Chapter One
State authority

A good place to start finding out about the concept of state is to consult an encyclopedia of the state\(^3\) or politics,\(^4\) a manual of political philosophy and social philosophy,\(^5\) or the now standard work on the modern state by Arthur Benz.\(^6\) The information they offer is discouraging: there appears to be consensus that it is difficult if not impossible to define the state. Arthur Benz quotes Raymond Boudon and François Bourricaud to the effect that “defining the state is an almost hopeless task”.\(^7\) With almost moving intensity, Josef Isensee, a leading German teacher of constitutional law, describes the inevitable “relativity of all concepts of the state”:

“What the state is cannot be reduced to a single concept or captured by a scholastic definition. This is in the nature of the subject: the complexity and spatio-temporal mutability of state phenomena. A concept can capture only one of countless aspects of ‘the state’. Consequently, all concepts of the state are necessarily relative, and many such concepts are accordingly needed. An approximative picture can emerge only from the multitude of aspects that come into view in circumnavigating the topic. The state as the subject matter of scholarly research requires both normative and empirical methods. It is addressed by many disciplines: legal, philosophical, historical, economic, political and other ‘social-scientific’ fields of study: all that traditionally constitute the → ‘Staatswissenschaften’ (‘sciences of the state’) in the broadest sense of the term. → Staatslehre (‘theory of the state’).”\(^8\)

Given these difficulties, various strategies can be considered. Christoph Möllers suggests following the Anglo-American pattern of simply doing without a definition;\(^9\) or one could ask whether a concept of state is really necessary.\(^10\)

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3 In Germany, encyclopaedias of the state (Staatslexika) traditionally have a denominational orientation. Apart from the Catholic “Staatslexikon in fünf Bänden” by the Görres-Gesellschaft (ed.) (1989), there is the Protestant “Evangelisches Staatslexikon” by Heun et al. (eds.) (2006).

4 See, for example, Fuchs/Roller (2007).

5 Gosepath et al. (eds.) (2008).

6 Benz (2008).


10 Benz (2008) is convinced that it is necessary (6): “We need the concept of state to describe an institution of modern societies performing important services indispensable for the continued existence and quality of society. This is where a substantial part of politics takes..."
We are firmly convinced that such avoidance strategies are not the solution: the manifest, enduring role of the state as key governance actor\textsuperscript{11} makes it more necessary than ever to map out the contours of the concept.\textsuperscript{12} Our strategy is to circle the object “state” to gain a closer view from three different angles – in the hope that the intersections will throw the “nature” of the state into relief, teaching us something about the role of the language of law in the process. The itinerary proceeds under three headings:

* Functions of the state and the role of law
* The state as form of rule and the role of law
* State semantics and the role of the language of law

A. Functions of the state and the role of law

In his key article on the state in the Görres Society dictionary, Josef Isensee lists six \textit{functional characteristics of the modern state} (for which he reserves the term “state”).\textsuperscript{13}

* The modern state as an \textit{entity of peace}
* The modern state as a \textit{decision-making entity}
* The modern state as an \textit{action entity}
* The modern state as a \textit{legal entity}
* The modern state as a \textit{power entity}
* The modern state as a \textit{solidarity association}

The following samples all show that these various entities cannot be described without the help of law and its language. This hold true in the first place for the modern state as peace entity: “The modern state … has brought peace to society, disarmed the citizenry, and replaced self-justice by place and will do so for the foreseeable future.” Unlike concepts such as government, administration, governance, etc., “state” captures the specific \textit{form of authority} that has developed in modern society. The concept also helps us understand changes in politics and society. We may be experiencing a fundamental shift towards a system of rule that can be clearly distinguished from what we call the state. But it is perhaps not the form but only the content and procedures of state authority that are changing, which does not necessarily mean that the challenges facing government and administration are any less daunting.

\textsuperscript{11} See, in substantive agreement, \textsc{anter} (2013) 17 ff.; and \textsc{schuppert}, G. F. (2013a) 29 ff.
\textsuperscript{12} See \textsc{schuppert}, G. F. (2018a).
\textsuperscript{13} \textsc{isensee} (1989) col. 136.
procedure … This obligation of the citizen to keep the peace is the counterpart of the state’s monopoly of force.”¹⁴ Still more evident is the situation with the state as decision-making entity: “In accordance with a given division of powers and rules of procedure, the state deals with disputes that affect public welfare and whose settlement cannot be left to societal self-regulation.”¹⁵

We have already discussed the modern state as an action entity (Hermann Heller: Handlungs- und Wirkungseinheit) at some length: it is the law as organizational and procedural law that produces this entity and renders it viable. And the state as a legal entity requires no further comment. With regard to the state as a power entity, power, too, is organization through law: “The basis is the monopoly of legitimate physical violence (Max Weber). Only the state has the right to use coercion and to maintain organized coercive potential: police, army, administrative or judicial execution and enforcement. By virtue of these tools, it differs from non-state associations. Indeed, the means, not the ends constitute its particularity.”¹⁶ Finally, the state as a solidarity association is also constituted legally: “State solidarity is legally constituted and organized as a (territorial) body corporate, and thus as a legal person that lends the association legal identity regardless of shifting membership. Membership of the corporate association of the state, of the nation arises from citizenship.”¹⁷

In brief, the state as a viable actor is constituted by law, above all by organizational and procedural law. If we add what we have learned in discussing rule-of-law principles about the function of law in establishing and limiting power, we can join Arthur Benz in describing the “authority of the state under the rule of law” as follows:

“Sovereignty and the authority of the state as integral part of the institutional order of the state are limited by law. Only to the extent that they serve to realize the law are they considered legitimate power. This does nothing to lessen their coercive nature for those affected. But they find recognition only in conjunction with the structures of a democratic state under the rule of law. Their exercise is entrusted to special institutions of democratic lawmaking, bureaucratic administration, and the judiciary. The coercive power of the modern state is therefore necessarily tied to the form of enacted law and the structure of a democratic state under the rule of law.”¹⁸

¹⁶ ISENSEE (1989) col. 137.
¹⁸ BENZ (2008) 133.
B. The state as a form of authority and the role of law

According to Christoph Möllers, “The state is a central category in the Western tradition for describing a highly aggregated system of authority distinct from others (→ Herrschaft). The concept combines institutional development, political theory, and legal dogmatics in a mix often difficult to clarify.”¹⁹ A look at what booming empire research calls imperial rule reveals that law plays a particularly important role in this mix. Jane Burbank and Frederick Cooper have addressed the manifestations of imperial rule with particular intensity,²⁰ examining what actually goes to make up the repertoire of imperial rule. As they show for the Roman and Chinese empires – their favourite examples – law is one of the most important elements in this repertoire.

Burbank and Cooper speak of the Roman Empire as a republic built on war and law,²¹ where we encounter law in three guises, first accompanying Roman (state)²² institution-building in developing the structures of republican governance:

“The radical move from kingship to republic was accompanied by measures designed to prevent a return to one-man rule. Personal authority in the republic was constrained by a strict term limit on magistracies, by the electoral power of the people’s assemblies, and by the authority of the senate – a council of serving or former magistrates and other men of high office. Underlying these institutions and giving them force was a commitment to legal procedures for defining and enforcing rules and for changing them. The historian Livy described Rome as ‘a free nation, governed by annually elected officers of state and subject not to the caprice of individual men, but to the overriding authority of the law’ (History of Rome).”²³

Secondly, law acts as the unifying bond of the Roman Republic, constituting what Burbank and Cooper describe as an important element in the “seductive culture” of Rome:

“Law was part of this Roman civilization, both a means of governance and a support for the social order. … What was Roman about Roman law from republican times, and

²⁰ Burbank/Cooper (2010).
²¹ Burbank/Cooper (2010) 44.
²² Whether we can speak of “state” rule in “ancient Rome” in connection with governance structures is a controversial subject among historians; see Wiemer (ed.) (2006); and Lundgren (ed.) (2014).
what became a powerful historical precedent, was professional interpretation, operating in a polity where the manner of making law was itself an ongoing and legitimate political concern. Rulers had issued laws in much earlier times; the Babylonian king Hammurabi who ruled from 1792 to 1750 BCE had a law code inscribed in stone. The Greeks had laws and theories of the state and the good, but they did not create a legal profession. From the mid-second century BCE, just as the republic was expanding most aggressively in space and institutions, jurists appeared in Rome, drawing up legal documents, advising magistrates, litigants, and judges, and passing on their learning to their students.”

What proved to be particularly important, however, was the granting of Roman citizenship as an element in the Roman expansion strategy:

“To govern outside their capital, Romans developed strategies that would enter the repertoires of later empire-builders. One of these was the enlargement of the sphere of Roman rights. … [Of] particular import for Rome’s future was that its citizenship came to be desired by non-Romans, and was preferable to substantive autonomy in allied cities or colonies. From 91 to 88 BCE, Rome’s Italian allies rebelled against their lack of full Roman rights and fought Rome to attain them. After much debate, the senate made the momentous decision to grant citizenship to all Latins. Extending citizenship became both a reward for service and a means to enlarge the realm of loyalty.”

Burbank and Cooper describe this unifying function of Roman citizenship as follows:

“Citizenship, as we have seen, had been central to Roman politics from republican days, a means to draw loyal servitors into the empire’s regime of rights, a status so advantageous that Latins had fought for the privilege of becoming Romans in the first century BCE. The institution of citizenship was also connected to the most basic mechanism of imperial rule – military service, law, and, providing for them both, taxes. The emperor Caracalla’s enlargement of citizenship in 212 CE has been interpreted as a measure of necessity: if all free males in the empire were made citizens, they could be called to serve in the army, to submit compensation if they did not serve, and to pay inheritance taxes imposed on citizens. But Caracalla’s declaration focused on religious cohesion: with citizenship, the worship of Roman gods would be extended throughout the empire. An incorporating and unifying impulse was at the core of the new policy. Through military service, taxation, legal protections, and common deities, ten of millions of people – free men with their families – would be connected more directly to the empire’s projects and to a Roman way of life.”

With regard to the *Chinese Empire*, Burbank and Cooper also delve deep into the “toolkit for Empire”, especially during the *Qin dynasty* in the third century BCE and the following *Han dynasty*. Over this period, what we would now call a regulatory and administrative state developed:

“If the Qin empire was to last, the emperor’s claim to universal power had to be recognized throughout his enlarged realm. The empire was divided into command areas, and further into counties; these were administered by officials appointed from the center and subject to recall at any time. Three different officials – a governor, a military commander, and an imperial inspector – supervised each commandery. Qin governance by centrally appointed officials contrasts with Rome’s empowerment of local elites and senators to exploit distant territories on their own.”

Burbank and Cooper describe this rule-bound civil service machinery:

“For the Han, unlike the Romans, a large and intricately organized body of officials was critical to imperial power. The tradition of learned advisors offered rewards and pitfalls both to ambitious councillors and to the emperor, who benefited from multiple sources of advice but could also succumb to flattery and intrigue. The capital city, with its dominating and off-bounds imperial palace, teemed with officials and their staffs and servants. Officials served on a scale of ranks – 18 in 23 BCE – with a sliding scale of remuneration. The Grand Tutor, three grand ministers (of finance, of works, and the commander in chief of the military), and nine lesser ministers, as well as a powerful secretariat, could influence, guide, or obstruct the emperor’s will. So, too, could the emperor’s family, including the emperor’s mother, whose powers were enhanced by the seclusion of the imperial court. These competing networks diversified the information, goals, and capacities of the centralized administration.

Government by officials was invigorated by meritocratic selection. The emperor recruited not from an aristocracy but from the sons of landowners, and in 124 BCE he created an imperial academy – some call it a university – to train them in techniques of rule, record keeping, and Confucian ideals. By 1 CE a hundred men a year were passing examinations by scholars and entering the bureaucracy. Young men from the provinces, usually nominated by officials, were brought to the capital to study and be evaluated. Candidates were placed in service throughout the empire; the most highly appreciated served in the capital.”

To sum up: both the Roman and the Chinese Empires show how important law was as a pillar of the state repertoire of rule. Whereas the issues in

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Rome were institution-building through law and the institution of citizenship as a tool for the “governance of diversity”, in China the chief concern was the crucial importance of a professionalized body of officials – i.e., bureaucracy – for the efficient administration of a gigantic imperial space. We turn now from these old empires to the third variant of our unity strategy.

C. State semantics and the role of law

I. Jurists as strongly committed trustees of the concept of state

The search for a manageable definition of state will almost inevitably take us to the famous three elements theory of jurist Georg Jellinek, who posits that the architecture of the state comprises territory, nation, and authority:

“German jurists perfected the theory of the state, in 1837 declared the state to be a legal entity, and finally developed an authoritative definition of the state. The following features or claims accordingly characterize the modern state: 1. A state territory as exclusive area of authority, 2. A national people as sedentary association of persons with permanent membership, 3. A sovereign state authority, which means (a) internally a monopoly of the legitimate use of physical violence, (b) externally legal independence from other authorities. Strict unity of territory, people, and authority are a sort of common denominator. There is only one state authority, and the constitutive people (Staatsvolk) composed of legal individuals speaks only one language.”

Although there can be objections to Jellinek’s successful definition, the historian Wolfgang Reinhard, writing under the heading “modern state-building – an infectious disease?” has not hesitated to use it as a working definition. And the very plausible thumbnail portrait of the modern state provided by Arthur Benz clearly betrays the influence of Jellinek’s three element theory. Benz’s “approach to the concept of state” reads as follows:

* “The modern state is a territorial state; its power extends over an area where it exercises exclusive supreme authority and is formally subject to no external influences.

32 In: Reinhard/Müller-Luckner (eds.) (1999) VIII.
The state is the body of the citizens of its territory, which constitutes itself as national people (Staatsvolk) or political nation (Staatsbürgernation).

The state is an organized decision-making and action entity (Heller [1934] 1983: 259) of a society. It is empowered – as minimum competence – to make law and exercise legitimate coercion (monopoly of domination, Weber [1921] 1967: 29), and, moreover, it has the function of providing public goods and services – however defined in the political process.

The state is grounded institutionally in the constitution, which provides the legal basis for its action.

The political structure of the modern state is democracy: decisions by institutions of the state must derive from the will of the united people.

The activities of the state include implementing the will of the people, determined in democratic procedures, through a governmental and administrative organization that has developed from the administrative staff of the absolute monarch. The form of organization designed to ensure predictability and controllability is bureaucracy.\(^{33}\)

The dominance of jurists in developing and administering the concept of state is certainly to be explained by the fact that the discipline of jurisprudence has to operate more than any other with this concept. This is particularly apparent in the subdiscipline international law: “States constitute the international legal community as original and regular members. International law depends on defining the state. The status of a polity as a state decides whether it is recognized as a subject of international law and a member of the system of rights and obligations under international law. The ‘three elements’ the necessary and sufficient preconditions under international law are state territory, state people, state authority (Staatsgebiet, Staatsvolk, Staatsgewalt) (G. Jellinek).”\(^{34}\)

But constitutional law, too, needs the state – as assignee of legal responsibilities: “In law, ‘state’ refers to a normatively defined organizational form of sovereign power to which only certain rules of constitutional and international law apply. To this extent, the concept describes a legal attribution construction, a legal subject to which certain actions can be attributed.\(^{35}\) However, the legal status of ‘state’ presupposes the existence of an order defined in terms of territory and personnel such as that expressed and

\(^{33}\) Benz (2008) 38.

\(^{34}\) I sensee (1989) col. 135.

applied in Georg Jellinek’s three element theory (state authority, state territory, state people).”

The concept of state is thus at home in the discipline of jurisprudence, and there are no signs of it being evicted.

German political science, by contrast, has expended much effort on avoiding the concept of state, a strategy Arthur Benz explains as follows:

“In avoiding the concept of state, political science not only distanced itself from the older Staatslehre (theory of the state) but also reacted to the fact that, in modern societies, politics also takes place outside the state and that the boundaries between state and society are becoming increasingly blurred. Attention turned first to associations that represent societal interests and seek to promote them in competition and cooperation with one another. Later one discovered the outsourcing of public sector functions to non-state organizations. … moreover, politics and the state are even farther apart for those who discover politics outside established institutions, ‘beyond formal responsibilities and hierarchies’ and who accuse experts that ‘equate politics with the state, with the political system, with formal responsibilities and advertised political careers’ of misunderstanding the concept of politics.”

At any rate, there is no denying that, empirically, politics is not limited to the framework of the state. Changes in statehood – which some equate with the decline of the state – that clearly lead to state activities ‘fraying’ in the course of internationalization and privatization, seem to corroborate the view of those who deny the state concept its central importance in political science.

In actual fact, however, the concept of state is not only experiencing a renaissance in political science; empirical observation in recent years suggest it is in the best of health and shows no signs of expiring as predicted.

37 Beck (1993) 156.
40 See Vosskuhle et al. (eds.) (2013); see also Anter (2016), which, incidentally, strongly stresses the contribution of jurists to current state theory: “Among the authors who currently represent a realistic theory of the state are notably Gunnar Folke Schuppert, Josef Isensee, and Dieter Grimm. Interestingly, all three are jurists, albeit with a strong inclination towards the social sciences.”
II. The meteoric career of the state concept in the guise of the “reason of state”

There seems to be broad agreement that the real career of the state concept really took off only when it came to be linked with the ‘reason of state’ notion: “The origins of the concept [of state] appear to lie in the political prudential literature of early modern Italy … It served as a terminological means of differentiating between innerworldly political organization and transcendental claims to rightness, thus describing precisely the function of substantive autonomization of the political order from material demands on its content. However, the Italian authors tended to make topical rather than systemic use of the idea. The topos is the reason of state (Staatsråson, ragione dello stato, raison d’état) as a passpartout argument for enforcing order against moral or religious objections.”

According to Herfried Münkler, reason of state is a “tendentious term used in the building of the early modern state, steering its internal consolidation and external expansion.” In similar vein, Paul-L. Weinacht speaks of the double thrust of reason of state: inwards and outwards:

“The advance of thinking in terms of the state that accompanied the transformation of overall conditions – grounded in estates and princely rule – in the absolute princely state (Fürstenstaat) is evident on a number of fronts: ‘ratio status’, the politico-juridical concept of the new princely regime, had many adversaries: within, the estates, without, the emperor and the empire; both within and without: the churches; and not least of all the concrete interests of external competitors and rivals (i.e., their reason of state). The reason of state had its profile sharpened by these conflicts: as legal doctrine of the absolute regime internally, as political doctrine of prudence (new politics) externally.”

In parallel to the two chief aspects of the reason of state concepts – internal stabilization of rule and building an external carapace, the passage shows that reason of state also gained the quality of a legal concept. Herfried Münkler comments on this interdependence between the internal and external aspects of the associated juridification of the reason of state:

“With the development of the European system of states, interest grew among kings and princes to centralize rule within their states … Central authorities tend above all

43 Weinacht (1975) 70–71.
to concentrate legal and fiscal powers to enable the state to focus all its energy outwards in the event of political and military conflict. The question of the religious unity of the state is also important in this context, which – in conflict with the ‘liberty’ of the estates – joins forces with the idea of the reason of state … What in Machiavelli and Guiccardini was justified only on grounds of utility, was in the confessional disputes in the second half of the sixteenth and the first half of the seventeenth centuries legally underpinned by the evocation of emergency. Thomas Aquinas had already advanced the notion of ‘derogatio legis’ (derogation from the law) for purposes of ‘utilitas multorum’; this was supplemented by Seneca’s maxim: ‘Necessitas omnen legem frangit’ – necessity breaks every law. This formula was taken over by Justus Lipsius (Politicorum libri sex, IV, 14; 1589) and Hippolitus a Lapide (Diss. de ratione status, Prol., Sect. V; 1640); Jean Bodin (République, IV, 3; 1576) reworded it as: ‘Nulla igitur tam sancta lex est, quam non oporteat ur gente necessitate mutari’ – no law is so sacrosanct that it cannot be changed in an emergency. The reason of state idea thus begins to assume legal character."

The development of the reason of state concept has been described in similar vein by Michael Stolleis:

“The more territories formed themselves into ‘states’ by developing their own administration, educational facilities, and armies, the more plausible it seemed to assert their own ‘raison territoriale’. With the almost unconstrained sovereignty brought by the Peace of Westphalia, this fact also gained legal recognition. Not only the renaissance of the universities after the war but also the removal of this legal obstacle probably explain the broad wave of legal dissertations on the ‘ratio status’ from 1650 on. While setting external bounds to the reason of state of the given sovereign, these treatises also discussed the internal possibilities and limits of legitimation vis-à-vis the estates and subjects. The latter aspect is particularly important; for the right of expropriation, contract termination, the levy of special taxes, and the revocation of old privileges and other special legal titles needed legal justification. It was supplied not only by the well established devices of necessitas, notturft, bonum commune and utilitas publica but also by the reason of state as a legal concept. The jurist Besold was clearly aware of this shift in categories: ‘Ratio politica, quam nunc vocant de Statu (olim aequitas & epieikeia) transgreditur legis bus, scripto vel voce promulgatae; literam, sed non sensum & finem’. This is the early, moderate level at which, although breaching the letter of the law, the reason of state fulfilled its ‘spirit’. Later, the reason of state was to change into a unilateral governmental legal title justifying interventions of all sorts, while its parallel limiting function weakened as absolutism consolidated.”

45 Stolleis (1990) 37 ff., 68 f.
These two passages lend support to Münkler’s definition, encompassing as it does the *content and thrust of the reason of state*. Summarizing early modern reason-of-state and arcana literature, he seeks to concentrate the central elements of the reason of state:

“The common denominator of all reason-of-state theories is the power to contravene traditional and positive law internally and the authority to terminate contracts externally; but in both cases with the objective interests of the state strictly in mind. The reason of state accordingly means rejecting all concepts of politics committed to universal norms and values, the triumph of the particular in the sphere of the political.”

What is striking about this definition is that *dealing with law* constitutes the core of the reason of state – and of sovereignty. If the essence of sovereignty is the justification and *institutionalization of the lawmaking monopoly*, the core of the reason of state lies in the authority to contravene the law. This recalls the role of the language of international law as a language of justification discussed above in the context of international law.

III. A remarkable semantic shift: from state to statehood

If the “state” is not disappearing but is clearly more and more in its element in times of crisis – financial, monetary, European, or whatever – as an entity with an effective executive, this indicates that it is the *concept* of state that is in retreat. Over recent decades, the discussion on the state has revealed a conspicuous shift in usage from *state* to *statehood*. Talk is now almost only about statehood, not only in the two collaborative research centers “Changing Statehood” (“Staatlichkeit im Wandel”, University of Bremen, until 31/12/2015) and “Governance in Spaces of Limited Statehood” (“Governance in Räumen begrenzter Staatlichkeit” FU Berlin until 31/12/2015), but in almost all more recent publications. Note what a student advisory service brochure at the University of Passau has to say about a study programme: “The bachelor’s programme ‘Governance and Public Policy – Staatswissenschaften’ is grounded in disciplines that classically address the relationship between the state, society, and the economy. This programme combines political science,

47 On the inappropriateness of the retreat metaphor for the development of the modern state, see Schuppert, G. F. (1995b).
Historical, economic, philosophical, (international) law, and sociological aspects. ‘Statehood’ as the subject and focus of the programme encompasses both the nation-state perspective and the various forms of political activity (domestic, international, supranational), that are examined at multi-disciplinary and interdisciplinary levels. 

Since, in our experience, semantic shift is less a fashionable label than (like the shifts from third sector to civil society and from control to governance) an expression of more profound processes of change, or at least of a more or less radical change in perspective, this shift from state to statehood deserves our attention; there must be particular grounds for this change in terminology. Three can be identified:

- One decisive advantage of the statehood concept is that it imposes no categorization and thus helps avoid unease about assessing the extent to which the EU has a state-like quality. Hans-Jürgen Bieling and Martin Große-Hüttermann comment: “In this connection we speak explicitly of ‘statehood’ and not of ‘state’ because the concept of statehood is more open and adaptable from an analytical point of view … Especially in the debate on the state-like nature of the European Union there is a ‘wide conceptual mantel of statehood’, since the EU is a specific, historically contingent, institutionally and dynamically shifting form of a model for political order, which is not to be understood as a deficient or underdeveloped form of a ‘state’ on the model of OECD states.

- Historians who are concerned with “statehood” in antiquity or the Middle Ages also appreciate the concept: it can, for example, prove helpful in answering the question of whether the governmental practices of the Roman Empire can be described as a “state”. Under the heading “statehood as analytic category”, Christoph Lundgreen explains: “Statehood should … first … be understood as ongoing process rather than state. Movement within this process should, second, not be coupled with the figure of thought of rise and fall or other teleological concepts but be treated analytically as weaker or more intensive statehood. If, moreover, political science sees varying statehood as characteristic of the present day and comparative history as typical of the nineteenth century, the strict “state/non-state” dichotomy ought to be abandoned in analysing antiquity, as well Writing about “statehood and political action in imperial Rome”, Hans-Ulrich Wiemer remarks in similar vein: “Whenever it is a question of the action patterns and spaces of political actors, it is also question of what forms of state-

52 Lundgren (2014) 34–35.
hood determine how they act … What is decisive is institutionalization, i.e.,
objectivization and stabilization, the performance of joint responsibilities, so
that there are necessarily varying degrees of ‘statehood’.\footnote{Wiemer (ed.) (2006) 1–2.}

Governance studies, too, prefer to work with the concept of statehood, because it
can capture entities – ‘étatique ou non étatique’ – that are either not states in the
legal sense of the term or only partly or deficiently provide what is normally
associated with the concept and expected of the modern, Western type of state.
What the statehood concept thus permits is to enter the whole motley world of
“varieties of statehood”, to study the various “configurations of statehood”\footnote{Zürcher (2005) 13–22.} and
not to limit oneself to the narrow perspective of statehood as defined by the
OECD.

What does the semantic shift from state to statehood mean for the language of
law? This massive change in language use can be understood as a call for
jurisprudence to overcome its fixation on an essentialist and supposedly exactly
defined concept of the state, which had developed in the course of the nine-
teenth century and encouraged the dominance of thinking in terms of the
nation-state,\footnote{On these isolation tendencies, see Glenn (2013).} by doing two things: first to address the state as a process\footnote{Schuppert, G. F. (2010).}
and thus avoid having to write its history as a narrative of either rise or fall
(the latter being the more popular option);\footnote{See my controversy with the Bremen Collaborative Research Centre “Staatlichkeit im Wandel”
in my article, Schuppert, G. F. (2008c) with the response by Genschel/Leibfried (2008).}
and second to take up the analytical potential of classical “Staatswissenschaft”, (“science of the state”)
and apply it anew under the conditions of Europeanization, transnationaliza-
tion, and globalization. In what could be called “Staatlichkeitswissenschaft”
(“science of statehood”), the language of law would retain its legitimate place.

It will be no surprise that we now turn to the concept of sovereignty,
generally considered the central characteristic of the modern state.