

## CHAPTER II-6-2.2

# The Monopoly of Legitimate Violence and Criminal Policy

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### I. INTRODUCTION: VIOLENCE AND THE STATE

The modern state emerged in centuries of bitter fights, in which competing power holders were brought down and robbed of their capacities to use violence as a political means of exerting power. “In the past” Max Weber stated succinctly, “the most diverse kinds of associations—beginning with the clan—have regarded physical violence as a quite normal instrument. Nowadays, by contrast, we have to say that the state is that human community which (successfully) lays claim to the monopoly of legitimate physical violence within a certain territory, this ‘territory’ being another of the defining characteristics of the state. For the specific feature of the present is that the right to use physical violence is attributed to any and all other associations or individuals only to the extent that the state for its part permits this to happen. The state is held to be the source of the ‘right’ to use violence” (Weber, 1994:310f.).

In the past, states have taken on many different functions. The diversity did not diminish in the era of globalization. Modern states do not differ from their predecessors in the specific set of tasks they pursue, but in their institutional structure. On this point at least, the majority of scholars who currently debate the future of the nation-state follow Weber’s thought, in particular the “new institutionalisms” in social science, economics and history. This is true even though many authors do not accept Weber’s defining criteria of the modern state.<sup>1</sup> For Weber the modern state is the one and only rule of man over man—Herrschaft—that has the capacity for maintaining social order regardless of the

<sup>1</sup>Giddens, 1987:20, Mann, 1993:54, and Tilly, 1985:171 depart from Weber by eliminating the concept of legitimacy (Thomson, 1994:7). For the new institutionalism debate, see Evans, Rueschemeyer & Skopol, 1985; North, 1990; Peters, 1999.

specific content. Weber defines the modern state not by specific functions, as Hobbes or Locke do, but by its specific instrument—the monopoly of legitimate physical violence. The monopoly is the indispensable prerequisite for the capacity of any form of government to enforce binding decisions in a given territory (Weber, 1994:309–311, 1978:54–56).

From a Weberian point of view, however, it is not the superiority of the state's coercive powers and its capacities to force resisting subjects into submission that constitutes and defines the monopoly of the modern state. In order to speak of a successful monopolization of violence the state has to embody a power "super terram" (Hobbes) that is entitled to assert its authority by force.

The state has to be able to count on the subordination of those citizens and aliens who are subjected to its rule in a given territory. A use of violence—the sheer force of arms—may compel compliance. In order to establish enduring subordination, the authority to enforce rules by force needs credible 'inner justification' (Weber, 1994:311). This holds true for any form of rule of man over man. It is only the modern state, however, which succeeds in establishing an exclusive and universally binding "spatial system of authority and subordination and to maintain it permanently by its monopoly of legitimate violence" (Rokkan & Urwin, 1983:21; Tilly, 1975). This spatial system of authority is based on the specific instrument of the state—its monopoly of violence—and the superiority of the legal/bureaucratic rule to any form of private efforts to enforce social order.

The superiority and efficacy of the bureaucratic state supplies only a necessary, not a sufficient justification of the monopoly. "In using the notion of violence," Luhmann argues, "state theory refers to the system of society" (2000:195). Without some degree of societal acceptance, any effort to institutionalize a state monopoly of physical violence is doomed to fail. Consequently, governments and their agents have to justify the use of force—its purposes as well as the specific ways they try to compel compliance. In democratic states these justifications amount to the assumption that it is exclusively a 'government by law' not by man that finds expression in and subsequently legitimizes the authority of the state. Citizens are willing to accept coercive measures by the police and the criminal justice system as long as they become convinced that the use of force—in order to enforce the law, to maintain public order or to implement binding decisions—is governed by the rule of law (Weber, 1994:311–313; Lassman, 2000:88).

In order to claim a monopoly of legitimate physical violence, states are not required to reserve the legitimate use of force for a central apparatus. All modern states do in fact delegate the authority to use legitimate force to a wide range of state and societal institutions. Furthermore, the state's claim to a monopoly of legitimate violence does not apply to all possible ways actors can exert power, whether by psychological pressure, intimidation or material constraints. The claim is restricted to direct physical coercion, to acts which "aim at the physical vulnerability of persons" (von Trotha, 1995:131, FN. 3). And finally the state's claim to a monopoly does not imply that the coercive institutions successfully eradicate all violent acts in a society, either by individuals or by groups. Violence remains the most ubiquitous resource on which every social actor can depend. In societies in which the state successfully exerts a monopoly of physical violence, however, such individual acts of violence become the extreme opposite of "legitimate force;" they become illegitimate and therefore "criminal violence" (Luhmann, 2000:195).

As a synonym for the Leviathan, the term "monopoly of violence" is widely used in social science and jurisprudence. Social historians, too, attach significance to the "extraction-coercion cycles and the successive monopolization of violence in the formation of the European nation-states" (Finer, 1975:96; cf. Reinhard, 1999:306–369). The rising territo-