The State’s Monopoly on Legitimate Violence.
Violence in History and in Contemporary World Society as Challenges to the State
Hannes Wimmer

Introduction

The monopoly on legitimate force or violence belongs to the essential elements of modern statehood – so the scholarly consensus since Thomas Hobbes or at least since Max Weber. In “Economy and Society” Weber defines the state as a political organization whose “administrative staff successfully upholds the claim to the monopoly on the legitimate use of physical force in the enforcement of its orders” (Weber 1922: 29, translation). This definition seems to be very clear, but sometimes it leads to misunderstandings.

First of all, the use of force is not the sole and not even the normal means for the modern state “to realize its orders”; it is only the ultima ratio if all other means are not effective. The crucial point for Weber was the fact that the state cannot be defined by its “ends” because there are almost no ends that states did not try to realize in the course of history. Of all social institutions and all possible actors in modern society, only the state is legitimated to use physical force as a “means” – with the implication that all forms of non-state violence are illegitimate and have therefore to be prosecuted and punished according to the penal law (Milanes 1999). One of the misunderstandings concerns the question sometimes posed in discussions: How can we speak of a “monopoly on violence” if there is so much violence originating in society? Yes, there is an important difference between monopolies in the economy where certain goods or services may be supplied by only one company whereas the state hasn’t even a chance to monopolize the ownership of arms, not to speak of innumerable devices that can be used in exercising violence, for instance, knives. In other words, the state’s monopoly on violence does not create a “society without violence” (Anter 1995: 44), because it is completely impossible for the state to suppress all forms of violence. The term “monopoly” refers only to the legitimate use of force or violence!

Secondly, Weber speaks of a successful claim to the “monopoly” by the state. The question here is: If the state cannot prevent all forms of violence and if therefore there exists a certain level of violence in any society, how can we determine whether or not a state is successful in its claim (and another not)? The answer has to concede ambiguity: “It depends”. It depends on the general level of violence in society and on the effectiveness of the state in combating that level. For instance, the state can be quite “helpless” facing a high level of criminality, especially in cases of homicide or destruction of property, and the state can be ineffective in combating alternative “security organisations” such as the mafia (Hess 1995), guerrilla or other forms of “private armies”. If we look to Columbia we see all of this and it is therefore correct to say that the state in Columbia is not successful in its claim to uphold the monopoly on violence (and maybe has never been). But is Columbia only an infamous exception in Latin America? How many countries on the African continent can be classified as successful? Would we find a successful state in Central Asia? – From the European perspective at least one thing could be said about the monopoly on violence: The state is successful or effective in its claim to uphold the monopoly as long as it does not ignore instances of violence, or to put it the other way around, the state has to view every instance of violence as a challenge. It must be a “case” in which something

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has to be done as a consequence. Nevertheless, it is true that the monopoly is always somehow “a matter of degree”.

There is consensus among most scholars of European history that the state of the Ancien Regime was a “weak state” precisely because this state had not made good its claim to monopolize legitimate violence, especially in the countryside where the bulk of the populations lived. If this is true, we have to pose the following question: What then made the state a “strong state” in the sense defined above in that the state did not have to ignore many instances of violence but could react whenever facing them? In other words, what made the difference in the course of the “history of the monopoly”, when took it place and how can it be explained? If the state could not or simply did not enforce its claim to the monopoly, what were the consequences for the evolutionary processes of the functional differentiation of society (being equal with the breakthrough to modernity), for instance for the effectiveness of markets in the economy, and how did the failure of the state affect the internal developments of the political system itself? 

Regarding the states in our contemporary world society Trutz von Trotha writes in strong words: “My basic thesis is: the state’s monopoly on legitimate violence is in a crisis worldwide and with it the nucleus of what constitutes statehood” (Trotha 1995: 130, translation). For proof Trotha (1995a, 1997, 1999) offers in his last publications a typology of what he calls “orders of violence” including almost all world regions; for instance, in Africa he sees a “despotic or neopatrimonial order of violence”, and indeed on that continent we witnessed a dramatic decay of the postcolonial state in nearly all countries ending in some cases in a “collapsed state” (Zartman 1995) or in a breakdown of all central authority, which again paved the way for the emergence of “warlordism” (Reno 1998; Schlee 1995; Schlichte 1998) and a war economy (Elwert 1995; Kaldor 1999). For some parts of Africa the phrase “return of the Middle Ages” is quite correct; and in almost all countries where we find at least some remnants of the state, it is indeed a “neopatrimonial state”. The question is, however, how we define the notion of the “neopatrimonial state”? What are its main characteristics? Has it developed in Africa only or in other regions of the world, too? How is the reality of the neopatrimonial state related to violence?

Experts in “area studies” for Latin America as well as officials in international organizations, for instance in the banking sector (Buvinic/Morrison/Shifter 1999), are very concerned about the increasing levels of violence in most countries on the continent (the statistics indicate that things are not becoming better but worse, see Zinecker 2001). Why this negative development? – Latin America had a long, almost uninterrupted tradition of caudillismo, that is, authoritarian local politics dominated by latifundistas (owners of large estates having many clientele) resting their power on private armies (nowadays financing paramilitary groups, see Tobler/Waldmann 1991) on the one hand and on the other side the campesinos’ self-help as the main form of securing their right. This situation has not changed very much since the nineteenth century when there was actually no state at all (Riekenberg 1998; Esser 1998; 2000). During the twentieth century most of the Latin American countries witnessed a process of rapid urbanization, but the growth of the cities could not be controlled by the authorities so that many of them have now their favelas, that is, social spaces in the cities which are beyond state control (where milicianos or armed vigilantes control the poorer neighbourhoods, see Krujt/Koonings 1999). Moreover, the security institutions are not trusted by large majorities of the population. On the contrary, the military units are feared for their brutality and lack of discipline and the police is regarded as a source of insecurity that has to be avoided. Is a “Columbianization” of the continent possible?

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2 “Consolidation of modern statehood” being one of the important preconditions for the development towards democracy; see now the World Bank 1997 – a study which is no less than a change in “paradigm” in this institution.
Some authors say yes (Nolte 2000; see the contributions in Koonings and Kruijt 1999 with the title “Societies of Fear”).

According to results of an inquiry by the World Bank (1997) one of the most important problem of the post-Soviet states has to be seen in the growing “criminalization of the economy” (see also Ingold 1999). In societies where the state controlled large parts of the (formal) economy and where self-organized market institutions did not come into existence, policies of privatisation and deregulation led to an increase of the “informal economy” with all the implications we already know from developing countries: new groups of shady “businessmen” are often linked to the decaying institutional apparatuses through various forms of corruption, speculation or even crime, linking up to international circuits of illegal goods (especially arms and drug traffickers), the emergence of new forces who demand “protection money” by using violence or the threat of violence; tax evasion is widespread, which again weakens the revenue base of the state; police forces and army get no regular pay and try to find some resources on their own; the existing laws are not respected and the judiciary is not regarded as independent and trustworthy etc. There is a “lawlessness syndrome” that seriously weakens the stability of the political systems and this is, of course, not a good climate to attract foreign investment.

The situation in the countries of Central Asia is so well known that it need not discussed here in more detail (see for instance Menon 2001). A few remarks have to suffice: Afghanistan has been characterized since the beginning of the 1990s as a country in a “Hobbesian state of nature” (Suhrke 1990; Tarzi 1993; Khalilzad 1995) which paved the way for the infamous Taliban regime; this country represents one of the cases of a total disintegration of the state and where therefore the monopoly of legitimate violence, that might have existed before, has broken down completely.

**The Hobbesian Problem. Reflections on Violence as a Problem for Societies**

Why is violence and its control so important? The notion “violence” refers to the (usually sudden) exercise of physical force so as to inflict injury or damage on humans, animals or things. More precisely, violence with respect to humans would include actions, which infringe their physical integrity, such as inflicting wounds, torture, murder, rape, or destruction by impact or arson (Fletcher 1997: 47). Therefore, every social order depends on provisions against the threat of “escalating violence” (Opitz 1986), and because violence is an “everybody’s resource” (Trotha 1995), it can at best be mitigated rather than eradicated: Every form of control of violence implies the threat of violence and to a certain degree the use of violence (Opitz 1986; Luhmann 2000). Therefore, every society by necessity must have its own “rules regulating violence” – in German “Gewaltordnung”, and this is of course also true for “societies without a state”.

Some characteristics of violence can explain why violence almost always “works” (Luhmann 1975): (i) Violence or the threat of violence leaves the victim with no alternatives (at least, if death would be a consequence); (ii) the use of force is almost completely independent of contextual factors (day or night, seasons, social contexts); and (iii) violence is easily organized (as “organized crime” or criminal bands in the early modern period demonstrate, see Danker 1988).

The likelihood of finding a society with a very low level of violence is therefore very low – at least in principle. On the other hand, “safety” or “security” could be considered as a “basic need” because

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3 For an overview to the literature of “political anthropology” see Wimmer 1996.
somebody who is killed has no other basic needs. Is security a human right? Some authors say “yes” (see Habermas 1990 on this issue).

**THE STATE’S MONOPOLY ON VIOLENCE IN THE EUROPEAN HISTORY**

*Violence in the Late Medieval Society.* – Historians who study the sources/documents of the period between the fourteenth and the seventeenth century obviously find innumerable indicators for a very high level of violence (Algazi 1995; Heiduk/Höfert/Ulrichs 1997; Lindenberger/Lüdtke 1995; Pröve 1999; Kaeuper 2000). The majority of the adult males in the late medieval upper classes were warriers who led groups of knights into battle so that the life of knights was spent in training for or being involved in physical combat. The *form of society* can probably best be understood as a *highly stratified society* in which a class of feudal barons financed groups of knights by whom they dominated “their” surrounding lands, extracted surplus goods from their peasants and fought constantly for their rights as they interpreted them, for instance, if they believed that their honour had to be defended or that honour could be gained by thoroughly physical acts of prowess (Kaeuper 2000). And, above all, there was no political power which could legitimately restrict the scope of their affective outbursts!

There is scholarly consensus among historians that *feuding or armed self-help* was legitimated by the law of the time (Brunner 1973; Wadle 1999; Fehn-Claus 1999), at least for all nobles and knights who felt seriously aggrieved. The nobility claimed the right to declare and wage “private wars” as an inalienable birthright. Even urban family clans had their traditions of feuding, vendettas and violent self-help. “Recourse to violence by both nobles and bourgeois was commonplace” (Malcolm Vale 2000: 167). Swords were not costume accessories – they were meant to be used. The last formal *trial by battle* in England was held in 1571, and there is no doubt that *tournaments* could be extremely violent and dangerous, for example, the catastrophic death of Henry II of France at the celebration of a double royal wedding in 1559 (Juliet Vale 2000). And it was a period of upheavals and *rebellions* across all European countries (Press 1991; Dülmen 1993).

If it is true that there was a very high level of violence, then we have to pose the question, Where was the state? Some historians, for instance Rösener (2000), still believe that there was something like a state in the Middle Ages – quite a different one than the modern state, but a state nevertheless! With this approach here – applying evolution and system theory – we deny the existence of a state until the seventeenth century although we recognize some pre-adaptive advances (for instance in the cities for the idea of taxation or the Church for an impersonal bureaucracy). What we find in the late medieval society are essentially “patrimonial” forms of domination in the sense of Max Weber, and what Norbert Elias calls an “elimination contest” between feudal magnates, with serious consequences for the level of violence. The starting point for further evolutionary processes was a highly stratified society which was at the same time equally highly fragmented in its political organization, although processes of “political centralization” were going on (but without taking the form of statehood, so my argumentation in Wimmer 1996).

*The Formation of the Modern State Establishing a Monopoly on Legitimate Violence.* – Why had the “warrior society” of the late medieval times with its forms of domination to be changed and replaced by a completely different political order – or to be more precise, by a new political system with a state in its centre? And how is this process of state formation to be explained? Because the social sciences were widely unable to offer convincing theories, many historians (for instance Schwerhoff 1998) rediscovered the work of Norbert Elias with his theory of a “Civilizing Process” (Elias 1976) and “The Court Society” (Elias 1983) with which Elias wanted to explain *inter alia* how the state’s monopoly on violence became established; so Elias’s work is central to our subject.
In the following short discussion we should differentiate between what Elias had to say about firstly, the overall transformation of society which led to modernity, and secondly, as part of the process, how Elias explains the process of state formation.

Maybe the most important aspect that Elias elaborated to understand the long-term transformation on the societal level was what he called the “lengthening and increasing density of interdependency chains” which became more and more vulnerable to sudden interruptions by violence, for instance, the expanding networks of trade, the problem of protection for goods and persons in transit, the growing division of labour, etc. Indeed, markets were only able to flourish under conditions in which there was a lower level of violence, that is, within larger pacified social spaces (see also Giddens 1987; Hall 1987; Mann 1990).

Now, this theory of the interdependency of pacification and economic growth is certainly not wrong, on the contrary, it could easily be reformulated within the approach of “transaction costs”, but as a theory of the overall societal transformation it seems a little bit “poor”. Instead, we suggest Luhmann’s theory, which could be summarized in the formula “from stratification to functional differentiation of the society”. – Secondly, Elias traces the process of state formation in the following way: the warrior nobility of the medieval period was gradually transformed into a court nobility, as the monarchs were able increasingly to bring the warrior lords and nobles into their service within the courts as courtiers – Elias calls this process “courtization”. Crucial to this process was a “royal mechanism”, which was most successful in France, especially in the case of Louis XIV, but was going on in others countries as well. Accompanying this gradual pacification of social spaces, Elias suggests a transformation of the medieval personality structure (esp. a very low level of affective control or very weak super-ego of the medieval personality, unable for planning by looking to the future etc.) to a more differentiated one wherein the key aspect in Elias’s analysis is the gradual replacement of “constraints by others” by the development of certain types of “self-constraints”. “External compulsions were more and more transformed into internal compulsions” (so Fletcher 1997: 12).

Elias’s theory of social control has been applied recently by Muchembled (1990) in a vividly written book in which he demonstrates how manners changed indeed over centuries – especially how the refinement of manners concerning bodily functions spread or disseminated from courts to towns and finally to villages which included a growing sensibility and awareness for affective aggressions and therefore for forms of “violence by affect”. In a similar way, Elias’s theory is applied by historians of Crime and Criminal Justice History (see for instance Spierenburg 1994; 1999) to explain the long-term trend of a sometimes dramatic decrease in homicide rates in nearly all European countries (this can be shown only if there are data, of course; see Stone 1983; Sharpe 1985; Cockburn 1991 and the contributions in Johnson/Monkkonen 1996; sceptical Dinges 1998; but see now Eisner 2001).

Nevertheless, Knöbl (1998) may be right in saying that we find almost nothing in Elias’s work about the institutions of the state which are indispensable for its monopoly on violence, that is: the military and the police. If this is true, we have first of all to draw our attention to what is called the “military revolution” as the crucial process within which the first institutional complex of the modern state has been established, namely the military. Space allows the enumeration of only some aspects (van Creveld 1999: 179-195):

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4 See also Ribalta 1996: 36 f. From the beginning of the early modern period in western Europe, the court became increasingly associated with the concept of sovereignty, the royal court became the platform on which the rituals of the supreme majesty of the king were celebrated, and the court acted as a clearing-house for patronage matters. “Its expansion was a prerequisite for the political integration of the developing state”.

5 The literature on the “military revolution” cannot be reviewed here, but see Roberts 1986 as the “classic text” and Parker 1996.
– the crisis of the late medieval warrior class begins with the defeat of knights by the tightly packed shoulder-to-shoulder configuration of the early sixteenth century Swiss pikemen and the rise of the pike as “queen of the battlefield”. To be sure, cavalry did not disappear, on the contrary, it continued to attract “men of good background and thus nobler spirit” (Tallett 1992: 31), but its days of battlefield dominance were over;

– the “gunpowder revolution”: heavy artillery had a dramatic impact (McNeill 1982; Keegan 1993; Porter 1994). It rendered medieval fortress architecture obsolete within a generation – Charles VIII’s invasion in Italy (1494-5) was maybe a watershed in this respect (Anderson 1998: 69 ff.); it prompted military architects to develop a new type of fortification which became known as the trace italienne, but the costs of constructing it were enormous – it strained the resources of even the richest princes not to speak of the many principalities (still regarding themselves as “sovereigns”) or the towns (Koller 1986). – It is suggested that the cannon has probably been a more effective “royal mechanism” than courtization and the exponential rise in military costs more effective to cut the rights of the many “sovereigns en sa terre” (the feudal barons, but also of the autonomy of towns and the Church);

– technical developments improved the performance of hand firearms; the adoption of handguns was rapid and universal in the sixteenth century and replaced the pike as “queen of the battlefield”;

– the introduction of firearms was to have profound implications for battlefield tactics, formations and training of soldiers; the key words are: linear tactics, volley fire, drill, new techniques of fortification and siegecraft, etc.;

– the exponential increase in the number of men under arms during the sixteenth and seventeenth centuries, which was wholly unprecedented and marked a “quantum leap forward” (Tallett 1992; Lindengren 2000: 131, Table 3: “Sizes of European Armies, 1470-1760”);

– the construction of barracks in towns and on military routes; the provision of uniforms as well as some improvements in the crucial sphere of logistics; and finally a separate legal code for the military with its distinctive offenses and punishments (Bröckling 1997);

– the beginning of specialization and professionalization, for instance, the dissemination of military literature and the establishment of the first military schools to educate the officer corps.

All of this contributed to the establishment of standing armies administered by an expanding bureaucracy and financed by a continuous flow of finance in the form of taxation. The early modern state was, to a large extent, a military institution and warfare a crucial agent of change in the direction of “modernization”, which was itself caused by the new competition between states in the emergent international political system. – To be sure, the concentration of military power was not the only, but maybe the decisive factor at the beginning of the history of the state’s monopoly on violence: Private armies were forbidden almost everywhere since the middle of the seventeenth century; the independent military power of the nobility disappeared and with it “private warfare” on the local level in the form of feuding, for instance; the time of unemployed or unpaid landsknechte or garträuber who

6 The state was the ultimate long-term victor over all competing forms of political organization by achieving the monopoly over the exercise of military violence, and later even of violence per se – see for this evolutionary process of “selection” Spruyt 1994; but there was not the state in the singular but states in the plural, that is, there was no empire in Europe comparable to China (Hall 1997) but a system of states (by which the new political system of international relations emerged) that developed its own “dynamics of competition”; see Contamine 2000: 4.
again and again posed a major threat to law and order (as plundering the property of civilians) was definitely over with the establishment of standing armies under state control (for the Thirty Years War as a state-building war see Burkhardt 1992; 1994). We could speak of a “demilitarization of society” (Tilly 1992), which itself contributed to the adoption of a more pacific lifestyle; duelling became a subject in the penal code (although duelling will have a long history, actually until 1914, but had to be legitimated as an exception to the monopoly or had take place outside the public sphere, see the contribution in Spierenburg 1999), and in most countries it was forbidden at all to carry arms (openly). The uniformed soldier became the only legitimate bearer of arms! How important this process was, in which the central authority did succeed in establishing a monopoly at least on military power and in which the former warrior groups found an outlet for their martial ardour in regular armies can be seen very easily if we look to contemporary cases of “collapsed states”, the Lebanon, Somalia and Afghanistan being only the most prominent among them.

In addition, during the second half of the seventeenth century and actually the whole period of the Ancien Regime, the rulers did use troops to repress popular revolts or to “insure the peace and tranquillity” of the country; troops could be used for patrolling roads against highwaymen; from time to time troops were ordered to imprison all vagrants of a certain district; and finally troops have been used to assist the civil powers – escorting prisoners or providing security during public executions (van Dülmen 1988), etc.

To be sure, the Ancien Regime was not a democratic system and that is also true for England despite the legislative power of the Parliament (after 1688-89). The famous Riot Act of 1715, enacted in response to a wave of riots following the Hanoverian succession, aimed to provide a legal basis for the suppression of disturbances, making certain riots felonies, and it indemnified the civil and military authorities from prosecution for any injuries caused in dealing with them. Under its provision, a crowd of twelve or more which “unlawfully, riotously, and tumultuously” remained assembled for an hour after reading of a proclamation was guilty of a felony and therefore liable to capital punishment! In addition, the statute allowed the local authorities to ask for troops whenever they felt endangered and, indeed, many towns have been garrisoned with troops, as Oxford in 1716. Throughout the century, troops were called many times “to restore order” (Stevenson 1979). One of the most serious riots of the eighteenth century were the so called Gordon Riots of 1780 in London, when the “mob” violence got completely out of control for two weeks and an estimated 10,000 troops were called in. The cost of the riots was considerable: 210 people were killed outright, 75 died subsequently in a hospital, 62 were sentenced to death, of whom 25 were eventually hanged, huge damages to public buildings and private property etc. Although a number of technical features of the apparatus of public order had allowed the riots to get out of control, no measures were taken as a consequence until 1829.

The Well-Ordered Police State and the Establishment of the New Police. – During the Ancien Regime monarchs developed structures to enforce concepts of a “gute Policey” in a broad definition, that is, structures which provided some degree of welfare, security and fairness in a smooth running of markets, together with the maintenance of public order (Raeff 1986). With the gradual consolidation of the central institutional complexes of the state, and especially the enforcement of the state’s monopoly on violence, the state became more and more interventionist. Yet it was one thing to pass ordinances and quite another to ensure their implementation.

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1 For the time after the Fronde in France: “Disarm civilian France: this was the golden rule, the primary ingredient of internal politics”, so Meyer 2000: 112; see also Collins 1995 and Briggs 1998.
2 See now the contributions in Stolleis 1996 and in Härter 2000.
As we have seen, the history of the state’s monopoly begins with the establishment of the modern military. Interestingly, many other institutions remained “pre-modern” or roughly unchanged throughout the Ancien Regime (in some countries until 1848): On the countryside we find the persistence of manorial courts including some police functions which allowed the use of violence (Wienfort 1994); parish constables should act as agents of violence control although they were ordinary members of their community; a night-watch would patrol some streets of his city; very traditional courts used criminal codes of late medieval times (the “Carolina” of 1532 in the lands of the Empire).

The interesting questions here are: How is this longevity of old socio-political structures and of traditional “policing” to be explained? – The notion of a “gute Policey” in the German speaking countries seems to look quite old-fashioned, but this may be a wrong impression. The authors of the eighteenth century writing on “Policeywissenschaft” reflect important changes for certain conditions of their country suggesting deliberate policies whereby they presuppose that these conditions could be changed. In other words, they reflect what may be called “the contingency of conditions”, and that is very modern compared to the world view of the late medieval times. – Nevertheless, the question remains why the authors had such a broad understanding of “Policey” although the “Ständegesellschaft” produced law and order problems en masse especially by the exclusion of large sections of the population as, for instance, the growing numbers of vagrants whose members were believed to be criminals (Küther 1984).

With the notable exception of France (Garrioch 1994; Sälter 2000), no European country had something of a modern police at least until the beginning of the nineteenth century; this situation changed profoundly in the decades after the French Revolution (Emsley 1983; 1999). The establishment of the “new police” in almost all European countries in the course of the first half of the nineteenth century can be regarded as the most important modernization process of state structures, and the police is, of course, the central institution for the state’s monopoly on violence (Funk 1986; Knöbl 1998). But the question remains: why police? Following the concept of “differentiation by function” in order to explain this most significant aspect in the evolution of statehood, we suggest that it was the necessity of a “de-militarization” of policing as a consequence of the increasing “professionalism” first in the military (Huntington 1957) and then in the police itself (Jessen 1991). It is therefore difficult to understand why troops were still used for what may be called “policing the labour movement”, and, if the comparative study by Johansen (2001) is correct, it was not Prussia with its “militarist ethos” but France where troops were called most frequently to police protest and labour conflicts. Anyway, even the movements and protests became less violent than the rebellions and riots of earlier times had been (Kocka/Jessen 1990), and that seems to indicate that the internal pacification of society had been assured effectively as a consequence of the internal modernization process of the state apparatuses.

Although we find in Luhmann’s work only some scattered remarks on the state’s monopoly on violence, we can use it to draw some basic conclusions: accumulation of means of physical force to a level that the threat to use those means in the case that somebody will not comply to the laws has been the crucial development in the early modern state formation, where this threat had to be convincing to everybody living in the territory under the state’s control. State-building means then, again according to Luhmann (2000), firstly, a build-up of capacities and capabilities to threaten everybody who intends to exercise physical force and to leave no doubt that law-breaking will be sanctioned. Secondly, these capacities are at the same time a precondition for the self-referentiality in decision-making in politics and in this way for the differentiation and autonomy of the political system in relation to other spheres of society, for instance, religion (of course, very important for the early modern period with its “religious wars”, see Holt 1991, but also concerning various forms of religious
fundamentalism in our present time). Thirdly, if and only if these preconditions are given, politics (the political system with the state in its centre) can fulfil its primary function, namely, to produce collectively binding decisions (in the form of laws) and to implement them. Finally, because most or almost all citizens are convinced that the state will use force in sanctioning law-breaking, violence is no “rational option” anymore. It will be avoided even in conflicts or disputes so that the state has to use force as the last resort, as an ultima ratio only.

Given the space for this paper, the following pages can only give a very short and sketchy overview to the relevance of the state’s monopoly on legitimate violence for the contemporary world community.

THE STATE’S MONOPOLY ON VIOLENCE IN THE WORLD COMMUNITY

The Breakdown of the Monopoly in “Failed States”. – The process of the monopolization of legitimate violence was by no means smooth and uninterrupted, as we have seen (or what could be demonstrated considering the development in European countries between the world wars in the twentieth century), nor did it take place at the same time or in the same way. Nevertheless, a whole series of distinctions were characteristic of the evolving state including:

- the distinction between the public and private spheres, more specifically between state activity and non-state activities;
- the distinction between what took place within the clearly defined territory of the state and what took place outside;
- the distinction between the civil and the military, between domestic non-violent legal intercourse and external – maybe – violent struggle; after all, there emerged the distinction between war and peace itself. Instead of more or less continuous violent activity in late medieval times, war became a discrete event in which the state was the “master of war” (Münkler 2000), and because of that fact could be held responsible for actions during a war according to the “rules of war”, the jus in bello;
- particularly important was the emerging distinction between the military and the police in the process of functional differentiation within the state’s apparatuses: a highly professionalized military has to be ready to defend the state’s territory and its population in the case of an aggression from outside; the police has to realize the state’s claim to the monopoly on legitimate violence in which “legitimate” is more or less clearly defined by the law (according to the principle of Rechtsstaatlichkeit);
- the distinction between the legitimate bearer of arms and the (civilian) non-combatant or the criminal.

In cases of “failed states” or “collapsed states” all these distinctions (and many more) break down – most important the loss of control over and the fragmentation of the instruments of physical coercion. A disintegrative cycle sets in, which is the exact opposite of the integrative cycle through which modern states were established. Effectively, the “failure” of the state is accompanied by a growing privatisation of violence after the breakdown of the military hierarchy, with the result that local army commanders act as warlords (see the discussion in Bartl 1999). In this situation any kind of warlord

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9 The modern state became responsible for actions of its citizens even outside its territory, for instance, in cases of piracy, or mercenary armies, see Thomson 1994.
can appear on the ground exploiting the need of the people for protection. As Mary Kaldor aptly puts it: “The new type of warfare is a predatory social condition” (Kaldor 1999: 107). And, above all, it is a condition of almost complete lawlessness! Famous cases of a state collapse are the Lebanon, Yemen, Afghanistan and unfortunately for the continent, many countries in sub-Saharan Africa, including, of course Somalia, but also other countries where at least temporarily the state disintegrated as in Uganda during the 1970s and 1980s.

Wherever a “state collapse” occurs, the consequences are always dramatic:

The “failure of the state” is accompanied by the loss of control over and fragmentation of the instruments of physical coercion or a privatisation of violence by so-called warlords which leads by necessity to indiscriminate killings of large numbers of the civilian population, the destruction of property and infrastructure as well as “asset transfers” on a large scale, i.e. the redistribution of existing assets in favour of the killing units, and often to forcible population displacement (Kaldor 1999; 2001).

Failed states pose a problem not only for the United Nations (Bartl 1999) and humanitarian organizations but represent “Bad Neighbourhoods” for a whole region, as was the case in the Middle East after the collapse of the state in Lebanon (Hanft 1990). The process was repeated on the Horn of Africa, in West and Central Africa, and, finally, in Central Asia.

Failed states can cause negative effects anywhere in the world society, as Al Qaeda has demonstrated. – Herfried Münkler (2001) has argued quite convincingly that the terrorist attacks of Sepzember 11th opened the eyes all of a sudden to at least two facts: Firstly, there is a certain “metamorphosis of war” going on. War in the Clausewitzian sense was defined as violence between states where regular armies fight each other in battles. Soldiers were supposed to fight in uniforms, carrying their arms openly and obeying a commander who could be held responsible for their actions. The civilian population was supposed to be left alone. In other words, as long as the state was the “master of war”, war was conducted within a set of rules, the jus in bello, as already mentioned, with the result of what Münkler calls the “containment” of violence in wars (“Hegung des Krieges”, see also Münkler 2000). If the state looses its position as a master of war, we have to expect uncontrolled escalations of violence with a blurring of the traditional distinction between war, guerrilla warfare, organized crime, terrorist acts, and large scale violations of human rights. – Secondly, terrorist networks such as Al Qaeda need somewhere an operational basis and such a basis is best found in social spaces where there is no state or only a “quasi-state” (Jackson 1987), i.e. a state lacking essential elements of modern statehood such as the monopoly on violence (instructive Roth 2001). In other words, “security” in our world society can only be achieved if and only if the state’s monopoly on violence if effectively enforced in all countries of the world community.

**Violence in Neopatrimonial States.** – “Neopatrimonialism” is a rather new concept and therefore not yet widely used as a theoretical tool to understand why so many developing countries have had no growing economy or even a “negative” growth rate. The populations of many African countries are poorer today than they had been at the time of independence. One of the decisive factors is “neopatrimonialism” as their political system, which is defined as the selective combination of three features:

- **Personal rule**, concentrating the power for decision-making on one person (for instance, the president), who allows no criticism by an opposition.
- **Clientelism** throughout the system: top-down to the bottom within the formal state apparatuses which is undermined in its character as a formal organization and leaving the state’s organizations back as a façade, and clientelism in the inside-outside communication as a form to include some sections of the population and their patrons with their highly particularistic interests.

- **Endemic corruption:** corruption everywhere as the “normal” way the system works, and self-enrichment by the members of the “political class” without any considerations of the consequences for the stability of the system in the future.

To be sure, the “real” systems can show some variations, for instance, “personal rule” could have a lower profile because the real power for decision-making is not only the president but a clique of powerful patrons surrounding him acting as “ministers”. Nevertheless, “politics” is understood as a matter of powerful men – it is personalized.

The existence and reproduction of the neopatrimonial state is inter alia also based on two problems concerning violence:

Firstly, in the countryside we find almost nowhere a modern police and therefore no state which would claim a monopoly on violence. The villages are either dominated by and “protected” by powerful local patrons or rely on other traditional forms of self-help. The people are easily intimidated by a short display of power such as the military driving briefly through the villages at high speed and then disappearing again in the dust.

Secondly, the military and the police are corrupted by the system. Their presence in towns and at least in the capital is regarded by the citizens as an additional source of insecurity or even a threat (Waldmann/Schmid 1996). The neopatrimonial state is a Leviathan, but a “lame” one, aptly called so by an Africanist (Callaghy 1987; see also Jackson/Rosberg 1986), but sometimes it is a state which uses force not as the last resort, but the first – it can be a very brutal and violent state! Maybe there is no actual fighting or warfare going on in the country, but there is a lot of violence of which the state takes no notice or which is simply not prosecuted (Fatheuer 1994). Taken together it is correct to say that the neopatrimonial state is not successful in its claim to the monopoly on violence. In addition, there is no independent judiciary that could be trusted!

As a consequence of its low performance, the neopatrimonial state lacks legitimacy and is therefore vulnerable to strategies of “identity politics”, that is, to movements which mobilize around ethnic, racial or religious identity for the purpose of claiming state power (Scheffler 1991; Bielefeld 2001; Kaldor 1999: 76 ff.). – More and more scholars shifted their attention from the economy to the political system in their study of the so-called “developing countries”, for instance, Trotha (1995; 1999) offers in his last publications a typology of what he calls “orders of violence” including almost all world regions, and sees in Africa a “despot or neopatrimonial order of violence” because of which the continent witnessed a dramatic decay of the postcolonial state in nearly all countries\(^\text{10}\) – ending in more and more cases in a collapse of the state (as we have already mentioned), which paved the way for the emergence of warlordism and a war economy based on violence (Elwert 1995).

For Latin America the most famous case is of course Columbia because of its extremely high level of violence (Pecaut 1999; Kurtenbach 1999; Fischer 2000; Waldmann 1997 and 2001), but there is a growing awareness of the levels of violence in the other countries on the continent.

\(^{10}\) In Trotha 1999 he writes, modern statehood was and remained a “utopia” in Africa.
A Crisis of the State’s Monopoly on Violence in Western Democracies? In comparison with earlier stages in history or with most regions of contemporary world society, Western Europe and North America seem to be rather “pacified” societies, where citizens meet each other without being armed or without the fear of being victimized. Nevertheless, there are scholars – especially criminologists – who identify phenomena which could be interpreted as indicators for a crisis:

- homicide rates declined over several centuries but are rising again to a level higher than in the nineteenth century (Spierenburg 1999; Eisner 2001);

- youth gangs and criminal underworlds dominate social spaces in many cities (Beyvogel 1993; Enzensberger 1993; Bohnsack 1995) to a degree that they are more or less out of control – even police officers avoid those “no go” zones – not very different from the favelas in Latin America; Popitz (1992), for instance, speaks of an emerging “molecular” civil war;

- upper classes live in areas which are closed up by private security measures such as walls and fences, engaging private police who are patrolling the area (often with dogs), surveillance cameras watching the entrances day and night, and a security industry with high growth rates for alarm systems, etc. Trotha (1995) sees a culture of “No trespassing” emerging and a new inequality which is based on the opportunity to buy “security” on a private basis.

Most authors who discuss those indicators refer directly or indirectly to the violence of the inner cities of the United States; the situation there is indeed quite alarming. But there is a difference to Europe that has to be taken into account: The United States have a long tradition of private ownership of arms and many groups such as the National Rifle Association believe that this is even a right guaranteed by the Constitution (what is hotly debated, and maybe wrong). As Zimring and Hawkins (1997) have shown, the United States do not have a higher crime rate than European countries, but a much higher rate of “lethal violence”, which can be directly attributed to firearms.

Looking to the homicide rates of the advanced industrial states we see that the United States are an exceptional and extreme case indeed:

**Homicide rates per 100,000 population, G 7-countries, 1990** (Source: World Health Organisation 1990, cit. in Zimring and Hawkins 1997, p. 55):

<table>
<thead>
<tr>
<th></th>
<th>Rate per 100,000</th>
</tr>
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<tbody>
<tr>
<td>United States</td>
<td>9.4</td>
</tr>
<tr>
<td>Italy</td>
<td>2.6</td>
</tr>
<tr>
<td>Canada</td>
<td>2.1</td>
</tr>
<tr>
<td>France</td>
<td>1.1</td>
</tr>
<tr>
<td>Germany</td>
<td>1.0</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0.7</td>
</tr>
<tr>
<td>Japan</td>
<td>0.6</td>
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“Americans in all categories kill and are killed at alarming rates” (McKean 2000: 84). This is especially true for the male and younger categories of African Americans: The homicide rate for black, male, age 18-24, is incredibly high: 246.5 (ibid, p. 90). Nevertheless, the standard deviation for African Americans in American cities is also very high, namely 157.6, and that figure demonstrates that African Americans are not a homogenous group, but living in very different neighbourhoods. In
addition, most of the “lethal violence” has to be classified as “intraracial”: Between 1976 and 1997, 85 percent of whites were killed by whites and even 94 percent of blacks were killed by blacks!

Comparing the United States and Western Europe, what can we learn about the state’s monopoly on legitimate violence?

First of all, the differences in the levels of life-threatening violence are not due to differences in the total numbers of crimes but to the availability, easy access to handguns and the willingness to use them. Whereas the European state had been quite successful in its history in forbidding the (private) ownership of weapons or to carry arms (openly), that is, in its attempt to disarm its populations, in the United States exactly this has not been the case, and that is the reason why one could say: there is a significant deficit in the modernity of statehood in that country concerning one of the essentials of modern statehood, namely the enforcement of the monopoly on legitimate violence (Heideking 1999). – Nevertheless, this general statement has to be qualified or modified in relation to at least two widely agreed realities in Europe. On the one hand, Europe always had regions where the modern state was almost or even completely non-existent: from Ireland to Spain, especially the islands Corsika, Sardinia, and Sicily, to southern Italy and the Balkans – in all those regions, the modern state “arrived” very late or, as in the Balkans, has not yet arrived. It is therefore no coincidence that we find here either relatively strong terrorist groups or very “successful” mafias whose goals are not only to make “quick money” by illegal business but also to build up a power base on a specified territory by the use or threat of violence (Hess 1995; Blok 1991). The failure of the state on the fringes or peripheries of Western Europe is still felt today because it allowed the emergence violence-based businesses with which even the European Union has to deal with, as we will see. – On the other hand, the homicide rates are increasing again in almost all European countries since the late 1960s. Whether we have here to do with a complete reversal of the long-term trend of decreasing interpersonal violence or only a short-term cycle caused by specific conditions that could disappear again in the near future, is a question that is hotly debated among criminologists. Anyway, the level of violence concerns the public because security from assault, freedom from pain inflicted by serious intentional injuries are among the most basic interests citizens have, and concerns, of course, the authorities of the states – although the issue of security or “law and order” are almost always debated with an ideological bias. Of course, there is no linear relationship between the levels of crime and the number of people incarcerated, but the costs for “security” – understood in a broad sense, including police, the provision and maintenance of jails, the costs of criminal justice procedures as well as the consequences of having a large number of people for measures of “rehabilitation” after they finished their sentences, etc. – and finally the “costs” victims have to suffer as a consequence of victimization, will probably not decrease in the future but increase.

Most of the violent acts in our modern society occur in urban settings – violence has become more or less a phenomenon of the cities (Eisner 1997; Eisner/Manzoni 1998). There is scholarly consensus that the inner cities in the United States have been deserted by the middle-class whites and are now to be characterized by a high degree of residential segregation or even “residential apartheid”, that is, areas inhabited by poor and/or unemployed people – many of them belonging to ethnic minorities - with a lot of anger and resentment. Studies of European cities show that there are some tendencies pointing to “Americanization”, for instance, Bailleau identifies “stigmatised areas” in some cities in France – cities with an excluded, marginal population contained within “balkanised” areas on the urbane periphery with a significant increase in individual delinquency, a high level of “incivility” and a continuing deterioration of the living conditions, so that “the state can no longer impose its rule” (Bailleau 1998: 95 and 99f). So, do we have to take into account the possibility that the “divergent”, violence-ridden American cities show the European cities their future? Considering the assessments
of the available empirical evidence for the moment, most scholars would say “no” primarily because spatial and social segregation/exclusion has not occurred in Europe on the scale that it has in the United States. Moreover, the public and social policies which, in the United States, have allowed unrestricted suburbanization, the flight from the city and the deterioration of city centres, have not, on the whole, been present in Europe (Young 1998; Body-Gendrot/Martiniello 2000), on the contrary, the policies of social security in combination with public housing programmes and urban renewal, etc., have prevented and will prevent in the future the emergence of highly “criminogenic” urban spaces.

Politically motivated violence such as violence against foreigners (in German “fremdenfeindliche Gewalt”) has been a serious concern for many European governments, especially in Germany after the reunification; when there has been a sharp and dramatic increase in violent crimes up to the year 1993, but also a sharp reduction in the subsequent years. Equally, the level of violence caused by terrorist groups, for instance, assaults perpetrated by hard core members of the IRA and ETA, have declined in recent years, but it is also true that we have seen several assassinations in 2002 – for instance, Pim Fortuyne as a victim in the Netherlands – and also some shootings as the one in a German school, which was very similar to the shootings we know of American schools. Nevertheless, Europe didn’t have until now the levels of “hate crimes” as the data show for the United States, and most importantly has nothing comparable to the right-wing extremist groups and organization that are grouped by most experts under the label “Christian Identity Movement”, such as “The Order”, “The Covenant, the Sword and the Arm of the Lord” (CSA), “White Aryan Resistance” (WAR), “Posse Comitatus”; “Aryan Nations” and last but not least “The Patriot Movement”. Especially the Patriot anti-government movement, barely noticed before the bombing of a federal building in Oklahoma City in 1995, represents the greatest threat of “domestic terrorism” to the United States, because of its paramilitary nature accumulating huge amounts of arms and because of their belief in the necessity and even desirability of war as a means of realizing national or racial destiny. As Brian Levin (1998) puts it: “The Primary goal of Identity ideology of destroying modern American society through guerrilla warfare and replace it with a divinely ordained whites-only homeland does not leave much room for the less violent alternatives that are present in other nontheological terrorist movements” (p. 129). – Former administrations have been fighting an (unending) “war against crime”, the present U. S. administration is fighting a “war against terrorism” (in quite a similar way as states fought piracy and privateering in the nineteenth century, see Thomson 1994). But what have U. S. administrations done so far to repress the establishment of paramilitary groups and organizations whose publications quite openly announce that they arm themselves in order to fight the federal government one day?

If we take the term “crisis” seriously that Trutz von Trotha used to indicate the condition of the state’s monopoly on legitimate violence in Western democracies we can draw the conclusion that in Europe the state has been quite successful in combating its forms and levels of violence – at least to the degree that it is not too disturbing to the operations of the functional systems of society, for instance, the economy – but in the United States the circulation and distribution of arms, especially handguns, seem to be “out of control” for the law enforcing apparatuses and therefore the level of “lethal violence” as well as the threat inherent in the “Patriot Movement” with their thousands of followers and supporters legitimizing themselves with a strange combination of religious beliefs and constructions of American traditions, are unlikely to disappear whatever the measures of the state will be, and, as the events of September 11th have shown, the threat originating from islamist-extremist groups and organizations worldwide make the situation in the United States almost dramatic.
The European Union: Statehood in the Making

The political organization of the European Union (EU) has been changing in the last two decades at such an accelerated pace that it is difficult to find a definition today that is not outdated tomorrow (as many publications on the EU are). Most authors writing on the EU with some theoretical ambitions would agree that the EU is something new, a political system *sui generis* or they take for defining the Union as a starting point “Governance without Statehood” or place the EU somewhere in between a mere confederation (an international organization) and a federation (as some nation-states are) or it is conceived as oscillating between “intergovernmentalism” and “supranationalism” (between anarchy and hierarchy as a “negarchy” would be), but there is almost a consensus that the EU is not a state, and, to be sure, it *should* not become a “superstate” (the term almost always having a negative connotation).

The EU is not a state – so the common wisdom – firstly because it is not recognized as a state by the international community (although the EU Council Secretariat opened a liaison office at the UN, and has a Mr. GASP to be invited at the international arena), and secondly because it lacks all essentials associated with “sovereignty”: The EU is not sovereign in its competence to select any issue which it considers necessary for decision making but is confined to the policy areas of the Treaties (although it is admitted that “it is difficult to find areas of national policy that do not have an EU angle”, so Campbell 2002: 47). Moreover, the law of the state – “state” in its “classic” Westphalian model – is backed by coercive force, over which the state has a formal monopoly, “the state’s formal monopoly of force extends its control over all individuals and political actors in the territory. This is clearly a gray area of statehood in any discussion of the EU. It certainly lacks the ability to enforce its rules by coercive sanctions and its laws are not backed by any formal monopoly of force. The EU is dependent on the good will and law abiding nature of the member-states to enforce the legislation of the EU and to recognize its laws as sovereign and supreme. Yet again this is not entirely unusual in federal states. Certainly the individual states of the United States in its formative period prior to the American Civil War were able to insist on their sovereignty and act in defiance of the federal unit. Undivided sovereignty is a characteristic primarily of unitary not federal states. In federal states the legal monopoly over force is usually divided between the federal and subfederal units. In some federal units, such as the United States, the ability to enforce law is divided between federal and state law enforcement and courts, while in others, such as Canada the court system is united and subfederal units may or may not use federal law enforcement officers” (MacMillan 2002: 66).

The following considerations are thought to shed some light to this “grey area of statehood” of the EU.

*From Trevi to Schengen.* – The beginning of the cooperation in the policy field “security and home affairs” dates back to 1975 when the British foreign minister Callaghan made the proposal to establish a working group in order to fight terrorism. Although all member states agreed to participate, the so-called Tervi-group was organized outside the framework of the EC and remained there until 1992. Trevi-cooperation followed the usual paths of the international arena without any further ambitions, for instance, to create an organization, and it was completely independent of the integration process in the economic field (the integration process stagnating at this time anyway), so that it cannot be explained as a *functional spill over* effect – it was simply a functional response to the threat of terrorism: In the United Kingdom, the IRA extended its operations, in Germany the RAF, in France the “Action Directe” and in Italy the “Brigade Rosso”. Despite the ongoing cooperation process in Trevi, there was still a tendency to regard terrorism at ‘home’ as an issue of overriding importance and terrorism ‘abroad’ as something of lesser consequence or even as another state’s problem – “best avoided altogether” (so an observer, cit. in Knelagen 2001: 97). But Trevi developed practical working
relationships, a mutual understanding and a commonality of approach between the member states’ police forces, and, last not least, the people responsible for those organizations came to know each other personally what again helped communication and thereby the needed flow of information. It was quasi a logical consequence that a second Trevi Working Group was established for general questions in police matters including training and technology.

The next impact on Trevi came in the early 1980s when the intention was on the table to create an internal market as “an area without internal frontiers” that included the free movement of people as well as goods, services and capital. The whole establishment responsible for security and policing in their countries were shocked by the idea of abolishing border controls because they were convinced that border controls were decisive to detect criminals or at least to deter criminal activities from entering the country. It took some efforts to demonstrate that the “turnpike is not a good police officer” anyway. Resistance was met finally by five member states in 1985 at Schengen by following the Trevi-procedure – an interesting case for “path dependencies” - that is, to move forward as an “inner core” by a purely intergovernmental arrangement outside the Community in order to accelerate progress towards the completion of the internal market project. The same procedure was taken 1990 for the Schengen Implementation Agreement (Schengen II).

But security concerns remained on the agenda and measures were requested widely, “compensatory measures” had to be taken in order to deal with the supposed “security deficit”; the most important measures then were: the Schengen Information System (SIS) which allows to read passports electronically and to deny entry if the system shows a “hit” (the SIS works at a “hit/no hit” basis); police cooperation in matters such as “hot pursuit”, cross-border observation and controlled delivery of illegal goods, etc. What has been strongly objected (by Margaret Thatcher) was the proposal made by the German Chancellor Helmut Kohl at the IGC at Hannover in 1988 to establish a European police office similar to the FBI in the United States. But only three years later (1991), the project for a European Drug Intelligence Unit was agreed.

From the Third Pillar to Europol to the First Pillar. Trevi-cooperation and the Schengen system provided important steps towards a European law enforcement capacity, but they remained outside the frame of the Union. With the Maastricht Treaty on European Union in 1992, which included a new Third Pillar of EU competence over “Justice and Home Affairs”, the EU became a legislator to the state’s monopoly on legitimate violence on all fields that are somehow related to the principle. To be sure, the term “home” in “home affairs” referred to the member states, not the Union, but it may be an unintended consequence of the title of the Third Pillar, that the EU has its own “Home Affairs” (so that the ongoing work of the Convention can take this as a matter of fact). To understand how important those changes were, we should remember the crucial role such matters as “guaranteeing security”, “law and order” and “control of national borders” had in the process of the formation of the modern state. “The fact that Europe is increasingly becoming a referent object of security, not only in an internal sense but also in an external sense – as an actor on the world stage – suggests that we are beginning to invest the idea of Europe with many of the characteristics and attributes previously attributed to the state” (Walker 1998: 175).

But Maastricht left at least two complexes of problems unresolved. The first was the idea of a “European FBI”. The proposal for a European Drug Unit was already agreed upon in 1991 – greeted by the European Parliament as a measure but criticized if it would be placed legally outside the EU
frame, that is, to take resort again to cooperation outside the Treaties as it was the case with the Schengen Conventions. Anyway, the idea of Euro Cops was simply too much for some member states to be acceptable and, as the analyses of those historical processes show, behind the reservations and objections we find always an attempt to preserve national sovereignty (Walker 1998: 169). – On the other hand, nobody knew at this time what the consequences were after the end of the Cold War and the events following it: instabilities in the Eastern European countries (Anderson 1998), for instance, a resurgence of nationalism and even some warlike fighting in Moldava; enormous waves of immigrants were expected to flood the labour markets (speculations in the hundred thousands); bands of criminals exploiting the openness of the borders entered EU territories specialised in stealing and trafficking cars (and drugs, see Lewis 1998); the phenomenon of the Russian Mafia became known (Rawlinson 1998) and, above all, there was a war in the Balkans with all its demoralizing effects on the population there (Nikolic-Ristanovic 1998). In short, there was a generalized sense of uncertainty and insecurity as well as the knowledge that “organized crime” operates internationally or even globally whereas the Union was on the way to abolish its inner border controls and had only police forces confined to the territories of the member states, that is, the old structures of policing of the nation-state. In this context the Europol Convention was finally agreed upon in 1995 (in force since 1998), but its statute looked – at least legally – like an international organization what again raised the question whether or not Europol is an institution of the EU at all (Oberleitner 1998: 120, with the thesis, Europol is legally no genuine organization of the EU, see also Petri 2001). On the other hand, the status of Europol is quite clear: the Council makes the rules for Europol, participation in Europol is restricted to members of the EU, it is financed by the EU and its administrative council is recruited from member states, so that there is de facto no doubt that Europol is a police force of the European Union, although, for the time being, with the restrictive tasks to facilitate, support, and coordinate specific investigative operations by competent authorities of the member state – especially to assist them in investigating cases of organized crime. Nevertheless, Europol was established and yet the integration process is going on. “Current initiatives in the area of police and customs cooperation include the new European Police College, offering, from 2001 onwards, training courses for national police personnel; the establishment of a task force of European police chiefs; and the creation of joint police/customs command centres” (Xanthaki 2002: 239).

The second problem left unresolved by the Maastricht Treaty was the requirement of unanimity for the Council in its decisions on matters of the Third Pillar and the legal status of the Schengen Conventions; both problems were resolved by the Treaty of Amsterdam (signed in 1997 and ratified in 1999), which incorporated Schengen into the EU’s acquis (see the contributions in Neunreither/Wiener 2001, and in Hummer 2001). Following the Treaty, the Schengen Convention became part of the EU law on 1 May 1999, and it extends to all member states except the United Kingdom and Ireland (on 1 December 2000 the Council adopted a decision applying the Schengen acquis to Denmark, Finland, Iceland, Norway and Sweden). The Treaty also transferred external border controls, asylum, immigration, and judicial cooperation in civil matters into the first pillar; and the Treaty of Nice (signed in 2001) introduced in addition qualified majority voting for the areas of asylum and immigration after the year 2004.

Summarizing the development of the EU, the following aspects seem to be of a special interest in the context of a theory of the state:

1. In comparison with the early modern time and its processes of state formation, state-building in the EU case differs indeed by the different role violence was relevant for the internal dynamics: the early modern state had first of all be able to pacify the society for which it was the political organization, that is, to build up capacities and capabilities to disarm the population and to sanction non-compliance.
The military was the crucial institution to enforce the state’s claim on the monopoly of violence – at least up to the nineteenth century; and the state had to be cautious to secure its borders because most of the time, the “natural enemy” was a territorial neighbour (Bigo 1998: 149). In order to reduce possible conflicts on the borders, the states drew borders into the landscapes which were quite different from the frontier zones of ancient times – the linear territorial borders were an invention of the European state! Military units were widely used not only to control the borders but also for policing and “social control” (in a general sense). – Now, the early modern state in its formative phase had to eliminate, or at least to force back, the rival holders of autonomous power dating from the pre-state phase of history, in order to establish its own monopoly of power. “This is the origin of the state” (Reinhard 1996: 8). The starting point for the state-building on the European level had nothing to do with the “daily violence” of people or “private wars” of warlords – as is still the case on the African continent and in other areas of the world society – but with the violence resulting of the anarchy of the European state system, that is, with states as war machines, and in Europe war was “endemic” almost the whole period of modern history, especially in the first half of the twentieth century. One of the underlying projects of the European unification process can be called “pacification of the European society” by eliminating anarchy in the relations between the states (with all its consequences as, for instance, power politics, e.g. arms race). – It is true that the European Union has no armed forces to threaten member states which don’t comply to its rules – in this respect the EU deviates from the Westphalian model (MacMillan 2002). But does the EU need such a force for the management of its internal relations? The answer is “no”, because the EU is actually a “power state” in the strict sense of the word, that is, it does not need force to coerce but “only” its power, and the EU has enormous power to sanction non-compliance, namely, the power to exclude. If it is true that the “wealth of nations” in Europe is dependent of membership in the Union or at least of being closely associated with it, than exclusion is a sanction that threatens a state and its population with the prospect of poverty (relative to the wealth of the other nations), not to speak of the unbearable situation of being excluded from the EU and treated as a sort of “pariah-state” by the rest of the community. – Nevertheless, the member states still insist on their right to be the supreme or sovereign commander of their armies and they behave as if their membership had not changed the security condition of their countries. What is needed is a thorough redefinition of the future problems of “security” for the European Union and after that a complete re-structuring of the military according to the respective requirements.

2. With the advent of gendarmes in the villages even of remote regions during the course of the nineteenth century, the state could eliminate the last remnants of non-state powers at the local level, as were the aristocratic landlords or parishes of the churches or magistrates of towns (which had to establish new forms of police). But the police was neither a homogenous structure – almost all countries had different types of police (Emsley 1999) – nor was it governed by the central state, on the contrary, it was under the command of local authorities and had sometimes even be paid by them. – In quite a similar way has the EU overtaken the competence of legislation for “policing Europe” whereas the member states have the responsibility of executive functions. This situation could well be conceived with Caporaso as a “regulatory state” (Caporaso 2002). But, as we have seen, this is not the whole story; we have to take into account the existence of the “European Police Office” which is an institution in its own right even if it provides only intelligence or information; but as the director of Europol has aptly put it, information is the decisive “raw material” of every police work and without it the police would be helpless (Storbeck 2001: 187). Anyway, as the German term “Europäisches Polizeiamt” clearly expresses, it is thought of as an institution of the state – “Amt” is the basic organizational unit of the state!
3. Borders or frontiers had been established by the modern state in order to delineate the territory over which it claims jurisdiction, or to designate where the jurisdiction of one state ends and that of the other begins. In this respect borders have indeed a “primordial function”, as Anderson (1998: 4) writes because borders are - and that is my interpretation - a prerequisite for the “segmentary form of differentiation” of states on the basis of closures of territories by borders and it is this function by which a single state can exist in the international political system. “The frontier is the basic political institution: no rule-bound economic, social or political life in advanced societies could be organized without them” (Anderson 1998: 4, emphasis in the original text). And borders have always been of great concern to the states because they involved questions of sovereignty. – Now, the Schengen Conventions dismantled the internal frontiers of the member states or introduced the distinction between “internal frontiers” and “external borders” with the consequence that the European Union got the problem of its own borders, that is, it was necessary to construct an “inside” and “outside” for the Union itself. Only five states participated at the beginning of the Schengen process, at the end all member states are in the Schengen area (with the exception of UK and Ireland, for the time being), and the EU has made it clear in preparing the enlargement that the new members must accept the Schengen commitments “in full” (Wallace 2000: 184). Whether one likes it or not, Schengen became a great success story for the European integration process and is at the same time a decisive step in the direction of state-building: the EU has all the competences for legislation and the rules for border controls are EU law even if a state reactivates its border control for a certain time – that is, the member states have lost their sovereignty in this respect to Community law. “Hence the sovereign exercise of internal border control, although still available in principle, is barred by Community law” (Müller-Graff 1998: 19).

4. With the consolidation and the growth of its power, the early modern state started endeavours directed to a systematic re-organization of the space of its territory in order to overcome the obstacle of distance. Famous in this respect is the route royale (king’s highway) in France of the time of the reign of Louis XIV who also enforced the marechaussee (the only gens d’armes allowed) as a form of highway police to provide security for travellers and the transport of goods. The route royale enabled journey times to be reduced by over half, journey speed doubled (Meyer 2000: 119). In England, the new constructions of roads, bridges and canals summed up to a veritable “communication revolution” during the eighteenth century. Equally important was the role of the state in the intellectual mastery of space, more precisely, the financing of scientifically based maps that ended with establishing geography as a science. The German lands had to wait until the military successes of the Napoleonic time swept away the hundreds of pre-modern forms of local domination which had been protected in their rights by the Holy Roman Empire (theocratic dominations of the Catholic Church, for instance, Salzburg; small principalities claiming some sovereign rights; autonomous cities defending their “freedom”, etc.) and thereby retarded the formation of modern states as larger territories with clear frontiers. The importance of this process for the “modernization” of what is today Germany cannot be overestimated. – All this led to the erosion of local boundaries which were penetrated by the new networks of roads and traffic lines what again contributed to improvements of many forms of communications and played an important part on the move towards the unification of national markets. – Now, as the integration process of the European Union has removed “internal frontiers” which already had been experienced as obstacles (not anymore as means of protection and security) to many forms of exchange across them, and as the EU has taken measures to strengthen its “external borders” (which will move eastwards very soon), we can expect new initiatives for a systematic re-organization of European space – at least our historical comparison leads us this expectation and the measures taken by the EU to re-order the European airspace underscore the importance of this aspect of “modernization”.

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5. Finally, the process of state formation on the EU level should have feed-back effects on the member states changing their characteristics of statehood. But for the time being, it may be too early to begin with analyses because this process is simply just at the beginning and the outcomes uncertain. At least some restructuring will be inevitable to re-adjust the state structures to the reality of being not a full-fledged nation state anymore but “only” a member state. The change has been quite aptly put in the phrase “From nation-state to member-state”.

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