human affairs rather than evidence of any inherent analytical or normative value of the state. In virtually all of these strands or debates the state and sovereignty take on shadowy form, as if the verdict of history had already condemned it to death but its obdurate persistence necessitated renewed assault upon it rather than the understanding of what it might be.

The original assumption of the state as the bedrock assumption of the study of International Relations as it developed, and took on disciplinary form and identity, in the Cold War world consolidated an earlier and wider presumption in which the state was taken to be central to the study of politics. The presumption was

put succinctly by Georg Jellinek, a most consequential theorist of the state, at the beginning of the twentieth century: “Political” means “related to the state”: in the concept of the political one has already thought the concept of the state.⁷ This core concept was then transferred to the nascent science of politics in the Anglo-Saxon world and, more specifically, to understandings of international relations.⁸ Here, the state functioned both as an evolutionary product of history and as a trans-historical unit of analysis that defined the disciplinary identity of the new science of politics.

Initially, in the comparatively fluid disciplinary world of the early twentieth century, the concept of the state was neither the preserve of any particular disciplinary field, nor was it immune from criticism when it was perceived to take on an abstract and rigid form. Thus, Jellinek saw nothing in the least inconsistent with his emphasis upon the centrality of the state when he dismissed the idea of the autarkic state as an arrogant fiction.⁹ Max Weber, whose definition of the state would become commonplace, was even more scathing:

If I am once again a sociologist (according to my letter of appointment), then that is essentially so in order to put an end to recurrent ghostly fabrications which operate with collective concepts . . . Sociology can only set out from the actions of . . . individuals, can only be carried out strictly ‘individualistically’ in terms of its method. You, for example, express entirely archaic and paternalistic views about ‘the State’. The state in a sociological sense is nothing other than the chance that specific types of specific *acts* take place, acts of specific individual men. Otherwise it means nothing.¹⁰

In reflections upon the international order on the other side of the Atlantic, advocates of the concept of the state, replete with a juristic understanding of sovereignty, competed with critics in ways which seem to foreshadow the more recent disputes between neo-realists and neo-liberals.¹¹

Yet, despite these reservations about the concept of the state in both the politics of domestic and international relations, the sovereign state seemed triumphant in a way that had not

been the case a century earlier. Both sociological and normative changes, including the widely perceived and welcomed triumph of legal positivism over a defunct natural law tradition, combined to create a predisposition in favour of the sovereign state.¹² Ironically, this was consolidated by the growing band of critics of the concept of the state. As Jens Bartelson has put it, ‘by targeting a state tradition . . . its critics implicitly accepted its existence as a historical fact. What was doubted was the value of such a tradition, not its existence.’ Moreover, ‘by assuming that this tradition had been constitutive of modern political life, state critics elevated it to imperial proportions, the net consequence being but a further reification of the state’.¹³

Critics denounced the idea of the state linked to an untrammelled sovereignty that earlier advocates of the concept of the sovereign state had tended to avoid or overtly criticise. That trend was emphasised in the Anglo-Saxon world as the First World War took on an ideological dimension in which different ideas of the state were associated with the two sides and the West denounced a supposedly distinctive German tradition of the autarkic, sovereign state.¹⁴ Then and later, however, the critics of the concept of the state have had great difficulty in banishing it. For, in one guise or another, something similar to the idea of the state has been substituted for the supposedly exorcised concept.¹⁵

If the pluralist critics of the concept of the state doubted the moral value of the state-tradition, the theorists of International Relations who were to be claimed as the fathers of the dominant post-war realist understanding of the state had a much more ambiguous attitude. This was to be largely suppressed until recently, as post-war realism constructed a story, the so-called first great debate, which pitted idealism against the realism of a Carr, Morgenthau or Herz.¹⁶ In this reading, states are strong, driven by instincts rooted in human nature or systemic factors – by the power of the nation-state as the essential element of international politics, by objective laws rooted in human nature, by the inevitability of the security dilemma and so on. While each element of this reading had its roots in aspects of the concept of the state and the international order, the overall picture that emerged was of International Relations as a static and robust arena in which

states engaged in an often violent struggle for power and security. The possibility of any fundamental change was discounted. Any moral guidance was disparaged, in favour of the dictates of interest and fear. Again, it is increasingly recognised that this picture is misleading.¹⁷

The fragility and vices of the modern nation-state, the importance of morality and international law, the possibility and sometimes the necessity for radical change, the possible historical transience of the sovereign nation-state, which figured in the works of Carr, Morgenthau and Herz, all disappeared from view. Their concepts of the state and sovereignty were taken to be straightforward and not to warrant any great consideration: 'The realist theory of the state, in so far as they express one, clearly relates back to the cluster of ideas developed by the proto-liberals Thomas Hobbes and John Locke – the state is a problem-solving mechanism coping with problems of domestic order.'¹⁸

The idea that the concept of the state was unproblematic, or even largely irrelevant, was strengthened as neo-realism sought to appropriate and distinguish itself from the classical realism of Carr, Morgenthau and Herz. Kenneth Waltz sought to provide a systemic theory which gained a reputation as essentially state-centric.¹⁹ It was indeed a theory that presumed that International Relations was a stable and robust system. Waltz confidently asserted: 'The enduring anarchic character of international politics accounts for the striking sameness in the quality of international life through the millennia, a statement that will meet with wide assent.'²⁰ In the light of this persistence, Waltz found 'reductionist' theories, that is those that 'concentrate causes at the individual or national levels', deficient, for they could not account for the persistence of outcomes despite changes in behaviour at the level of individuals or states.²¹ He acknowledged that 'Agents and agencies act; systems as wholes do not. But the actions of agents and agencies are affected by the system's structure . . . Structure affects behaviour within the system, but does so indirectly . . . through socialization of the actors and through competition among them.'²² In this scenario, states appeared as 'like units', further investigation of which was, for Waltz's theory of international politics, redundant. The outcome was 'the irony',

as John Hobson put it, that ‘for all the talk of states, state power and state autonomy, the state is *under-theorised* and rendered all but irrelevant to the determination of IP [international politics] – it is merely a “passive victim of systemic anarchy”’.²³ Much the same could be said of what Waltz described as the ‘bothersome concept’ of sovereignty.²⁴ The concept of the state, along with that of human nature, was cast aside as an obstacle to a scientific understanding of international relations.²⁵ Yet, this provided little obstacle to the general reputation of neo-realism as a state-centric theory.²⁶

Although some aspects of state-centric theories, especially the assumption of states as rational unitary actors, had come under criticism, the combination of an assumption of the centrality of the sovereign state with limited analysis of either the state or sovereignty persisted at least until the mounting attack on the concept of the sovereign state by advocates of globalisation and cosmopolitanism. The challenge of globalisation is now widespread and diffuse. The reactions and strategies it has provoked are so diverse as to elude any brief summary.²⁷ Yet, one of its most thoughtful advocates, Jan Aart Scholte, concedes that ‘much discussion of globalization is steeped in oversimplification, exaggeration and wishful thinking’ and that analyses of it ‘tend on the whole to remain conceptually inexact, empirically thin, historically ill-informed, economically and/or culturally illiterate, normatively shallow and politically naïve’.²⁸ Scholte notes that globalisation has been construed as describing processes of ‘*internationalization*’, meaning increased cross-border transactions; ‘*liberalization*’, meaning a policy of removing state restrictions on such flows; ‘*universalization*’, meaning the dissemination of practices and objects across the globe; ‘*westernization* or *modernization*’, often with the implications of ‘Americanization’ and ‘*respatialization*’.²⁹

Contrary to some of the more dramatic assertions of the demise of the state, Scholte comes to the conclusion that such states ‘continue to figure in this poststatist condition, but they are embedded in multi-scalar and diffuse networks of regulation’.³⁰ The concept of the state, it seems, remains obdurately alive, or rather it seems to exhibit ‘too little statehood to live and too much statehood to

die'.³¹ Related approaches set out from the assumption that reliance shown by the concept of the state has to be acknowledged but only as appropriately qualified – as the 'competition state',³² the 'negotiating state',³³ the 'guarantee state',³⁴ or the 'cunning state'.³⁵ In some of these formulations the concept of the state appears explicitly as a 'paradox'.³⁶ All of which begs the questions: What is it that allows us or requires us to recognise the persistence of the state? What is the common or core meaning that is qualified by these appropriate adjectives?

Cosmopolitanism can be seen as a component of globalisation, or as strengthened in its moral necessity or urgency by globalisation. Yet, cosmopolitanism has a much longer historical pedigree, inevitably leading to disagreement about what constitutes cosmopolitanism and who is to be included within that pedigree.³⁷ The driving force behind its recent manifestations, however, has been moral arguments about the subjects of rights and duties on the international stage and more precisely critiques of the supposedly malign monopolisation of international law by the sovereign state. Thus, Charles E. Beitz distinguished between the 'morality of states', rooted in the dominant Hobbesian tradition, and a 'cosmopolitan conception', derived from Kant, which 'is concerned with the moral relations of members of a universal community in which state boundaries have a merely derivative significance'.³⁸ Beitz was careful to specify that this moral conception did not entail any particular political programme, and specifically not 'global institutions conceived on the analogy of the state', complaining that discussion of cosmopolitanism was often confused by the contrary presumption.³⁹ Self-avowed cosmopolitans have, of course, come up with diverse recommendations, largely critical of the existing world of states and its associated morality, often tending towards the notion of "global governance without government".⁴⁰ Thus, Garrett Brown's recent review of cosmopolitan literature has complained of the lack of attention on how to implement cosmopolitan principles in a world of states, even in the case of a specifically '*institutional cosmopolitanism*', claiming that

This lack of discussion is symbolic of the fact that many cosmopolitans have seen the state more as an inconvenience to work around

than an empirical background condition that needs to be thoroughly worked in. When surveying the cosmopolitan literature one is often struck by the ease with which the state is rendered morally and empirically otiose and by the resulting ambiguities about the normative role states could play in creating a cosmopolitan order.⁴¹

There are two issues here. First, there is the neglect of the implementation of the cosmopolitan agenda. Second, there is the assumption built into the ease with which the state is taken to be morally and empirically redundant. The significance of this assumption is brought out by a comment made in the context of globalisation, though it applies equally well to cosmopolitanism: 'It is interesting to see that those having the most revolutionary ideas about the impact of globalization often also use the most classic definition of the nation-state, in which sovereignty over a given territory is crucial.'⁴² Much as the early pluralist critics of the state assumed a state-tradition, disputing its moral value, so too critics of the state in the name of cosmopolitanism have tended to assume the existence of a state-tradition in which state sovereignty is a key feature of the international order. More specifically, the assumption of a state-tradition takes the form of the critics' subscription to the idea of the Westphalian model they shared with the dominant neo-realist models. Indeed, this adoption of a Westphalian model of international relations was more or less coterminous with the emergence of a self-confident discipline of International Relations.⁴³ In the words of Leo Gross, the most cited authority for the Westphalian model:

The Peace of Westphalia, for better or worse, marks the end of an epoch and the opening of another. It represents the majestic portal which leads from the old into the new world . . . In the political field it marked man's abandonment of the idea of a hierarchical structure of society and his option for a new system characterized by a multitude of states, each sovereign within its territory, equal to one another, and free from any external sovereignty.⁴⁴

Whereas Gross emphasises sovereign equality between states and the absence of any higher external sovereignty, authors who

emphasise the Westphalian model/system have attached a wide range of attributes to it, without seeming to be concerned about the differences between them or, indeed, the precise status of the model or system.⁴⁵ Other attributes of the Westphalian order are said to include the duplication of sovereignty into internal, often absolute, and external sovereignty. For lawyers, this is replicated as two forms of law. Thus, according to Twining, the 'Westphalian focus' identifies 'two forms of law: municipal law (of sovereign nation states and subordinate legal orders) and public international law (largely but not exclusively treated as the law governing relations between states)'.⁴⁶ Another widely shared feature is simply the epochal significance of the Westphalian system in defining the 'modern' state system. This is paralleled in international law with the idea of Westphalia as marking the foundation of modern international law. It is often associated with the claim that the Congress of Westphalia was the first occasion on which 'all the major powers of an international system' joined together in order to conclude a definitive peace for the system as a whole.⁴⁷ Equally common is the idea of the territorial state, with an emphasis upon the defensibility of external borders and exclusive jurisdiction within these borders. Sometimes this is given a distinctly Weberian twist, as is evident in the description of the Westphalian state system as 'a system of territorially bounded sovereign states, each equipped with its own centralized administration and possessing a virtual monopoly on the legitimate use of force'.⁴⁸ To these one could add the 'Westphalian norm of nonintervention';⁴⁹ the idea that Westphalia created a balance of power⁵⁰ and even the presumption of some form of congruence between state and society.⁵¹ In most of these formulations it is Westphalian sovereignty in one guise or another that forms the core of the model.

What unites them is the presumption of the existence of a Westphalian model which describes, in some way or another, a powerful, usually normatively laden, state or system of states. Sometimes this acquires dramatic and ominous form where, for example, Linklater associates the Westphalian system with a 'totalising project' which 'reached its peak in the first part of the twentieth century'.⁵² The Westphalian mode, however, is usually

taken to be under threat or morally discredited. This, then, leads to conclusions such as the claim that the 'Westphalian regime of state sovereignty and autonomy is undergoing a significant alteration as it becomes qualified in fundamental ways'.⁵³ Scholte proclaims that the 'Westphalian notion of sovereignty has indeed become obsolescent' and that the 'statist constructions of sovereignty' associated with the model 'cannot be made operative, whatever the resources that a country government has at its disposal'.⁵⁴ Linklater writes, in a chapter titled 'Community and Citizenship in the Post-Westphalian Era', that 'One of the tasks of the post-Westphalian state is to harmonise the diversity of ethical spheres . . . and to do so by creating forms of citizenship which pass beyond sovereignty to institutionalise advances in universality and diversity'.⁵⁵ Most such proclamations enter some caveat. Thus, Scholte laments that 'myths of Westphalian-style sovereignty continue to have widespread currency and attraction' and that 'invocation of Westphalian ideas of sovereignty actually hinders rather than enhances the possibilities of collective self-determination in respect of transplanetary issues'.⁵⁶ As with critiques of the concept of the state, so too the sovereign state is presumed to have had a long tradition, only recently rendered problematic, yet at the same time it is presumed to be obdurately persistent despite its supposed moral bankruptcy.

The point here is not that cosmopolitan and globalisation theories inevitably invoke the Westphalian model or something recognisably similar to it. Cosmopolitan theories can do very well without it, since they can take the form of essentially moral arguments and can draw upon a natural law tradition.⁵⁷ Globalisation theories do typically need some such referent even if it is not explicitly tied to the Westphalian model.⁵⁸ The point is, rather, that the Westphalian model, for all the diversity of its formulation, has played an important role in understandings of the state, and especially the sovereign state, and has done so on the basis of a rather thin grasp of history, especially of the history of the Peace of Westphalia and the international relations of the period. Yet, this Westphalian model is crucial to many assertions about the rise and fall of the concept of the sovereign state and of the process or theories of globalisation and cosmopolitanism that are presented

as fundamental challenges to the state, even if the state seems to live on in an obdurately Westphalian form or to persist in some post-Westphalian form. More recently that has allowed Andreas Osiander to launch a critique of the Westphalian model.⁵⁹ That critique has been supplemented by others, though the extent to which it has shaken the predominant view is questionable.⁶⁰

The work of Osiander and his fellow critics of the Westphalian model might be seen as a part of what has been called the ‘dawn of a historiographical turn’ or the end of a ‘fifty years’ rift’ between ‘intellectual history and international relations’.⁶¹ That has entailed the emergence of a much more sophisticated understanding of the history of the concepts of the state and sovereignty, as well as related concepts such as that of reasons of state.⁶² Sovereignty, especially in the form of indivisible sovereignty construed as *summum imperium*, *summa potestas*, had considerable persistence as a doctrine. It was, moreover, often understood as a distinctively European doctrine that facilitated a European appropriation of non-European lands before being exported to the rest of the world in the wake of de-colonisation.⁶³

The endurance of the doctrine of indivisible sovereignty is striking since recent accounts have emphasised that for much of the history of the doctrine the divisibility of sovereignty was a recurrent feature of international life, or more precisely of imperial life, even if this was often experienced as problematic from the perspective of an Austinian view of sovereignty.⁶⁴ In the accounts provided within the ‘historiographical turn’, sovereignty endures as a relevant concept but often with a qualifying adjective, as ‘divisible’, ‘partial’ or ‘quasi’ sovereignty – resembling in that respect the fate of the concept of the state. The same outcome appears in a different context, namely, ‘internationally administered territories’, where sovereignty appears in the shape of ‘suspended’, ‘earned’, ‘phased’, conditional’ or ‘constrained’ sovereignty.⁶⁵

Reconsideration of the development of the concept of sovereignty has also suggested a more complicated relationship between Europe and the non-European world than is suggested by the idea of an endogenously developed European concept of sovereignty subsequently projected onto a non-European world, initially in

the form of an imperial project. In some accounts this changes the emphasis by making sovereignty, the state and the state system still an essentially European project but one constituted, and even maintained, by the interaction between the European and the non-European worlds.⁶⁶ Others have suggested, in varying degrees and for different periods, a more active role for non-European agents, as co-equal sovereigns in their own right exercising an influence upon the development of international law or as actors of disputed status whose resistance to effective de-legitimation as international actors contributed to more differentiated understandings of sovereignty.⁶⁷

What impact these products of the historiographical turn will have upon mainstream accounts of the concept of the state is, as yet, unclear.⁶⁸ It is indicative that in one area where the historiographical turn has been most intense and successful in many ways, namely in enriching understanding of classical realism, the potential impact on wider debates is only just being explored.⁶⁹ The current state of the analytical debate is perhaps best indicated by the response to Alexander Wendt's *Social Theory of International Politics*.⁷⁰ Much of the response, like much of Wendt's book, concerned the methodological claims and the extent to which it marks out a distinctive approach from the orthodox.⁷¹ It also attracted attention because of its claims to deal with the state as an actor and, more specifically, with the state as a person.

In this context, Patrick Thaddeus Jackson introduced a forum on the theme by picking up Wendt's claim that 'state agency has been neglected in IR, an essay published in 1959 by Arnold Wolfers being virtually the last word on the subject'.⁷² Jackson concurred, noting that Wolfers' concerns had gone unheeded 'and the question about what we might call the person-hood of the state virtually vanished from the agenda of mainstream International Relations (IR) theory'.⁷³ The question is important for at least two reasons. One was set out by Wendt: 'I think states do have a common core . . . If states have nothing in common, then what distinguished them from any other social kind?'⁷⁴ The other was suggested by another contributor to the forum, Colin Wight: 'Mainstream International Relations (IR), in general, simply does not believe its main unit of analysis exists. The ques-

tion is whether we wish to continue in this fashion?⁷⁵ Wendt's answer was not to continue in this fashion, that the state is real and that the state is a person endowed with the kinds of attributes associated with natural, individual human beings.⁷⁶ This predictably raised criticisms of organicism.⁷⁷

Two other considerations, however, point to the limitations of the debate and Wendt's claims to deal with the state as an actor. Firstly, as Wight perceptively pointed out, Wendt was prone to sliding from talking about the state as a distinct corporate actor to talking about groups as actors, from talking about 'corporate agency' to talking about 'collective agency', losing the focus on what, if anything, is distinctive about the state.⁷⁸ The second limitation had become apparent earlier in another forum. There, Steve Smith had objected that the 'state becomes reified in Wendt' and that the nature of the corporate agency of the state disappeared as Wendt turned to the analysis of international politics.⁷⁹ Wendt's reply was to concede that some reification was involved, adding, 'If this in some small way helps to reproduce a state-centric world then in my view that is a good thing.'⁸⁰ In the same vein, he replied that '*Given* an interest in the states system, we are forced by the nature of the subject matter to bracket the internal processes that constitute the state, to temporarily reify it, in order to get on with the systemic analysis.'⁸¹ This was a state-centric view of the world, but one with an intentionally limited interest in the nature of the state.

When Wendt invoked Wolfers as raising the question of the state as an actor, there was no reference to the fact that the nature of the state as an actor and, more specifically, the idea of the personhood of the state, has a long pedigree and an often contentious one.⁸² The idea of the personality of the state had, after all, been crucial in the development of the very idea of the state.⁸³ Moreover, the precise way in which the personality of the state was formulated, by for example Hobbes compared with Pufendorf, made a significant difference to what could be claimed by states in relation to each other and towards alien individuals.⁸⁴ The analogy between natural persons and states had played a key role in the presumption of the equality of nations in the natural law tradition and had continued to play a key role as the natural

law tradition became discredited, as twentieth-century critics of the presumption and the analogy lamented.⁸⁵

Similarly, there was no reference to the fact that the idea of the personality of the state and the critique of the organicist approach to which it was often, but not necessarily, linked had played a prominent role in the debate about the nature of the state and the international order in German political thought, especially in the late nineteenth and earlier twentieth centuries. Organicist theories were, however, on the defensive, although they retained significant influence in the historicist tradition where they had become bound up with nationalist and historicist interpretations.⁸⁶ The dominant trend was marked by the disavowal of natural law, traditionally seen as the prime source of constraint on state behaviour and by a refusal to acknowledge any substantive reality underlying the concept of the state. Thus, Jellinek insisted that, in conceiving of the unity of the state, 'we use a conceptually necessary category for the synthesis of appearances which is epistemologically justified so long as we do not ascribe transcendent reality to what is thought through it'.⁸⁷

Yet, in another sense, what was most striking about Jellinek's concept of the state was his attempt to hold together all aspects of the state within a single theory. Conceptually, this entailed a dualistic approach to the state, seeing it as both a legal and a sociological concept. On the one hand, this meant rejecting the idea of sovereignty as *summum imperium*, *summa potestas* in favour of the theory of auto-limitation: 'Sovereignty is not lack of limitation but rather the capacity of exclusive self-determination and therefore self-limitation of a state power not legally bound by external powers.'⁸⁸ On the other hand, he defined the state as 'a united association of sedentary men, equipped with an original power of domination'.⁸⁹ Both domestically and internationally, Jellinek sought to combine the Janus face of the sovereign state: self-limitation and domination. It was an attempt that never fully persuaded his contemporaries and even Jellinek sometimes let slip the possibility that the state as power might escape the capacity for self-limitation.⁹⁰

Whatever the inherent merits or deficiencies of Jellinek's synthesis, it is clear that those who followed him could no longer aspire

to such a synthetic vision. It could be said that the outcome was the increasing fragmentation of the concept of the state, initially into the sociological and legal dimensions, taken up by Max Weber and Hans Kelsen respectively. While the contributions in this volume could not be construed as an attempt to step back, so to speak, behind Weber and Kelsen to recover an equivalent of Jellinek's synthesis, they are intended to begin to redress the neglect of the state and sovereignty in contemporary international relations which lies behind their manifestation as bedrock of the discipline and passive victim of systemic anarchy, as the sovereign state of the Westphalian model and the ghostly state of globalisation theory.

Notes

1. Hans Morgenthau, *Scientific Man vs. Power Politics* (London: Latimer House, 1946), pp. 197–8. On Morgenthau's concept of the state, see John M. Hobson, *The State in International Relations* (Cambridge: Cambridge University Press, 2000), pp. 45–55; Robert Schuett, 'Peace through Transformation? Political Realism and the Progressivism of National Security', *International Relations*, 25, 2011, pp. 187–91.
2. For John Herz it was a feature of the international order that states depended for their existence on 'relations of power which prepare for their end at any moment', 'Einige Bemerkungen zur Grundlegung des Völkerrechts', *Internationale Zeitschrift für Theorie des Rechts*, 13, 1939, p. 109.
3. Along these lines, see, for example, William E. Scheuerman, *The Realist Case for Global Reform* (Cambridge: Polity, 2011); Schuett, 'Peace through Transformation?'; Peter M. R. Stirk, 'John H. Herz: Realism and the Fragility of the International Order', *Review of International Studies*, 31, 2005, pp. 285–306.
4. See Nicholas Guilhot (ed.), *The Invention of International Relations Theory* (New York: Columbia University Press, 2011) and Felix Rösch (ed.), *Émigré Scholars and the Genesis of International Relations* (Basingstoke: Palgrave Macmillan, 2014).
5. The new understanding could hardly be reconciled with, for example, Hans Morgenthau's suggestion that 'in reality you can only rely on a series of informed hunches', 'Appendix 1. Conference

- on International Politics, May 7–8, 1954’, in Guillhot (ed.), *The Invention of International Relations Theory*, pp. 254–5.
6. John Mearsheimer, *The Tragedy of Great Power Politics* (New York: Norton, 2011), p. 11. On the neo-realist state, see Hobson, *The State*, pp. 19–44.
 7. Jellinek, *Allgemeine Staatslehre*, 3rd edn (Berlin: Julius Springer, 1929), p. 180. On Jellinek’s concept of the State in its historical context, see Peter M. R. Stirk, *Twentieth-Century German Political Thought* (Edinburgh: Edinburgh University Press, 2006), pp. 17–53; Oliver Jütersonke, *Morgenthau, Law and Realism* (Cambridge: Cambridge University Press, 2010), pp. 41–3, 76–7.
 8. See Jens Bartelson, *The Critique of the State* (Cambridge: Cambridge University Press, 2001), pp. 30–76; Brian C. Schmidt, *The Political Discourse of Anarchy* (Albany: State University Press of New York, 1998); Sylvia de Fries, ‘Staatstheorie and the new American Science of Politics’, *Journal of the History of Ideas*, 34, 1973, pp. 391–404.
 9. Jellinek, *Die Lehre von den Staatenverbindungen* (Goldbach: Keip, 1966), p. 95. See also Peter M. R. Stirk, ‘The Westphalian Model, Sovereignty and Law in Fin-de-siècle German International Theory’, *International Relations*, 19, 2005, pp. 153–72.
 10. Quoted in Andreas Anter, *Max Webers Theorie des modernen Staates* (Berlin: Duncker & Humblot, 1996), p. 94.
 11. Thus Schmidt, *The Political Discourse of Anarchy*, p. 120.
 12. It is important not to exaggerate the date or the nature of the triumph of legal positivism. As Martti Koskenniemi has pointed out, late nineteenth and early twentieth-century lawyers were not “positivists” who were enthusiastic about “sovereignty”, in *The Gentle Civilizer of Nations* (Cambridge: Cambridge University Press, 2002), p. 4. When Lassa Oppenheim proclaimed ‘the downfall of the theory of the Law of Nature . . . during the second half of this century’, his list of ‘real positivist’ texts went back no further than 1874 and there was no significant cluster of them until 1895–1907, *International Law*, vol. 1 (London: Longmans, 1912), pp. 100–1.
 13. Bartelson, *The State*, p. 84.
 14. *Ibid.*, p. 95. As Hugo Preuss, an ardent critic of the *Obrigkeitsstaat*, lamented, their task was made easier by the fact that it was precisely from Germans that the West had heard so much about the distinctiveness of the German state-tradition, in *Das Deutsche Volk und die Politik* (Jena: Diederichs, 1916), p. 59. For the enduring effect of this kind of interpretation, see Scheuerman, *Realist Case for Global Reform*, p. 13.

15. Bartelson, *The State*, passim.
16. That this debate was largely a fiction is increasingly accepted; following earlier arguments, see Lucian M. Ashworth, 'Did the Realist–Idealist Great Debate Really Happen? A Revisionist History of International Relations', *International Relations*, 16, 2002, pp. 33–51.
17. Such arguments are now plentiful; see Richard New Lebow, *The Tragic Vision of Politics* (Cambridge: Cambridge University Press, 2003); Michael C. Williams, *The Realist Tradition and the Limits of International Relations* (Cambridge: Cambridge University Press, 2005); Sean Molloy, *The Hidden History of Realism* (New York: Palgrave, 2006); Scheuerman, *The Realist Case for Global Reform*, Chapter 1, with the succinct title 'Why (almost) everything you learned about realism is wrong?'; Schuett, 'Peace through Transformation?'
18. Thus Chris Brown, *Sovereignty, Rights and Justice* (Cambridge: Polity, 2002), p. 70.
19. Waltz explicitly designated his approach as 'state-centric' in *Theory of International Politics* (New York: McGraw-Hill, 1979), p. 94.
20. *Ibid.*, p. 66.
21. *Ibid.*, pp. 18 and 65.
22. *Ibid.*, p. 74.
23. Hobson, *The State*, p. 30.
24. Waltz, *Theory of International Politics*, p. 95.
25. For a critique of the disparagement of the concept of human nature, see Robert Schuett, *Political Realism, Freud and Human Nature in International Relations* (New York: Palgrave, 2010).
26. According to Hobson, the reputation was sustained by the confusion of 'the state's autonomy (domestic agential power) and its international agential power', *The State*, p. 9.
27. See, for example, John Gray, *False Dawn: The Delusions of Global Capitalism* (London: Granta, 2009); Geoffrey Pleyers, *Alter-Globalization: Becoming Actors in the Global Age* (Cambridge: Polity, 2010).
28. Thus Jan Aart Scholte, *Globalization: A Critical Introduction*, 2nd edn (London: Palgrave, 2005), p. 1.
29. Scholte, *Globalization*, pp. 16–17.
30. *Ibid.*, p. 222.
31. This phrase was deployed in the context of Germany's Maastricht debates, but it serves well as a wider characterisation of the debate about the state; in Roland Lhotta, 'Der Staat als Wille und Vorstellung', *Der Staat*, 36, 1997, p. 195.

32. Philip G. Cerny, 'Paradoxes of the Competition State: the Dynamics of Political Globalization', *Government and Opposition*, 32, 1997, pp. 251–74.
33. Andreas Anter, 'Im Schatten der Leviathan', in P. Benedl, A. Croissant and F. Rub (eds), *Demokratie und Staatlichkeit* (Opladen: Leske and Budrich, 2003), pp. 35–55.
34. Fabio Franzius, 'Der "Gewährleistungsstaat"', *Der Staat*, 42, 2003, pp. 493–517.
35. Shalini Randeria, 'The State of Globalization: Legal Plurality, Overlapping Sovereignities and Ambiguous Alliances between Civil Society and the Cunning State in India', *Theory, Culture and Society*, 24, 2007, pp. 1–33.
36. Peter M. R. Stirk, 'The Concept of the State in German Political Thought', *Debatte*, 14, 2006, p. 224.
37. See, for example, David Boucher, *Political Theories of International Relations* (Oxford: Oxford University Press, 1998), who opts for the category 'universal moral order' to avoid what he takes to be some of the resulting confusions, pp. 18–23.
38. Charles E. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1999), pp. 181–2.
39. *Ibid.*, pp. 182–3.
40. Scheurman, *Realist Case for Global Reform*, p. ix and pp. 98–125.
41. Garrett Wallace Brown, 'Bringing the State Back into Cosmopolitanism: the Idea of Responsible Cosmopolitan States', *Political Studies Review*, 9, 2011, p. 54. See also, in a very similar vein, Steven Slaughter, 'Reconsidering Instructional Cosmopolitanism: Global Poverty and the Importance of the State in International Political Theory', *Global Change, Peace and Security*, 21, 2009, pp. 37–52.
42. Michel S. De Vries, 'The Attack on the State: a Comparison of the Arguments', *International Review of Administrative Sciences*, 67, 2001, p. 406.
43. See Peter M. R. Stirk, 'The Westphalian Model and Sovereign Equality', *Review of International Studies*, 38, 2012, pp. 641–60.
44. Leo Gross, 'The Peace of Westphalia, 1648–1948', *The American Journal of International Law*, 42, 1948, pp. 28–9. Gross's article is still described as 'the most authoritative legal commentary on the treaty' by Philip Bobbitt, *The Shield of Achilles* (London: Penguin, 2002), p. 866.
45. David Held, Anthony McGrew, David Goldblatt and Jonathon Perraton described it as 'a *normative trajectory* in international law

- which did not receive its fullest articulation until the late eighteenth and early nineteenth centuries' in their *Global Transformations* (Cambridge: Polity, 1999), p. 37.
46. William Twining, 'A Post-Westphalian Conception of Law', *Law & Society Review*, 37, 2003, p. 199.
 47. Thus Robert Gilpin, *War and Change in World Politics* (Cambridge: Cambridge University Press, 1981), p. 36.
 48. Joseph A. Camilleri and Jim Falk, *The End of Sovereignty?* (Aldershot: Edward Elgar, 1992), p. 14. See also the description of the Westphalian state as 'a monopolist of the use of force within a circumscribed territory' by Darel E. Paul, 'Sovereignty, Survival and the Westphalian Blind Alley in International Relations', *Review of International Studies*, 25, 1999, p. 218. These elements figure in the 'five monopolies' said to be characteristics of the system by the cosmopolitan Andrew Linklater, *The Transformation of Political Community* (Cambridge: Polity, 1998), p. 28. Defensible borders and exclusive jurisdiction were central to the self-avowed realist John Herz, *International Politics in the Atomic Age* (New York: Columbia University Press, 1959), pp. 50–8.
 49. J. Bryan Hehir, 'Intervention: From Theories to Cases', *Ethics and International Affairs*, 9, 1993, p. 5. Mark W. Zacher identifies non-intervention as a 'key principle', only to promptly state that it 'has never really been a strong dimension of the system', in 'The Decaying Pillars of the Westphalian Temple', in James N. Rosenau and Ernst-Otto Czempiel (eds), *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992), p. 59. Intervention is central to Gene M. Lyons and Michael Mastanduno (eds), *Beyond Westphalia? State Sovereignty and International Intervention* (Baltimore: Johns Hopkins University Press, 1995), though they seem to characterise the system in terms of 'four institutions' rather than the principle of non-intervention, p. 6.
 50. Gilpin, *World Politics*, p. 29.
 51. Allen Buchanan, 'Rawls' Law of Peoples: Rules for a Vanished Westphalian World', *Ethics*, 110, 2000, p. 701.
 52. Linklater, *Transformation of Political Community*, p. 157.
 53. Held, McGrew, Goldblatt and Perraton, *Global Transformations*, p. 444.
 54. Scholte, *Globalization*, pp. 190–1.
 55. Linklater, *Transformation of Political Community*, pp. 197–8.
 56. Scholte, *Globalization*, p. 420.

57. See Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity, 2008) or Charles Jones, *Global Justice: Defending Cosmopolitanism* (Oxford: Oxford University Press, 1999). While the Westphalian model is a significant reference point in Linklater's *Transformation of Political Community*, it is not in his more recent *Problem of Harm in World Politics* (Cambridge: Cambridge University Press, 2011).
58. The 'Treaty [*sic*] of Westphalia' plays a minor role in Saskia Sassen, *Territory, Authority, Rights* (Princeton: Princeton University Press, 2006), p. 87.
59. Andreas Osiander, 'Sovereignty, International Relations and the Westphalian Myth', *International Organization*, 55, 2001, pp. 251–87. See also his *The States System of Europe, 1640–1990* (Oxford: Clarendon Press, 1994).
60. Explicit rebuttals are, however, rare. For one example, see Sasson Sofer, 'The Prominence of Historical Demarcations: Westphalia and the New World Order', *Diplomacy & Statecraft*, 20, 2009, pp. 1–19.
61. Duncan S. Bell, 'International Relations: the Dawn of a Historiographical Turn?', *British Journal of Politics and International Relations*, 3, 2001, pp. 115–26; David Armitage, 'The Fifty Years' Rift: Intellectual History and International Relations', *Modern Intellectual History*, 1, 2004, pp. 97–109.
62. On the paucity of systematic studies of sovereignty, see Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), p. 5. It is striking that after Friedrich Meinecke's *Machiavellism* (New Brunswick: Transaction, 1998), first published in 1924, one has to wait until Jonathan Haslam's *No Virtue Like Necessity* (New Haven: Yale University Press, 2002) for something of comparable scope.
63. See John M. Hobson, 'Provincializing Westphalia: the Eastern Origins of Sovereignty', *International Politics*, 46, 2009, pp. 671–2.
64. See Edward Keene, *Beyond the Anarchical Society* (Cambridge: Cambridge University Press, 2002), especially pp. 105–9; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press, 2004); Lauren Benton, *A Search for Sovereignty* (Cambridge: Cambridge University Press, 2010), especially pp. 222–78.
65. See Bernhard Knoll, *The Legal Status of Territories Subject to Administration by International Organisations* (Cambridge:

- Cambridge University Press, 2008), pp. 19–20, 28–30, 66–9; Carsten Stahn, *The Law and Practice of International Territorial Administration* (Cambridge: Cambridge University Press, 2008), pp. 757–8.
66. In different ways, Anghie, *Imperialism, Sovereignty and the Making of International Law*, and the earlier Carl Schmitt, *The Nomos of the Earth* (New York: Telos, 2003).
 67. See especially H. Alexandrowicz, *An Introduction to the History of The Law of Nations in the East Indies* (Oxford: Clarendon Press, 1967); Benton, *Sovereignty*, pp. 264–5.
 68. The older work by Alexandrowicz is cited by, for example, Robert Jackson, *Sovereignty* (Cambridge: Polity, 2007), p. 73, but with no evident impact on the overall narrative. Carl Schmitt has had a very wide impact, but this is plagued by the distinctive features of his work and career. See, for example, the concluding remarks to Stuart Elden, ‘Reading Schmitt Geopolitically’, in Stephen Legg (ed.), *Spatiality, Sovereignty and Carl Schmitt* (London: Routledge, 2011), pp. 101–2.
 69. See, for example, Scheuerman’s arguments for the relevance of the ‘progressive realism’ of the classical realists to cosmopolitanism in his *Realist Case for Global Reform*, and Schuett’s arguments for a revival of interest in human nature in his *Political Realism*.
 70. Alexander Wendt, *Social Theory of International Politics* (Cambridge: Cambridge University Press, 1999).
 71. An especially incisive assessment is provided by Hidemi Suganami, ‘On Wendt’s Philosophy: a Critique’, *Review of International Studies*, 28, 2002, pp. 23–37.
 72. Wendt, *Social Theory of International Politics*, p. 195.
 73. Patrick Thaddeus Jackson, ‘Forum Introduction: Is the State a Person? Why Should We Care?’, *Review of International Relations*, 30, 2004, p. 255.
 74. Wendt, *Social Theory of International Politics*, p. 201.
 75. Colin Wight, ‘State Agency: Social Action without Human Activity?’, *Review of International Relations*, 30, 2004, p. 270.
 76. Alexander Wendt, ‘The State as Person in International Theory’, *Review of International Studies*, 30, 2004, pp. 289–316.
 77. Iver B. Neumann, ‘Beware of Organicism: the Narrative Self of the State’, *Review of International Relations*, 30, 2004, pp. 259–67.
 78. Wight, ‘State Agency’, pp. 278–9.
 79. Steve Smith, ‘Wendt’s World’, *Review of International Relations*, 26, 2000, pp. 161–2. See also the weakness noted by David

- Campbell, 'International Engagements', *Political Theory*, 29, 2001, p. 441.
80. Alexander Wendt, 'On the Via Media: a Response to the Critics', *Review of International Relations*, 26, 2000, p. 174.
81. *Ibid.*, p. 175.
82. Wendt's stylised account of Hobbesian culture is reliant upon neglecting much of what Hobbes says, though Wendt is far from unusual in this. See Michael C. Williams, 'Hobbes and International Relations: a Reconsideration', *International Organization*, 50, 1996, pp. 213–36.
83. See Quentin Skinner, 'From the State of Princes to the Person of the State', in *Visions of Politics*, vol. 2 (Cambridge: Cambridge University Press, 2002), pp. 368–413.
84. With important consequences for attitudes towards European colonisation in the Americas: see Richard Tuck, *The Rights of War and Peace* (Oxford: Oxford University Press, 1999), pp. 157–8 and 161. For Pufendorf's understanding of corporate moral entities, which included the state as a person, see Samuel Pufendorf, *De Jure Naturae et Gentium*, vol. 2 (Oxford: Clarendon Press, 1934), pp. 3–21.
85. Most notably Edwin DeWitt Dickinson, 'The Analogy between Natural Persons and International Persons in the Law of Nations', *The Yale Law Journal*, 26, 1917, pp. 564–91. For how this fitted into the view of international relations in the early American discipline of political science, see Schmidt, *The Political Discourse of Anarchy*, pp. 171–7.
86. See Karl Mannheim, 'The History of the State as an Organism', in *Essays on Sociology and Social Psychology* (London: Routledge and Kegan Paul, 1953), pp. 165–82. For a modern defence of the idea, see Peter J. Steinberger, *The Idea of the State* (Cambridge: Cambridge University Press, 2004), pp. 266–324.
87. Jellinek, *Allgemeine Staatslehre*, p. 161.
88. *Ibid.*, p. 481.
89. *Ibid.*, p. 181.
90. See Wilhelm Hennis, *Das Problem der Souveränität* (Tübingen: Mohr Siebeck, 2003), p. 19.