In the Matrix of Global Governance. Reflections on the Transformation of Statehood in the Age of Global Governance. (A "globális kormányzás" mátrixában. Gondolatok az államiság átalakulásáról a "globális kormányzás" korában.)

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In the Matrix of Global Governance
Reflections on the Transformation of Statehood in the Age of
Global Governance*

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1 New, Global Challenges

Today’s current state of affairs suggests that the phenomenon of globalization has been profoundly changing the conceptual framework of politics. This fundamental transformation has not been unexpected, indeed, certain signs have made such a fact foreseeable. However, all of these signals – the growing worldwide economic interdependence,¹ the gradual rise of the global civil society,² the emergence of new political ideas as for example environmental protection³ or global thinking⁴ and the slow formation of global decision-making processes⁵ – were rather fragmented. So, traditional background of politics has not been capable of integrating all of them simultaneously and developing a new background adjusted to these new, global challenges. Today

* The author is very grateful to John H. Mittelmann and Roger A. Coate for their encouragement and support.
² About the expansion of global civil society see J. A. Scholte “Global Civil Society” in Woods (n. 1), 173–90.
⁴ On the relationship between “deterritorialization” and global thinking see Scholte (n. 2), 178–82, 183.
it can clearly be seen that our post-post Cold War world largely differs from the prior one due to these factors.

Because of this transformation process a revision of the traditional political concepts is unavoidable. The present study aims to begin this revision, through attempting to give an analysis of one of these traditional concepts: that of the state. Since globalization is a phenomenon of largely international nature, that is to say, globalization cannot be forced among national borders, our questions must be posed from the aspect of international dimension. How to appreciate the role of the state within the system of nowadays’ new global international relations? How to conceive of the traditional cornerstones of statehood – sovereignty, law, and politics – in this global context? How does global governance influence the concept of modern state? Evidently this article is not aimed to be a treatise on these complex and interrelated problems, it is only intended to represent an attempt to draw up certain contributions to assist the general understanding.

2 The State: a Constant Variable of Politics

1. Before going into details, it is necessary to scrutinize the “state” as a general societal phenomenon. Having studied the history of theoretical political thinking one can easily recognize the significant role of the state. From the classics of Greek political theory to the recent developments state takes up an important place in the works of political nature. State is often treated by various authors as the framework for social coexistence, or as the entity responsible for the maintenance of this framework. The famous work of Hobbes on Leviathan or Hegel’s ideas about the state can be treated as symbols of this way of thinking. Other authors did not regard the state as significant an actor in social life as it had been treated by the earlier thinkers and they also argued against the influence of state in a part of social affairs. Classical liberal thinkers, as for instance Wilhelm Humboldt, influenced by the idea of liberty and its economic corollaries argued for the separation of the société civile and the état politique and they proposed to draft a serious dividing line between private and public affairs. Marxists, pluralists, anarchists and current neo-liberals have continued this “relativization of statehood” and made severe attempts to develop competing theories which could be used to challenge the traditional role of the state in the Western political thinking.

Which approach can be regarded as the correct one in this long debate is of course an important question, but this question would get us far away from the core problem, therefore this study is not intending to answer it. For our
purposes these preliminary considerations can obtain a different significance. They suggest that the expression “state” can imply a number of different meanings, and therefore its interpretations must also be different, according to the intellectual background or the political intentions of a given author. This is why a research on the nature of the state is a very difficult enterprise in social sciences, and it may also be the main reason for most controversies and confusion connected to the phenomenon of state. It needs hardly be said that only scientific self-restriction and a correct methodology can offer a way out of this confusion of social science research, political intentions and disguised value judgments.⁶

2. It is not a coincidence that distinguished scholars engendered important findings regarding the nature of the modern state around the end of 19th century and the beginning of the 20th century. The oeuvre of Georg Jellinek and that of Max Weber examined exhaustively the phenomenon of state via drafting a serious dividing line between the modern state and its prior forms. They made significant contributions to the theory of the modern state, which can help us to sketch the idealtype of the modern state. This idealtype is essential for the purposes of this research, because, it is argued, by comparing it with the phenomenon of global governance it will be easier to find answers to the questions raised in the introductory part of the present article.⁷

As an analytical starting point it will be useful to recall Weber’s findings on the nature of the modern state. Weber argues that, from a sociological aspect, the most distinctive feature of the modern state is the successful mo-

⁶ Due to the aforementioned problems this paper intends to follow Max Weber’s methodological principles. In Weber’s view (1) a researcher must separate the descriptive statements from the hard value judgments in the process of research and (2) he must define his starting points very precisely, that is, the source of his findings and his relation to the general questions of research. And the paper will back the Weberian concept of idealtype in order to facilitate the process of the present research by creating an “idealtype of modern state.” For details see M. Weber “The Meaning of ‘Ethical Neutrality’ in Sociological and Economic Sciences” in Idem The Methodology of Social Sciences (New York: The Free Press 1949), 1–50 and “‘Objectivity’ in Social Science and Social Policy” in ibid. 50–112.

nopolization of coercion. So, in this Weberian context, the modern state is a territorial political organization which possesses the legitimate monopoly of coercion. Here Weber sets this monopoly of coercion against the fragmentary and personal exercise of power in the medieval kingdoms and principalities. Thus Weber defines modern state as a political organization which can legitimately use, via its rational legal system and bureaucracy, the instrument of coercion in order to reach its governance goals. Weber’s position thus indicates the importance of a concentrated, but legitimate power in modern states. The next question is how and in which form the modern state can exercise this concentrated power and why the modern state differs from its prior historical forms.

Jellinek’s *opus magnum* offers comprehensive conceptual answers to the above questions. In Jellinek’s view the principle of monarchy, which profoundly dominated the medieval and post-medieval political thinking, is no longer relevant for the comprehension of the modern state. The principle of monarchy means, in a nutshell, that the entire state power is united in the person of the monarch who, as a consequence, is the only sovereign in a monarchy. At this point sovereignty is the synonym of omnipotence, the unrestricted power. Jellinek argues that this approach is hardly anything but a simple fiction that has no connection with reality. As a contrast to the medieval state, the modern state can be characterized by the principle of constitutionalism.

The main features of the concept of constitutionalism are the idea of autonomy and that of “autolimitation” (self-limitation). Autonomy means the independent possibility of constitutional revision, i.e. a modern state can modify its governmental organization via certain constitutional processes. In this study, however, the conception of “autolimitation” might prove to be more important than that of autonomy. Jellinek points out that sovereignty is, in his view, the exercise of constitutional competences. Therefore sovereignty, since it is absolutely encompassed by the legal order, is no longer omnipotence as it had been before. Thus the legal order absorbs the concept of sovereign state. From a legal point of view the state is identical with its legal order, or the whole legal order can be treated as the state. So, the modern


11 Ibid. 51–6 and 78-88.
state is necessarily limited by theist own constitutional legal order. Jellinek argues that this so-called “autolimitation,” the supremacy of law, is one of the most important features which distinguishes the modern state from its earlier historical types, as for instance the Greek polis or the medieval regnum. In sum, due to this “autolimitation” by legal order, law acquires a prominent role in the concept of the modern state.

As a result of investigations concerning the concept of “autolimitation” the essence of the modern state has appeared. In the light of these intellectual achievements the distinguishing characteristic of the modern state is the limited nature of governmental or state power in contrast to the earlier historical forms of state. In the limitation of state power law as a general social phenomenon obtains a crucial role. The impersonal legal system and especially the guarantees of public law provide an efficient framework for this inner limitation. Thus the core of the idealtype of the modern state is the legal order and its historically novel role. Through this well-established legal system the modern state can offer a new historical perspective; an inherent limitation of sovereign governmental power.12

3 Global Governance: a New Variable

I. Following the above brief study of the idealtype of the modern state we shall reorientate our scientific investigations to focus on a phenomenon which is related to the recent transformation of today’s global scene. This phenomenon is the so-called global governance, which might imply serious consequences for the future of the modern state in the 21st century. Therefore, the setting of our analytical focus includes some change in the time dimensions, a jump to the early years of the 21st century, as well as a reference to sharpening our analytical lens, by using the relatively newest findings of international relations theory instead of classical works of political theory.

Global governance is indeed one of the newest and most cited ideas of the recent international relations theory. Various authors have tried to apply this concept in order to illustrate the recent transformation of the international playground.13 But the core of this concept seems to be highly ambiguous


13 The review Global Governance, which exclusively deals with issues closely related to global governance, may adequately illustrate the fast proliferation of the concept within the international community of IR researchers.
because authors, in most cases, attach very different meanings to it. These competing and diverging definitions of global governance can pose numerous questions, and reaching a common interpretation, or at least a common denominator, seems to be very difficult. Therefore, this study will solely focus on certain dimensions without attempting to build a comprehensive definition of global governance.

2. The first key point attains some historical bearing. Does global governance have any historical antecedents, or is global governance an absolutely new phenomenon that immediately followed the collapse of the bipolar world order? Certain authors argue that global governance is a qualitatively new phenomenon which emerged as a result of today’s global circumstances. However, they also state that some antecedents have appeared during the bipolar world order. The most relevant feature of the interstate governance regime of the bipolar world called international governance was the regulation of the behavior of states and international actors via a non-hierarchical network. This non-hierarchical feature of the so-called international governance might have forecast a highly relevant characteristic of the recent global governance system. Nevertheless the unexpected and fast disintegration of the bipolar international environment after the fall of the iron curtain has raised serious challenges toward this regime of international affairs. In addition, both the advent of technological revolution and the impact of economic globalization, as argued by Brühl and Rittberger, proved to be such several challenges that the establishment of a new governance regime seems to be necessary.

Taking up a different point of view one can recognize that the ontology of today’s international relations, that is said, the basic conditions of international affairs have transformed dramatically. In James Rosenau’s view the “fragmegrative” dynamics of our epoch which includes both an un-

15 Brühl – Rittberger (n. 5), 1–47.
16 Ibid. 2.
17 Ibid.
18 Fragmegration is an expression coined by James Rosenau. Fragmegration is “...a contrived word designed to capture in a single phrase the fragmentation-integration, localization-globalization, and decentralization-centralization tensions so pervasive through-
precedented pace of change and the general “disaggregation” of authority render the rethinking of our common ideas about governance on an international level necessary. Because of these ontological changes the emergence of global governance, as both a theoretical concept and an extant form of governance, seems to be inevitable.

The evolving regime of global governance, to a small degree, partially includes some elements of the earlier international regime *inter alia* the aforementioned non-hierarchical approach. However, in contrast to the prior regime “global governance is characterized by the decreased salience of states and the increased involvement of non-state actors” and it works as a special multilevel governance. This new multilevel style of governance involves new levels of decision-making as for instance global, supranational, and sub-national, (local and regional) levels besides the traditional ones (national, international).

Thus, stemming from the new ontological conditions, said to be “fragmegrative” in Roseanu’s terms, and the “disaggregation” of the traditional political decision-making centers, the current regime of global governance can be regarded as a historically new, a *sui generis* phenomenon.

3. Our next question, which aims to investigate an operative dimension of global governance, is the following. Who are the main actors in this non-hierarchical web and how does it really work? According to the findings of Brühl and Rittberger the interaction of a triad of actors determines the functioning of global governance. This triad comprises three main groups out the world that it can fairly be said the present age is not one of globalization, but one of fragmegration. […] one can discern fragmegrative dynamics in virtually any situation at every level, from the individual to the local community to the national state to the global system.” J. N. Rosenau “Stability, Stasis, and Change: A Fragmegrating World” in *The Global Century: Globalization and National Security* Vol. I (Washington, DC: National Defense University 2001), 129. For further discussion see Rosenau (n. 14), 293–5.


20 Brühl – Rittberger (n. 5), 2.

21 Ibid.

22 According to the insights of James Rosenau the analytical units of today’s global relations are not the states any longer but various spheres of authority (SOAs). SOAs can be *inter alia* special interest organizations, corporations, NGOs, and, of course, states. Rosenau (n. 14), 295–7.
of actors: states and IGOs, market forces and civil society actors. This triangle of actors determines international affairs and politics nowadays, so that their interactions establish the essence of global governance.

What can be the real extent of global governance? In accordance with certain theoretical considerations the primary aim of governance is to maintain a certain societal framework. So, the focal point of governance activities is to guarantee a safe framework for social coexistence, mainly by the maintenance of a predictable legal order or effective mechanisms of dispute settlement. In addition, governance can contribute to the physical security of the population, the protection of environment or the distribution of wealth. Thus governance comprises active and passive governmental practices, and its focal point changes parallel to the challenges of the actual historical situation.

It is obvious, that a system of global relations can contribute to the realization of the so-called governance goals on a global level. Nevertheless, for the purpose of this study the most significant finding is that global governance is such an interplay of the activities of the aforementioned actors whose outcome can facilitate the achievement of governance goals. Thus, global governance is a dynamic process which implies the continuous interplay, mostly cooperation or competition, of different actors.

4. As a next step, this analytical model should be further scrutinized. Brühl and Rittberger write about a triad of actors, however, applying a different approach, shifting to a new analytical level, we may simplify to some extent this fairly complex picture. Whether is there any real difference between states, IGOs and global civil society actors, between the two opposite poles of the triangle? On the basis of the Aristotelian heritage it is easy to find a common element which may be able to bridge them. If we conceive politics as the way to reach the common interest we can, indeed, easily regard these two groups of actors of the earlier triad as similar or identical. Either of them strives

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23 International governmental organizations: the UN, UN organs, and other organizations with international competence or aim.
24 TNCs, MNEs, and other organizations responsible for the administration of the international trade system (IMF, World Bank, WTO).
25 NGOs and diverse transnational social movements.
27 Brühl – Rittberger (n. 5), 6.
for political aims and it should imply, in all cases, a certain pursuit of some aspect of the common interest. Governments and IGOs follow their own political interests while transnational NGOs also attempt realizing their different aims in order to shape policies or even the whole society.29 They are actors governed by politics on the playground of the global scene.

So, governments and the global civil society may be identical from an Aristotelian political perspective, because they work and struggle for certain dimension of the common interest, so for different governance goals. It is easy to point out that the summary of their activities establishes the political dimension of global governance. Of course, this political dimension is quite fragmented due to the general and inherent diversity of politics (there was, there is and there will be a number of competing ideas on the common interest throughout the centuries of human history), so it does not offer us an undisturbed and balanced picture. Our picture of this political dimension looks like a modern expressionist painting which has both strong and opposite colors and which has no any particular focus because its dynamism is dominated by an intensified inner tension.

Contrary to the political dimension, the market forces that include different economic actors and their activities can be treated as the economic dimension of global governance. This economic side differs fundamentally from the political one. Plausibly, one can argue that market forces on the global level are primarily led by economic interests, and that this economic interest can be contrasted with politics.30 As mentioned above, for the purposes of the present research, politics is conceived of as deliberate attempts to influence policies toward the common interest, that is to say, politics is perceived as a social practice which strives to take into consideration the interests of the whole community. That is why the functioning of economic interest fundamentally differs from politics. Indeed, economic activities are mostly particular in that they always represent the partial interest of an economic actor, mostly increasing of its profit, and not the interest of a community in general. Naturally, the sphere of economics and politics can interfere in many cases, corporate lobbying techniques or different forms of partnerships between the business life and the private sector offer us good examples, but, in general terms, their underlying internal logic works differently.

29 Cf. Scholte (n. 2), 175.
This aforementioned particularity of economic interests was clearly recognized by Adam Smith when he wrote about the phenomenon of the “invisible hand.” Smith wrote about this particularity in an optimistic way, he hoped that through a silent aggregation of individual economic decisions the market will be capable of facilitating the realization of common goals. The events of post World War I era raised serious doubts in many economists with regard to this theory and they argued for the enhanced intervention of governments into the economic sphere. This newer debate on the limits of state interventions seems also to strengthen the fundamental difference of economics and politics.

In today’s global scene the above-mentioned particularity of economic interest strongly appear in the general promotion of deregulation, liberalization and privatization as formulated by the “Washington Consensus.” This all-inclusive promotion has been led by neo-liberal thinkers on ideological level. And these buzzwords represent a strong effort toward the creation of such a global market economy through which the realization of the aforementioned particular interests of economic actors can be more efficient, in economic terms, than ever before. International financial and commercial institutions, such as WTO, IMF, and World Bank and corporate lobbies strongly support their diffusion in national policies and in public debates.

Due to the above analyzed particularity of economic interests and due to other sociological factors, as for instance the materially and ideologically advantageous position of economic actors, the economic dimension of global governance indeed seems to be more coherent and unitary than the political one.

5. At this point it is worth summarizing the latest findings. A new regime of international relations has emerged and replaced the prior regime of international governance during the last two decades. This new regime is that of global governance which may be more able to find adequate answers to the complex challenges of our age than the former international regime had been. The regime of global governance comprises numerous actors; states,

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33 Brühl – Rittberger (n. 5), 37.
IGOs, market forces and the global civil society. But global governance possesses two fundamentally divergent dimensions; the political one and the economic one. The differentiation between these two dimensions is based on the nature of their underlying functioning. From the aspect of the society the economic dimension represents only particular interests, that is to say the interests of economic actors, contrary to general efforts of the political dimension. It must also be mentioned that the economic dimension is more coherent and unitary because of the current state of global economic affairs, that is, the growing global economic interdependence and the widespread influence of neoliberal ideology.

So the constant interaction of the political and the economic dimension determines the outcome of this regime of global decision-making. In consequence of the “fragmegrative” dynamics of our age these two different dimensions cooperate and compete simultaneously. That is why global governance, from an external point of view, can also be conceived as a very fragmented and ambiguous turmoil of the political and economical sphere.

4 Toward Certain Conclusions

1. The great French intellectual and jurist, Charles-Louis Montesquieu affirmed that only change is constant in human history.35 This insightful remark summarizes the core arguments of the last part of the present article. First of all, as a starting point, it should be emphasized that the modern state is neither a perpetual nor a final form of statehood; it had appeared as a result of a special historical context at a certain point in time. The birth of the modern state is usually associated with the emergence of the modern bourgeois class as well as the formation of modern capitalism in the scientific literature. It represents a claim for such a politico-legal structure which respects individual rights inter alia the right to property and freedom of conscience.

However, our post-post-Cold War age largely differs from the age of peaceful bourgeois who believed in the idea of individual freedom, equality before the law and in the republican spirit. The two world wars and the collapse of American-Soviet bipolarity, which seems to be a Copernican turn in the ontology of international relations, had gradually changed this classical international environment. Parallel to this change in world politics the overall volatility of international relations has significantly been increased because of the underlying “fragmegrative” dynamics generated by the emerging new actors and interests. Thus, a comparison of the idealtype

of the modern state and the earlier analyzed characteristics of global governance is unavoidable. Neither states nor international organizations based on intergovernmental principles can escape the above mentioned ontological changes.

As mentioned above, a well-defined sovereign legal system is the precondition for the existence of the modern state, because it guarantees the limitation of the arbitrary exercise of governmental power. The crucial question is whether global governance can influence this sovereign legal order? A positive answer would entail very serious theoretical consequences. On the other hand, if global governance has hardly any influence on the sovereign legal order, this means that the core of the modern state shall remain intact.

2. At the first glance a political approach of this problem seems to be very evident. As we have already known it the political dimension of global governance comprises states, international organizations and their political decisions which, of course, also acquire legal relevance in the form of international agreements. It is obvious that international treaties restrict legal sovereignty in certain fields; the web of human rights treaties offers a good example.\(^\text{36}\) Regional political and legal integrations can have similar implications. Interstate cooperation thus, whether international or regional, affects legal sovereignty in domains related to the sphere of public law or, in certain conditions, to some aspects of external trade law.\(^\text{37}\) However it must be supported by the political will of a given state or states, therefore it works exclusively on intergovernmental basis. Due to the armada of intergovernmental guarantees states can preserve their special interests, in other terms, states give pieces of their legal sovereignty if it is beneficial for their politics. Owing to this governmental support the political dimension of global governance does not influence fundamentally the idealtype of the modern state.

Does the economic dimension of global governance also acquire relevance in this question? The very recent theoretical achievements, related to the oeuvre of Gunther Teubner,\(^\text{38}\) might imply some consequences on this problem. Following Teubner’s central argument we can easily recognize, parallel to the deepening of world-wide economic interdependence, the gradual


\(^{37}\) The emerging supranational legal system of the European Union is an obvious exception, because its rules affect the private laws of member states.

emergence of a global legal regime. The existence of this qualitatively new legal phenomenon might even be able to restructure our traditional picture of legal sovereignty coined by the 19th century’s political literature. According to Teubner “…the most characteristic feature of the global legal regime is its lack of any form of political and institutional supports and its strong connection with socio-economic processes.”

So, in this approach, the main source of global law is not the political will of governments, as it was in the case of international or supranational law, but the demands of global economic actors. Thus global law, although its boundaries are constantly blurring, is generally independent of national law-making. The emerging regime of global law consists of numerous types of law or “proto law,” such for instance it includes lex mercatoria (law of global commercial transactions), the internal regulatory regimes of MNEs, lex laboris internationalis (international labour law), certain technical standards and professional regulations. In sum, global law converts the interests of economic sphere into legal norms. And due to its strong connection to socio-economic processes as well as its independence of traditional political processes global law can be regarded as a legal “representative” of the above-analysed economic dimension of global governance.

3. Does this regime of global law have any relevance from the aspect of legal sovereignty? Although a detailed answer for this question obviously requires a much more elaborated research, it is not too difficult to recognize two implications. On the one hand global law may be relevant from the aspect of sovereignty, because by using the rules of global lex mercatoria – in a broad sense – MNEs or TNCs can easily lift themselves out of the general jurisdiction of a given state via arbitration or other alternative dispute resolution methods administered by international commercial institutions. So MNEs and TNCs can avoid the application of certain legal rules or governmental standards by using rules of global economic law, especially in transborder investment affairs. In such situations, which may have high importance in the world of global economy, governments can hardly be sure in their capacities to regulate the behaviour of market actors even though the activities of these market actors can seriously affect national economies.

40 Ibid. 3–28.
The financial crises of the last decade and the debates on investment mechanisms in the developing world are an appropriate illustration for the above. So, traditional legal sovereignty seems to be incapable of guaranteeing predictability in the affairs of global economics.

On the other hand global law can affect the national legal systems from another direction, too. As indicated earlier the internal regulatory regimes of MNEs are an emerging field of global law.\textsuperscript{42} This part of global law contains primarily diverse intraenterprise codes of conduct and a system of contractual relations among the given company and its affiliations. It works mainly as “proto law” because these internal regimes demonstrate a considerable degree of consistency and generality of practice whilst they are not generally recognized by every actor. For example a given code of conduct can be recognized by a group of companies but not by the global business community as such.\textsuperscript{43}

However, many different channels exist for the conversion of these special norms into the national legal systems. It is a commonplace in toady’s business life that corporate lobbying activities can largely influence the national legislation. Hence under the umbrella of lobbies and professional support activities certain norms stemming from the economic practice have silently penetrated into the internal legal systems. This silent penetration of norms having a business background into the legal orders has transformed the content of national legal systems to a certain degree. Legislative acts and administrative measures in the field of business, for instance in cases related to investment practices or taxation problems, and of general private law, which regulates certain aspects of commercial transactions, may be considerably influenced by economic actors.

4. Following the earlier inquiry the present paper attempts to propose a fundamental conclusion. The legal sovereignty, which once was the essence of the modern state from an analytical aspect, seems to slowly fade or erode within the recent global conditions. Global economic actors, that is to say multinational or transnational companies which are obviously the most important players within the economic dimension of global governance, have gradually begun to opt out from the jurisdiction of national legal orders. In other cases these actors have strongly influenced the national legal sys-

\textsuperscript{42} For further details see P. T. Muchlinski “Global Bukowina Examined: Viewing the Multinational Enterprise as a Transnational Law-Making Community” in Teubner (n. 38), 79–108.

\textsuperscript{43} As a good example see the emergence of Global Compact as a widely recognized code of conduct within business actors. Weiss – Forsythe – Coate (n. 36), 303.
tems in order to reach their special interests. Therefore the relevance of legal sovereignty has begun to disappear with respect to the economic affairs, which means that we witness the fading away a considerable part of the legal aspect in the idealtype of the modern state. Parallel to this partial diminishing of the traditional hierarchical legal center of the modern state a new global legal regime has emerged, established primarily on the theory of legal pluralism and the idea of heterarchy.\footnote{Cf. Teubner (n. 39).}

This decreased relevance of legal sovereignty may predict the future profound transformation of the modern state. It might mean the emergence of a new historical form of state, especially if we take into consideration another factor, too. The increased pace of changes on the global scene, which stems from the “fragmegrative” dynamics of our age, forces states to make more and more decisions of political nature\footnote{This paper emphasizes the decisive and individual nature of politics contrary to the predictability and generality of legal order. At this point it accepts Carl Schmitt’s arguments, however it can not agree with that approach that the essence of the political is a decision between friend and enemy. Cf. Schmitt (n. 30), 26–7.} in order to successfully adjust to the newest global challenges. In the matrix of global governance, and within its constant tensions between politics and economics, politics seems to be more appropriate to reach governance goals than law which can only much more slowly adjust to the new conditions as well as challenges.\footnote{Let see for example the behaviour of United States after 9/11. The Patriot Act illustrates a serious change of attitude toward classical liberal legal principles and personal liberties, and toward law in itself. Cf. I. Ramonet \textit{Guerres de XXIe siècle} (Paris: Galilée 2002), 45–69; from a different perspective cf. R. Kagan “Power and Weakness” (www.policyreview.org/jun02/kagan.html).} Hence the recognition of a shift of the center of gravity from law to politics in the inner structure of the modern state, on an analytical level, is inevitable. Whether this shift does mean the birth of a new historical form of state is now highly questionable, and it should be one of the most important theoretical problems discussed in future researches.