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The Changing Role of the State: The State as a Mirror of the Individual?

If the topic of the workshop is the continuity and discontinuity of the state and law, it is possible to tackle the subject of the changing role and nature of the state itself. This change can be perceived from many perspectives and some of them are already almost traditional from a lawyer's or political scientist's point of view like the state and globalization, the transformation of the state (typically, post-communist transformation), the state and (European) integration, the shift from state governance to (non-)state governance, the changing role of the public sector (vis-à-vis privatization, public-private partnership) and so on.¹ Some perspectives are "hot topics" waiting to be elaborated deeply in the near future, e.g. the role of the state in the current financial crisis, the possibility of establishing a "world government" (given that currently states are too weak to solve the problems of "too big to fail" companies); others can be seen as topical in the future—or maybe not.² But here I do not want to write about these complicated issues, instead, I'll focus on two abstract speculations I have on my mind. The first speculation has been influenced by the famous statement of Carl Schmitt, namely, that all concepts of modern state theory are secularized theological concepts.³ From Schmitt's perspective, thinking about the state was influenced by thinking about God (e.g. Hobbes' "Leviathan" was an attempt to create an earthly or

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¹ For a relevant survey of these topics see, e.g. Hay, C.–Lister, M.–Marsh, D. (eds): *The State. Theories and Issues*. New York, 2006.

² For example, during the time of writing this article I have been aware of the phenomenon of living in virtual worlds, such as Second Life. More and more people are using the possibilities offered to them by our technically developed civilization and are spending more and more time in virtual reality, where they cannot only amuse themselves (like in a computer game), but also work and earn money or establish sometimes permanent relationships with others (like marriage). If this trend gains more ground in future, we will face an interesting social phenomenon, namely, that a growing segment of the population will prefer this virtual world to our "real" world and care only about physical subsistence and fast Internet connection—other needs will be satisfied in the virtual world. Will this affect the life of states? Of course: socially passive people in the "real" world will be only marginally interested in the elections and parliamentary democracy (while in the virtual world they will form governments and organize demonstrations) or paying taxes (in the virtual world the duty to pay them has not been established yet). Does it sound like a science fiction such as "Matrix"? Maybe, but when we consider the fact that virtual dollars can be exchanged to "real" money and that some states have already opened their virtual embassies in Second Life (like the Maldives, Sweden, Estonia, Serbia, Colombia and the Philippines), it is possible that in the near future states will be increasingly interested not only in how to regulate these virtual worlds, but also in how to convince people, who have been "going virtual" to "return" and participate in the "real" life of the state.

³ Schmitt, C.: *Political Theology. Four Chapters on the Concept of Sovereignty*. (Orig. publication: Berlin, 1922), Cambridge–London, 1985, 36 et seq.

“mortal” God with almighty authority over its citizens). To put it shortly and maybe too simply, the state is perceived as a mirror of God in spite of the fact that modern states were born in the process of secularization.⁴ Thinking about this statement has entailed my first speculation: The concept of the state and its sovereignty is modelled according to the concept of the moral sovereignty (moral autonomy) of the individual. In the first part of this article I will try to support this hypothesis with arguments originating mainly in the history of ethics and the theory of the state.

The second hypothesis I’ll present here is a mere development of the first one: Do we face in our present-day world any changes in the moral characteristics of the individual? If yes, what are these changes and how can they possibly affect the features of the state? The description of some present-day changes in the individual’s position and the changing role of the state stemming from them are the topics of the second part of this article. I will finish with a not very optimistic metaphor of the contemporary state conceived as an authoritarian insurance company. At the same time, these speculations are only a broader (and maybe deeper) version of my former ideas presented in previous workshops and published subsequently.⁵

1. The first speculation

If the majority of scholars agree that the roots of the modern concept of the state must be identified in the 16th and 17th centuries (e.g. Machiavelli was the first theorist to use the word “status” for the description of the state as “lo stato”, Bodin was the first thinker to elaborate the concept of sovereignty lying “at the heart” of the concept of state, whereas, Hobbes offered us the first theoretical concept of the secularized state (to mention only the most famous and significant development in the fields of political science and law), and it was also at that time when the new concepts of individuality were born. The developments concerning individuality can of course be observed a long time before these centuries—some recognize them, e.g. in the use of the word “ius” as a subjective right in the philosophy of William of Ockham,⁶ others in the cultural and political advances of Italian city states⁷ or in the somehow personal, inner relationship with God, which evolved during the Reformation and so on. The classical work on the development of modern identity (and its three components, i.e. a sense of ourselves as beings of inner depth, the affirmation of ordinary life, which in contrast to the Middle Ages focuses on other aspects of life, finally, the expressionist notion of nature as an inner moral source) is the result of the lifelong research

⁴ How this process of secularization ensued was famously described by Ernst-Wolfgang Böckenförde. See Böckenförde, E.-W.: *Vznik státu jako proces sekularizace* (The Creation of the State as a Process of Secularization). In: Hanuš, J. (ed.): *Vznik státu jako proces sekularizace: diskuse nad studií Ernsta-Wolfganga Böckenfördeho*. (Orig. publication: Berlin, 1991), Brno, 2006, 7–24.

⁵ The changing nature of citizenship (i.e. the relationship of the individual to the state) was presented and published in Šejvl, M.: *European Identity and European Citizenship: The Case of the Missing Polis?* *International Journal of Public Administration in Central and Eastern Europe*, 2 (2008) 2, 49–56. The implications of these changes in moral attitudes to the state for the symbolic order (manifested in state symbols) were presented and published in Šejvl, M.: (Not Only) State Symbols in Danger? *International Journal of Public Administration in Central and Eastern Europe*, 4 (2010) 1, 105–110.

⁶ See, e.g. Villey, M.: *La Formation de la Pensée Juridique Modern*. 4th ed., Paris, 1975.

⁷ See, e.g. classics like Burckhardt, J.: *Kultura renesanční doby v Itálii* (The Culture of the Renaissance in Italy). (Orig. publication: 1860), Prague, 1912.

of Charles Taylor.⁸ Taylor in particular argued against the notion of a disembodied, decontextualized and disengaged subject (rather simply, “against the notion of the modern atomistic individual”), instead, he focused on the fact that modern individuality is constructed (in contrast to the ideas of thinkers I will introduce later, such as Hobbes or Grotius) within the framework of “strong evaluations” that transcend the atomic individual’s perspective—may it be a Platonic idea of the virtues of reason and self-mastery, the sense of honour (e.g. of medieval nobility) or the modern understanding of the expressive power of inner selves or the virtues of counting everyone’s interests equally.

Be that as it may, the notion of individuality so precious to liberalism and modernity was conceived some time at the beginning of the modern age and almost immediately had implications for the new (modern) conception of the state. In my opinion, it was Thomas Hobbes in his “Leviathan” who on a theoretical level issued the “birth certificate” of the modern state. Hobbes developed the new legitimacy of the state for the first time in the context of atomic individuals with their innate natural rights and broke off with the Aristotelian concept of the *zoon politikon* elaborated in “Politics”. The Aristotelian ethics of virtue presupposed the naturalness of the *polis* (city-state) and explicitly rejected the concept of atomic individuality: “... and a man who is by nature and not merely by fortune ‘citiless’ ranks either low in the scale of humanity or above it”, i.e. is a wild beast (*therion*) or a god (*theos*).⁹ Man’s good life was the *telos* of the *polis* and vice versa Aristotle could not imagine a man living a good life without the *polis*. Thus, the theory of the state since the time of Aristotle and throughout the Middle Ages was always concomitant of the ethics of virtue and virtue itself was either rationally discovered in the world of ideas (for Plato and similarly yet differently for Aristotle) or rationally reconstructed by our understanding of *ius naturale* given by God (for Aquinas) or a result of God’s command (for Ockham). I will now cite one example from private law as an illustration of such an ethics of virtue, which is easily understood by lawyers: Why should we keep the contract? According to Aristotle, there is a difference between the contract and performance on the bases of friendship and virtue. Only the contracts that are immediately performed (*traditio* in Roman law) are purely commercial transactions. If a promise is involved (a transaction with delayed performance), it shall not be a contract, but (in the end) a matter of a friendship and virtue. Thus, there is a duty to keep promises among friends because of virtue and the question of keeping contracts is not raised, because the offer and the acceptance ensues in the same moment (as in the case of *traditio*), therefore, the contract is a matter of the pure profit of the contractors. The matter is differently (and yet similarly) solved under Roman law—a “pure” promise is not legally protected and as such it shall not be enforceable in court (*pactum nudum*), therefore, its performance is only a matter of virtue, whereas only a promise concomitant to a formal contract (*contractus*) must be kept according to law. The duty to keep the contract is either a matter of virtue (among Aristotle’s friends), or a matter of “economic” profit (in case of Aristotle’s *traditio*) or a matter of form (in Roman law).¹⁰ It was not a matter of an individual’s will transferred to another person, simply because no

⁸ Taylor, Ch.: *Sources of the Self*. Cambridge, 1989.

⁹ Aristotle: *Politics*. 1253a. Cited according to the English translation by Rackham, H.: Cambridge–London, 1959, 9.

¹⁰ For these examples of adherence to contracts I am indebted to my colleague, Tomáš Sobek. See Sobek, T.: *Závaznost smlouvy* (The Binding Character of Contracts). In: Havel, B.–Pihera, V. (eds): *Soukromé právo na cestě. Eseje a jiné texty k jubileu Karla Eliáše*. Plzeň, 2010, 274–299.

clear concept of a morally autonomous individual obtained. It was rather an “external” virtue that guided the behaviour of man.

Whereas, Hobbes posited autonomous individuals with natural rights as a necessary condition of the establishment of the state by a contract—thus, he invented the concept of social contract. This Hobbesian social contract must be adhered to neither because of virtue (how could we draw on the virtue of individuals who in a natural state behave like wolves?), nor because of “economic” profit (which plays a role in *traditio*, not for the future),¹¹ but because of the public force of the sovereign: “And covenants without sword are but words and of no strength to secure a man at all.”¹² We can see that in spite of the fact that Hobbes posited autonomous individuals, he deprives them of their autonomy in the moment they enter a state. At the same time, the sovereign is not necessarily endowed with virtue, since his/her “sword” is sufficient. We have to look elsewhere for the development of more fully elaborated concepts of the moral autonomy of the individual in the teachings of Hobbes’ contemporary, Grotius (in the area of the obligatory character of private contract) and Hobbes’ follower (and critic), Locke (in the area of the social contract, i.e. the obligatory character of “public” contract). As far as the ideas of Grotius are concerned, the form of a contract (or of a promise) is not an essential condition for adherence to a contract (or a promise); what matters is the will (or the intention) of the contractor (the promisor). We have the same power over our actions as we have over our property. The reason for adherence to the contract is the intention of the contractor to transfer a part of his/her will to another contractor. The promise consists in the alienation of a part of our freedom towards another contractor. Thus, even a *pactum nudum* has binding force, not necessarily according to positive law, but according to natural law. Thus, according to a different conception of the binding character of the contract, it lies in the individual’s will. This constitutes an important step towards the moral autonomy of the individual, in spite of the fact that natural law is not conceived of as the product of the individual’s moral choice yet, but it is still perceived as the rational duty of man.¹³ As far as Locke is concerned, according to the “Second Treatise on Government”, morally autonomous individuals retain their autonomy even after they have entered the state via a social contract (and thus retain their natural rights), therefore, the sovereign is bound by the contract (unlike Hobbes’ sovereign) and cannot, e.g. impose the “right” religion on them (according to the “Letter on Tolerance”). This way the state that must respect the moral autonomy of individuals was created.

We have seen how the notion of the moral individual slowly developed in the 16th and 17th centuries and at the same time, often in the works of the same thinkers, new theories of the state (established via the social contract) emerged. Briefly, morally autonomous individuals create a legally autonomous state—of course, in those centuries it was primarily an absolutist state (of Hobbes or Pufendorf), with the exception of Locke’s state. Nevertheless, the first complex philosophy of moral autonomy was introduced by Kant. For Kant, it is only possible to have moral laws, if these laws were autonomously chosen by an

¹¹ It is true that for Hobbes the establishment of the state by a social contract was a matter of rationality and thus even a matter of “economic” profit—this is the reason why a sovereign could not deprive her citizens of their lives or personal property, because in that situation their position would not be any better than in the natural state. See Hobbes, T.: *Leviathan*. (Orig. publication: 1651), Prague, 2009, Chapter XXI, par. 11 et seq., 151 et seq.

¹² See Hobbes, T.: *ibid.* Chapter XVII, par. 2, 117.

¹³ See Grotius, H.: *On the Law of War and Peace*. Translated by Campbell, A. C. (Orig. publication: 1625), London, 1814, Book II., Chapter XI.

individual using a “test” of the categorical imperative—“act as if the maxim of your action could be universal law”. I do not want to explicate his ideas deeply, since Kantian ethics as one of the most influential ethical conceptions is widely known. Nevertheless, I would like to point out that owing to Kant, the foundations of quite a different concept of the state have been conceived. He did not posit an absolutistic state, but a state bound by its own laws, i.e. a *Rechtsstaat* in German. In spite of the fact that the word “Rechtsstaat” cannot be found in Kant’s works, many scholars claim that it was his intellectual influence that prepared the ground for various *Rechtsstaat* conceptions elaborated throughout the 19th century.¹⁴ If we translate the Kantian idea of the morally autonomous individual, who binds himself/herself by moral maxims, into the realms of state and law, we reach the idea of the autonomous state that binds itself by its own laws embodied in *Selbstverpflichtung* (“self-binding character”) of the *Rechtsstaat* elucidated in Jellinek’s *Allgemeine Staatslehre*.¹⁵

Of course, we could mention theories of the state, which at first sight do not seem to be influenced by the concept of the morally autonomous individual. Now I’ll present some of them and show that those state theories also reflect moral individuality—except that in these theories the individual is not perceived as a morally autonomous unit. The 19th century brought forth many theories, which challenged the moral autonomy of the individual. For historicism, man was essentially the product of history, for nationalism, the product of the nation, for racism, the product of race, for conservative thinkers like Burke, the product of tradition, for Marxism, the product of impersonal economic forces. We can conclude that the morally autonomous individual was “dispersed” in history, tradition, nation, race or class. At the same time, the 19th century produced new conceptions of the state, e.g. for a German nationalist, law and the state are essentially the product of “Volksgeist” (therefore, every nation has to have its suitable form of law, like for Savigny, or state, like, e.g. for Bluntschli). For Marxists (if there really obtains something like a Marxist conception of the state), the state is the instrument of the bourgeoisie employed to impose obedience on powerless social classes; for organicists such as von Gierke, the state is merely one institution within the society besides, e.g. guilds and other associations. The important thing is that conceptions of the non-autonomous state (because it depends on nation, class, history etc.) feature along with the conceptions of the non-autonomous individual (that is, the individual “dispersed” in nation, class, history etc.). It is obvious that the conception of the state is modelled according to the conception of the individual.¹⁶

¹⁴ See Bluntschli, J. K.: *Theory of the State*. (English translation of the 6th German edition), London, 1885, 65 et. seq.; Jouanjan, O.: Présentation. In: Jouanjan, O. (ed.): *Figures de l’Etat de droit. Le Rechtsstaat dans l’histoire intellectuelle et constitutionnelle de l’Allemagne*. Strasbourg, 2001, 13 et seq.; Heuschling, L.: *Etat de droit, Rechtsstaat, Rule of Law*. Paris, 2002, Chap. I., 35 et seq.

¹⁵ Jellinek, G.: *Všeobecná státovéda*. (Orig. publication: *Allgemeine Staatslehre*, 1900), Prague, 1906, 508 et seq.

¹⁶ From this perspective, Hegel can be seen as an elaborator of the dialectical connection between moral individualism and the organic or historic conception of the state. On one side he posits civil society for expressing and ensuring individual interests; on the other side the state is posited at some higher moral level, which overcomes the differences in individual interests to form a public interest. This dialectical triumph is conceivable only within a particular conception of history, namely, the conception that history leads to the realm of freedom—in the sphere of the state, human freedom is more liberated than in the previous stages (the stage of civil society).

2. The second speculation

Are we facing any changes in the conception of the morally autonomous individual at present? Maybe yes and I'll refer to one change that particularly worries me: the "free rider's" opportunistic moral. I mean something that was expressed by a French historian, Marcel Gauchet: "In front of our eyes a new ideological pathology is developing—the pathology of non-belonging. It is the opposite of the non-normality of totalitarian times, when the individual was negated in the name of a collective that determined him/her (be it a race, a nation or a class). We are now making the opposite mistake. The new entity of the pure individual is emerging, who does not owe anything to society, but demands everything from it. Duties towards a collective and bonds of a common history are becoming impossible... The collective is rejected if belonging to it causes any problems, but on the other hand there is a growing demand on a collective. An individual who wants to self-govern himself/herself is taking shape, who exists by and for himself/herself, who does not want to belong to any entity, but in reality s/he demands guarantees for his/her very existence via this evasive entity."¹⁷

What do I mean by the "free rider's" morality? The conception that our moral behaviour is the product of our individual choices is more or less accepted by various liberal conceptions (but of course not by the Aristotelian morality of virtue). The subject with a "free riding" morality is neither a Kantian subject, which has acquired his/her moral attitude due to the "test" of the categorical imperative. Why would it be rational to act in a way that the maxim of my action is universal law, if acting as I wish can be more effective for myself—why bother about paying for the ticket, if I can be a "free rider"? Of course, this "morality" cannot be universal (if everybody was a "free rider," the system of public transport would collapse), but why should the "free rider" bother? Of course, this "morality" cannot be sustained for the whole society in the long run (and many scholars of ethics argue that ethics has developed because it was rational not to be a "free rider" in the long run). "But in the long run, I will be dead anyway," a "free rider" could reply. In fact, "free riders" do not want freedom, because freedom implies responsibility; therefore, what they want is arbitrariness. They are not moral pluralists, because moral pluralism in the end requires tolerance for the moral attitudes of others. Instead, they crave for "amorality" and arbitrariness, which are condemned by almost every book on ethics on the first pages. "Free riders" do not invoke tolerance or understanding for others, on the contrary, they are disinterested in the lives of others and respect sheer solutions that invoke power or force. "Free riders" neither treat others as ends in themselves (like in Kantian ethics), nor do they care about "greater happiness of great amount of people" (like in Bentham's utilitarianism), on the contrary, they treat others as means to their own ends (their employees as the means of the production of profits, their lovers as the means of production of sexual satisfaction etc.) and they favour "public happiness" exclusively if they can benefit from it—not a minute longer. They live in variable social contexts according to their wishes (which in itself is nothing immoral) and switch them any time the specific social context expects them to contribute something.

How the emergence of such "morality" is possible? I would like to offer a possible answer. In social reality not many people think about themselves explicitly as morally

¹⁷ Gauchet, M.: *Dějinný úděl. Hovory s Francoisem Azouvim a Sylvainem Pironi*. (Orig. publication: *La condition historique*, Paris, 2003), Brno, 2006, 180 and 191 (translated by the author).

autonomous subjects or do not formulate their moral attitudes explicitly. It is also possible for them to “switch” in various real life situations between different conceptions of morality and sometimes behave immorally. Modernity can be perceived as a process of emancipation that granted humankind (including slaves, women, various racial, sexual and ethnic minorities) the broadest possible freedom. However, during the process of modernization the evolution of the moral autonomy of the individual, which used to be the topic of ethics, was accompanied by various techniques of discipline, which has topicality for many historians, historical anthropologists and sociologists. Norbert Elias described how the rules of “proper” behaviour and politeness slowly emerged,¹⁸ whereas, Michel Foucault reformulated the history of modernity as a history of constant “normalization” called “biopolitics”.¹⁹ Whether we agree with these theories or not, we reject these techniques or we endorse them as positive ones, still we can see that many perceptions of these thinkers are true. One of the conclusions of Foucault’s theories could be that while we regarded ourselves in the course of history as more and more liberated (and every new bill of human rights seems to confirm this perception), our freedom as morally autonomous individuals was in fact facilitated merely by those techniques of normalization. But what happened when the “free rider’s morality” emerged? The same processes of civilization and normalization gave rise to many mysterious organizations not necessarily originating in the state, which decide on our lives without care about our freedom. As one Czech sociologist claimed: “What is in fact rational about the fact that an atomic bomb can be dropped any time on people, who use their handkerchiefs and feel ashamed of taking the meal on the table as first? Civilization is at the crossroads, when polite behaviour does not lead to any rewards, but straightforward brutality is gaining ground as a result of the arrogant decisions of state bureaucracies... Modern society has reached the moment, when “normal” brutality is sometimes still punished, but politeness is no longer rewarded.”²⁰ This tenet can be valid not only from the perspective that modernity brought forth an all-powerful state, but also from the perspective that our safety and confidence (one of the “dearest” values we as a people have) are in danger not only because of the behaviour of the state, but also because of the powers our states are unable (or unwilling?) to control – and we could expound here extensively on the impacts of economic globalization with its financial crises and so on. If the “moral” behaviour of Kant’s subject does not yield the “polite” social environment anymore, why not become “free riders”?

The implications of the “free rider’s morality” can be clear: The whole public sphere, which manifests itself in communication, rituals and gestures, as a sphere of the symbolic

¹⁸ Elias, N.: *O procesu civilizace*. (Orig. publication: *Über den Prozess der Zivilisation*, Basel, 1939), Prague, 2006.

¹⁹ For the process of disciplining and normalization in the factories, schools and primarily the prisons of early modernity, see Foucault, M.: *Dohlížet a trestat. Kniha o zrodu vězení*. (Orig. publication: *Surveiller et punir*, Paris, 1975), Prague, 2000. For disciplining as a universal technique applied to the whole population of the absolutist state, see Foucault, M.: *Security, Territory, Population, Lectures at the Collège de France 1977–78*, and Foucault, M.: *Je třeba bránit společnost. Kurs na Collège de France 1975–1976*. (Orig. publication: *Il faut défendre la société*, Paris, 1997), Prague, 2005. For the problem of “homo oeconomicus”, which is treated in a similar manner to our problem of “free riders”, see Foucault, M.: *Zrození biopolitiky. Kurs na Collège de France 1978–1979*. (Orig. Publication: *La naissance de la biopolitique*, Paris, 2004), Brno, 2009.

²⁰ Keller, J.: *Nedomyšlená společnost* (Unconsidered Society). Brno, 1992, 42 (translated by the author).

order is in danger. For lawyers, the judicial ritual is jeopardised with regard to the future, because it does not connect people anymore in a common idea of justice.²¹ Claiming that “it is a gesture” means “it is a lie.” As to the future, there are only words that try to manipulate with others and gestures that are empty. And if the public sphere is at stake, the distinction between the public and private will blur, as well: Are the people living in front of TV cameras in “reality shows” for twenty-four hours a day living their private or public lives? Are the people in virtual worlds such as Second Life living their private or public lives?

3. Possible implications of the conception of the state: the state as an authoritarian “insurance company”

Modern states declared they protected the interests of their citizens. The insurance of safety was the main motivation of the people who established the Hobbesian state. The absolutist state declared that it prevailed so as to grant people the “public good” (whether they wanted it or not). Later, states based on the rule of law declared that they were associations for the protection of human rights and modern democratic states claim to have power over what people have authorised them to do in the election process. Sovereignty is the “soul” of the state and the proclamation of people’s sovereignty implies the necessary democratic legitimacy.

Nonetheless, we are witnessing various changes in the concept of sovereignty, such as post-sovereignty or multi-level governance. Blurring the division of the public and private spheres has brought about the PPPs or the shift from government to governance. Is the state (as an actor that can effect changes in reality in favour of the interest of its people) disappearing? From the “free rider’s” perspective the state has a mere simple function: it should act as an “insurance company”, which helps “free riders,” if some of their acts have failed to be successful. It is in fact indifferent, whether “free riders” are persons who lost their jobs or families or financial companies that face bankruptcy. The state can privatise, effect outsourcing or other activities that limit its role as an economic actor. But abandonment of functioning as an “insurance company” is impossible, otherwise “free riders” would have to behave in a responsible manner. The complete disappearance of the state (the aim of many anarchists or libertarians) is not a program for “free riders”. Potentially all citizens are “free riders,” among whom bonds of solidarity do not obtain. It is indifferent whether “free riders” are successful in their personal lives (and consider their not-so-successful co-citizens to be “losers” or “parasites”) or unsuccessful (and think about successful citizens with envy and hatred). Since there is no solidarity in a society of “free riders”, the state must force “free riders” to contribute something to the state. In view of that, the “insurance company” must be an authoritarian institution. The practices of the “policing state” are stronger and stronger (DNA and other databases collecting data about us, surveillance cameras and legislation sometimes clashing with our human rights etc.) and again they are open to privatization or outsourcing, but only in so far as private firms (as “good” “free riders”) can benefit from these and the state does not fall prey to anarchy. If the inhabitants of the state are all potential “free riders”, why shouldn’t those who govern the state, i.e. politicians and bureaucrats be “free riders”, as well? If discussions (that can effect change in somebody’s opinion, because he or she is convinced by the arguments of the other party) are obsolete (because “free riders” change their opinions as they wish), can we still say that

²¹ See Garapon, A.: *Le devenir de rituel judiciaire?* In: Biet, Ch.–Schifano, L. (ed.): *Représentations du procès. Droit, Théâtre, Littérature, Cinéma*. Paris, 2003, 23 et seq.

we live in a deliberative democracy? Is our policy determined by democratic deliberation or rather by economic factors the state is unable (or unwilling?) to control? Or is it rather the fear of terrorism (that justifies almost anything including practices like “waterboarding”) that dictates our laws? If “free riders” behave dangerously, we call them “rogue” and use force against them, if states behave dangerously, we call them “rogue states” and use force against them. If “free riders” fail in their personal lives, we call them “failed” and send them to an “insurance company”, if states fail in their role as “insurance companies”, we call them “failed states”. Therefore, my conclusion is that the state is the mirror of the individual.