The Historical Constitution of the Political Forms of Capitalism

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Abstract: This article provides a general overview and critique of approaches to state theory, from the Marxist “state derivation” debate of the 1970s, through to regulation and world-systems perspectives, to theories which encompass imperialism. It proposes that a theory of the political forms of capitalism should have three elements: it should be based on analysis of the different historical processes by which capitalist states have been and are constituted; it should elucidate the specificities of the various political forms of capitalism; and it should explain the continuing existence of a plurality of states and imperialist relations.

Keywords: legal form, capitalism, separation of state and society, plurality of capitalist states, juridification international relations, imperialism, different capitalist states

Today, state analysis has, once again, taken centre stage in materialist theoretical endeavors. One of the reasons for this renewed interest is the fact that recent political developments have provoked a debate on “new imperialism”. This article suggests that present debates can be improved by critically taking stock of theoretical approaches to state analysis, which have been proposed in the context of materialist analysis. The general overview it provides concentrates on the question of the essential specificity of capitalist state power and of the relation between this specific structure and concrete historical processes.

Beginning with a very short summary of instrumentalist versions of state theory the paper goes on to discuss the state derivation debate of the 1970s as well as some of its sequels. It suggests that all the contributions to this debate mistook the bourgeois state form as being “the” general form of the capitalist state while, in fact, it is a historically specific form of a capitalist state. Despite this critique it is suggested that present debates could be improved if the concept of the separation of state and society as it has been developed in the course of the derivation debate were once again taken into consideration.

One of the problems that has been neglected in the derivation debate is that of the plurality of states. In recent years it has been suggested that national sovereignty has not only been transformed by internal revolutionary processes but also (or even more so) by competition between states. This paper discusses different answers to the question...
of whether or not the plurality of states, although pre-dating capitalism, is an element of capitalism.

The paper considers that theoretical progress in materialist state analysis will only be possible by taking history seriously whilst not abandoning the question of whether or not an essential form of capitalist state power exists.

The State In . . .?
For long periods most critics of capitalism used to conceive of the state as the instrument of a dominant class. To demonstrate this conception descriptions of actual state activities were adduced. The focus was on the use of repressive state power for the disciplining of the exploited. Notwithstanding the many differences in the explanations of the state put forward by Lenin ([1917] 1970) on the one hand and Miliband ([1969] 1972) on the other, both authors (and many others) concur in the assumption of a general form of the “state”. They then go on to explain its special features in capitalist societies. Although their theories have radically different political implications than, for example, interpretations by Charles Tilly (1992) or Wolfgang Reinhard (1999), they correspond theoretically. While the latter authors have provided us with impressive insights into the importance of religion in pre-bourgeois societies, into the development of the military or the fiscal administration of principalities, and lately have even debated specific features of the “European state”, the state in all of these theories always remains the “state in . . .”: the state in medieval times, the state in the epoch of absolutism, the state in capitalism, the state in Europe and so forth. This theoretical concept prevents any theoretical analysis of the political form of capitalism: the capitalist state.

The Capitalist State As Bourgeois State?
All those who in the 1970s participated in the Marxist debate on state theory tried to do just this: explain the political form of capitalism. Since many endeavored to derive its general form from the analysis of capitalism developed by Marx, this debate has become known as the “derivation debate”. It was provoked by two concepts which both aimed at the definition of the historically specific form of state power in the current epoch of capitalism: the theory of “state monopoly capitalism” (Stamokap) and the theory of “late capitalism” in the work of Jürgen Habermas and Claus Offe. The theory of “state monopoly capitalism” was intended to adapt the revolutionary theory that had become a dogma in the context of Leninism-Stalinism to present day conditions. While “Stamokap” had been developed by intellectuals in the Soviet Union and the German Democratic Republic as well as in European communist
parties, it was also present in the left wings of social democratic parties as well as in everyday language. Adherents of this theory assumed that in the current phase of capitalism a social revolution was not only necessary but also possible, and this was for two reasons: first, because the dynamics of the development of productive forces would produce a contradiction between these forces and existing social forms of production and hence provoke revolution; and second, because state and monopoly capital had now become amalgamated into one large power block. Since this development had transformed the state into the ideal capitalist of monopoly capital the interests of non-monopoly capital were no longer taken into account by state policies. This broadened the social base of fundamental opposition against monopoly capital and hence against capitalism as such.5

The theoretical concept of “late capitalism” (Spätkapitalismus) was of a different brand. While in the 1960s many still had faith in the potential of the state to plan social developments and while many academics accordingly offered themselves as counselors for sophisticated policy making,6 Claus Offe suggested that planning had to be interpreted as the first sign of a fundamental crisis. Since capital accumulation increasingly depended on political steering, the state could no longer restrict itself to the task of bringing about economic as well as international political stability: instead, it now also had to produce and preserve the loyalty of the masses (1972:77). But the very necessity of state intervention in society was thought to prevent the successful delivery of policies for the management of these contrasting needs. Political shortcomings would provoke the crisis of the legitimacy of the state and hence the crisis of the legitimacy of the existing social order. For Offe the crisis of the existing social order not only became evident in the form of a political crisis; for him the crisis of late capitalism had to be conceived of as a crisis of the state.

Wolfgang Müller and Christel Neusüß (1970) denounced the theory of “state monopoly capitalism” as well as the theory of “late capitalism” as new brands of revisionism. While they did not object to the assumption that societies could to a certain extent be stabilized as well as changed through politics, they insisted that any materialist analysis has to define the structural limits of policies, a requirement always neglected by adherents to revisionism. In their opinion the “concentration on politics” demanded by Offe (for example, 1975:9)7 should be rejected. Instead, state theoreticians should seek to explain the form of the state and the structural limits to politics which this form implies. In other words, theoretical analysis has to explain why the political form of capitalism is the separation of state from society. This was to become the leitmotiv of the derivation debate.8

All the participants in this debate tried to answer Pashukanis’ question of why class domination in capitalism is not exercised by an apparatus of
the dominating classes but, instead, takes on the form of public power ([1929] 1970:119f). All of them agreed that it was not sufficient to describe the relation between state and society as being inherent in state activity, because it was exactly the “separation” of the state from society which had to be seen as the expression of the social order of capitalist societies. As far as the explanation of the “separation” was concerned, different solutions were suggested. Some maintained that it emerged as a functional prerequisite from the potentially destructive effects of competition and the insufficient delivery of general preconditions for the profitable use of capital (Altvater 1972; Läpple 1973:chapter II), adding that the state also had to develop policies to overcome crises of capitalism. Such policies, however, would always remain limited because politics could only deal with the surface (Oberfläche) of capitalism. It would never be possible to “manage” politically the fundamental contradictions of capitalism.

Flatow and Huisken, on the other hand, saw the state form as deriving from the sphere of circulation because in this sphere the owners of different sources of revenue have a common interest: they all want to have their source of revenue protected against forms of acquisition outside the processes of market exchange (1973:109). According to Flatow and Huisken this common interest not only constitutes the bourgeois state but also explains why workers—despite struggles over their share of the value produced—conceive of the state as the guardian of public welfare.9

Looking back, it becomes clear that the most remarkable position was formulated by theoreticians whose arguments centered on the generality of law. Bernhard Blanke, Ulrich Jürgens and Hans Kastendiek (1974) argued that the general precondition of capitalist forms of production and reproduction is the protection of any form of private property by the state. The production of commodities makes it imperative that capital owners can freely dispose over the means of production including labor power, the use of which they acquired on the labor market. But the exchange of commodities necessitates regulations which protect not only the owners of capital but all owners of private property. Therefore, the state has to be formally neutral in its relation towards the different forms of property. This formal neutrality is embodied in the principle of the generality of the law. And it is exactly this neutrality towards the fundamentally different forms of private property—that is, the ownership in one’s own labor power on the one hand and the private property of capital on the other—that makes the capitalist state an integral part of the class structure of capitalist society. It was only with this theoretical concept that the merely instrumental explanation of the class character of the capitalist state was overcome.

In contrast to those participants in the derivation debate who placed state functions at the center stage in their arguments, these authors
actually proposed an explanation of the political form which is specific to bourgeois capitalist societies—the formal separation of the state from the class structure of society. While this formal separation has been present in capitalist societies from the beginning it is no accident that this theoretical concept could only become influential in a historical situation in which it was at all possible to conceive of the state as being formally neutral towards society. While Blanke, Jürgens and Kastendiek have declared themselves opposed to any explanation which would take the legal constitution or the institutions of specific states into consideration they have always taken for granted that a capitalist state would have a parliamentary constitution, with more or less general suffrage. For them the political form of capitalism is the “bourgeois state”: the state of western industrial societies.

This holds true for all the contributions to the so-called derivation debate. Although this debate was directed towards the production of a theory of the capitalist state, a theory that would be able to decipher the general structural prerequisites for the state form in capitalism, which is hidden behind concrete historical developments of states and policies, hindsight makes it very clear that it was always assumed that the political form of developed capitalist societies of the “west” constituted the adequate political form of capitalism. This also implied the assumption of a historical path of development which we can sum up in the concept of western modernization. For a very long time theoreticians of quite different political color were convinced that this was, in fact, a universal process which as soon as capitalism was established would be implanted in all hitherto non-modern and non-capitalist societies.

This was not the only theoretical generalization of very specific historical conditions. Today it is easy to recognize that central arguments put forward in the derivation debate had been fostered by conditions of the historical epoch in which the Bretton Woods agreement was still in effect. Not only was it generally accepted that the political form of capitalism was the sovereign nation-state but it was also assumed that the very nature of the capitalist state invites hopes and demands of increased welfare. Since the world market and neo-liberal strategies invaded national politics in the mids-1970s even the “surface” of the capitalist state is much less seen as a battlefield for struggles over more or less public welfare provision.

In spite of these shortcomings, the derivation debate represents an impressive advancement of materialist theory, one yet to be recognized in international debates. Apart from the participants in this debate, the theoretical concept of a “separation between state and society” is usually simply understood as separation of two spheres of action, that is, strategies of appropriation are focused on the market while—corruption apart—competition in the realm of politics is about power. It follows that adherents to this interpretation usually point out that
especially (but not only) in France the separation between economic and extra-economic power was only achieved in the course of the nineteenth century. The consequence of such reasoning is that the separation of politics from the economy must be seen as withering away with the growth of various forms of public–private partnerships. This interpretation of the separation brings historical materialism very close to typical liberal thinking about the state and to the conclusion that it is no longer historically appropriate.

The concept of the essential capitalist state form, on the other hand, focuses on the fact that the capitalist state transforms the inequality of social positions into the equality of the subjects of law. The problem of the derivation debate was not this hypothesis but its theoretical foundation. Instead of explaining the state form as being the result of historical struggles and ensuing practices, it was explained as being a necessity for the functioning of capitalism. In other words, the theoretical structure of the capitalist state was logically derived from the theoretical structure of capitalism. While this circularly constructed theoretical concept invited the illustration of its general logic by allusions to empirical facts it did not offer any guidance for empirical analysis. No wonder, therefore, that most of the participants in the derivation debate put its arguments to a back shelf when changing economic and political conditions made it very obvious that the economic determinism inherent in the logical derivation was not able to grasp sufficiently the relevance of new historical developments.

To remedy this shortcoming some critics of the a-historical character of derivation theory welcomed the “intermediate concept” offered by regulation theory. As far as the state was concerned, regulation theory at first only explained its economic functions (see, for example, Liepitz 1992). It focused on national accumulation regimes and modes of growth. Critical comments provoked revisions. This opened the path for the integration into regulation theory of Nicos Poulantzas’ concept of the state as the material condensation of the relation between different classes and between different fractions of classes (2002:159) as well as of Antonio Gramsci’s concept of the state as the integral ensemble of political society and civil society. This theoretical strategy developed a particular popularity when it was suggested that in the decades after World War II “co-evolution” of accumulation regimes and modes of regulation resulted in a historic bloc which Bob Jessop sometimes terms “Atlantic Fordism” while most speak of Fordism tout court. While Jessop (2002:38f) does consider “key features of the capitalist type of state” it is “the general form of the postwar state”—that is, the ideal-typical “Keynesian welfare national state” and the possible development of a consolidated “post-fordist competition state”—which are the object of his theoretical endeavors (2002:2). Only this can explain why a theoretical treatise about “The Future of the Capitalist State”
simply excludes the repressive state apparatuses from the discussion (2002:3). In “explaining” the general form of the Fordist state Jessop makes use of the concepts of “correspondence”, “co-evolution” and “structural coupling”. Notwithstanding sophisticated scholastic edifices of institutions, apparatuses and so on, these analytical tools aim at the description of factual developments.

While the proponents of regulation theory who had concentrated almost exclusively on the analysis of links between accumulation regimes and regulation had proposed several theoretical explanations, the crises of accumulation regimes (see Hübner 1990:passim), endeavors precisely to analyze economic developments have become rare since state analysis has been integrated into regulation theory. Even for critics of economic determinism Joachim Hirsch’s hypothesis that social processes can only be analyzed satisfactorily when the primacy of politics is accepted is a bit hard to swallow (2005:57). Although Hirsch is not (like Jessop 2002) identifying the institutional apparatus of the state with its essential form, his argument excludes the debate about the limits of politics. In other words, the question of Müller and Neusüß which provoked the derivation debate in the first place is, once again, not even asked.

The dangers inherent in the conception of the state as the “condensation of social relations” become most obvious when it is made use of for the analysis of international institutions like the WTO or the IMF. Paul Cammack, for example, wants to grasp theoretically the nature of these institutions by applying the “Marxist concept of relative autonomy” (2003). Notwithstanding that struggles about and within these institutions have not been entirely without success and that the Dispute Settlement Body (DSB) of the WTO has gained the functions of an international trade court, this reduction of state analysis to the evaluation of regulations amounts to a drop in the level of theoretical discussion which had been reached in the derivation debate.

This critique also extends to most concepts of the internationalization of the state (for example, Scheuplein 2008). While it is undeniable that processes of globalization have gone hand in hand with the development of international regulation, the political form of capitalism has remained the nation state. This is not because the state does indeed sometimes act as an agent for the interests of (the dominant fractions of) national capital. Rather it is because the monopoly of legitimate violence—though historically dating back to pre-capitalist processes in Europe (Gerstenberger [1990] 2007)—has become the most important agency for the reproduction of (those) capitalist social relations that function through the institution of contracts instead of the application of direct violence. Combined military interventions notwithstanding, the monopoly of the legitimate use of violence is still grounded in the nation state.

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Differing fundamentally from the analytical strategy which has inspired adherents to concepts of regulation theory, John Holloway strives against the radical dissolution of structural analysis into historical analysis (2002:91 and passim). While Joachim Hirsch and others hold the opinion that “a new type of capitalist state” has been brought about by processes of globalization (Altvater 1998:92 and passim; Hirsch 1998:33), Holloway insists that the essence of the capitalist state has not changed. According to him the “capitalist state” has always been and still is the stabilized (“fetishized”) expression of social relations. As these relations tended, from the very beginning of capitalism, to become global, it has always been wrong to conceive of national capitalist societies as having their own specific state apparatus (2002:14). Instead, nation-states have never been anything other than the fragmented forms of world society (1993:18–25). Holloway offers illustrations for the symbolic as well as repressive elements of this fragmentation: the use of national anthems, oaths of allegiance to the flag, discrimination against “foreigners”, the checking of passports, the organization of armies, and the continuation of wars (2002:95f). But Marxists, according to Holloway, should look behind the surface of these outer signs of nation-states, because it is not the nations which constitute states. Instead, the existence of states derives from the fact that in capitalist societies some elements of social relations are defined as being “political”, hence separated from the “economic”. This institutionalized practice serves to obscure the nature of society. Therefore, any real change of society is impossible as long as strategies solely aim at the transformation of “the political” (2002:94). Theoretical critique of the state must start from a critique of the autonomy of the state (2002:92).

Many will agree with Holloway’s critique of state oriented strategies, and hardly anybody will deny the principally global character of capitalism. But a structural analysis of the state which neglects historic specificity not only makes it impossible to debate the relevance of concrete historical changes, it also prevents an understanding of the political (see Bensaïd 2005:183; Hirsch 2003:38). Holloway explains the historical development of states as the result of class struggles. If this concept is offered as a roadmap for empirical analysis it becomes vital empirically to specify the classes that are engaged in this struggle. Serious obstacles have to be dealt with. First of all, if “class relations” are taken to be the dominant form of the contradictory social relations present in capitalist societies, it does not follow that classes should or can be conceived of as something like social groups engaged in struggles against each other. The theoretical concept of “class relations” and the historical dynamics inherent in their contradictory character is not to be equated with the theoretical construction of classes as historical agents. Holloway is not the only Marxist who has given in to the temptation of interpreting classes as agents of struggle. While evidence from
earlier epochs often seems to support this line of reasoning, the problems always inherent in this conception can no longer be overlooked when it is applied to the analysis of global society. It is hardly possible to subsume all those children, men and women who toil outside of any form of labor contract into the concept of a class which is struggling against capital, thereby also determining state activity. Therefore, a proponent of the theory of class struggle at the global level in search of possible agents of radical transformations has no choice but to appeal to the creative power of the many individuals who (somehow) have to become “we”. The end of capitalism then has to be conceived of as the result of millions of bee stings (Holloway 2005:271) or of “screams”. Holloway wants us to think of these screams as the expression of rage which transcends itself and leads the way to an open future (Holloway 2005:6). Notwithstanding its many differences from the concept of Michael Hardt and Toni Negri (2000) this romantic revolutionary theory is also in search of the mystical multitude which Hardt and Negri hope will destroy the Empire, that is, the totality of power relations (see also Hirsch 2003:40).

Holloway’s insistence on a historically invariant essence of the capitalist state is not the only attempt to keep the analysis of the “state form” (Staatsform) alive. Sonja Buckel (2007) focuses on the question of how the practice of the “legal form” (Rechtsform)—together with other practices—produces individual subjects. While every individual subject is constituted as an ensemble of specific differences integrated into structures of hierarchy and is at the same time isolated from all other individual subjects, contrarily, the “law form” transforms individual citizens into equal and therefore identical subjects of law. It homogenizes legal subjects.

Buckel has not only taken up the questions which were discussed in the derivation debate but has suggested answers which can further advance materialist state analysis. In refraining from characterizing her analysis as an analysis of the essential form of capitalist states, she accepts Joachim Hirsch’s insistence that the form of the state as the fetishized expression of the whole of society is also brought about by such additional features as universal suffrage, certain political discourses and the development of social policy.

But Sonja Buckel not only establishes the essential element of the capitalist state form, she also contends that this cannot be explained in the manner suggested by participants in the derivation debate—that is, as “requirements” of capitalist production (2007:132). Instead of seeing the state in terms of the logic inherent in capitalist production she wants to understand it as the result of “effects” of historical developments. This is similar to Gerstenberger’s explanation of the formation of bourgeois states ([1990] 2007). Provoked by the a-historical reasoning of the derivation debate this analytical concept focuses on the specific historical preconditions for the development of the bourgeois state form.
According to Gerstenberger these preconditions were inherent in the structures and the crises of the (specifically European) domination form “ancien régime”. Instead of seeing the bourgeois state form as being logically derived from the essential structures of capitalism, she insists that capitalist social relations could only become historically dominant when the private proprietors of powers of domination, including not only dynastic sovereignty but also all sorts of privileges, were dispossessed—that is, when the bourgeois state was constituted. This historical interpretation also extends to the analysis of the legal form. While the equality of the subjects of law became a prerequisite for the functioning of capitalism, it was historically established through struggles against specific inequalities inherent in European societies of the “ancien régime”. It has always been mistaken to see the agents of these struggles as “capitalists in waiting”.

The Plurality of Capitalist States

For Immanuel Wallerstein (1974, 1980) the “modern state” enters history as the ideal general capitalist of merchant capital. According to him the development of strong territorial states was a product of the European commercial expansion which began in the sixteenth century and was to bring about the “Modern World System”. The transformation was possible because the concentration of capital in the centers not only offered the financial base but also the motivation to constitute strong states. This reasoning fails, however, adequately to consider the fact that successful accumulation strategies on the part of merchants depended much more on the defense of privileges against potential newcomers than on territorial expansion.\(^{13}\) In pre-capitalist Europe territorial expansion was either motivated by endeavors of plunder (Andrews 1984) or by the drive for “land and people”—that is, for the enlargement of the base of taxation and of the possibility of integrating nobles into the centralized structures of princely domination.

The slow and always precarious stabilization of personal property in powers of domination attained a rather more stable structure when—at the end of the devastating 30 Years War—the principle of “proprietary dynasticism” was agreed upon. Benno Teschke has conclusively demonstrated that the Treaty of Westphalia was not a treaty between states but between dynasties and that it did not refer so much to the domination over a certain territory as to the possession of rights (2003:238 and passim). It was only in the course of the dispossession of personal proprietors of sovereignty that states in the modern sense came into being. This transformation of the plurality of sovereign dynasties into the plurality of states predates the spread of capitalist social relations. But for Teschke belligerent competition between states not only brought about abstract sovereignty but also inaugurated the
spread of capitalism. For him the conflicting relations between the already capitalist state in England and the not-yet capitalist states on the European continent resulted in the transformation of property relations in affected countries (2003, 2005, 2006). While capitalism in England had been the result of internal dynamics, political appropriation hindered any autonomous dynamics towards capitalism on the continent. Only in England did the transformation of the power of a dynasty into modern abstract sovereignty become possible without external influences (Teschke 2005).14 It is from the standpoint of this radical international analysis that Teschke criticizes any comparative analysis of the constitution of capitalist states (2005).

While Teschke’s critique of the widespread tendency to treat the capitalist “state” as if it existed only in the singular form is well founded, he offers no explanation for the essential political form of capitalism. His description of the historical development of the English state in the second half of the seventeenth century is on the same theoretical level as Bob Jessop’s description of the Atlantic Fordist state: it equates the institutional apparatus of the state with its essential form. If it might be possible to explain the drive to abstract sovereignty as an effect of conflicting international relations, this does not hold true for the establishment of formally equal subjects. When this came about, in France, in Prussia or in Sweden, it was of course inspired by international developments but it was, nevertheless, the result of opposition to very specific local forms of domination. The outcome of these processes of opposition has become known as the bourgeois state form.

If the constitution of the capitalist state form is reduced to a separation of functions it might, indeed, be tempting to think that capitalism, once established, “requires some form of (geo-) political organization” but does not require “a system of states” (Teschke and Lacher 2007:574). On first sight Justin Rosenberg’s conception of the “Empire of Civil Society” (1994) as well as Ellen M. Wood’s conception of the “Empire of Capital” (2003) seem to confirm the Teschke/Lacher hypothesis. Both maintain that the advent of capitalism has, once and for all, transferred the center of historical dynamics to the economy. They stress that the state has important functions for capitalist society but also that there is no requirement for the state to get involved in the privatized sphere of production (Rosenberg 1994:127). The “transnational whole of economy produces political effects independently of the agency of the state” (1994:13). While Rosenberg’s hypothesis of the transformation of the nature of sovereignty through capitalism refrains from any reference to the plurality of states, Wood expressly contends that this plurality is still vital. According to her, “the new imperialism, in contrast to older forms of colonial empire, depends more than ever on a system of multiple and more or less sovereign national states” (2003:141). They are necessary “to perform the administrative and coercive functions

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that sustain the system of property and provide the kind of day-to-day regularity, predictability, and legal order that capitalism needs more than any other form” (2003:141).

These concepts have convincingly undermined the theoretical foundations of realist international relations theory by scattering the edifice of an a-historical system of competing political actors, but their specific interpretation of the separation of state and market is not convincing. First of all, it is not able truly to grasp functional changes. Rosenberg’s conception, for example, forces him to maintain that processes of nationalization diminish the sovereign character of state rule (1994:127–128), and Wood’s conception prevents satisfactory theoretical treatment of the growing number of public–private partnerships (Harvey 2006:159). But Max Weber was quite correct in contending that there is no state function—in his terminology, no purpose (Zweck) of state activity—which cannot be fulfilled, and at some time or other has not been fulfilled, by non-state agents ([1921] 1972:section 17, 3). The identification of the capitalist state with certain functions for capital is not sufficient for the theoretical explanation of the continued existence of a plurality of states. David Harvey is not very far from the Teschke/Lacher hypothesis when he maintains that if the bourgeois state is “the preferred condition for capitalist activity” (2003:91) capitalists do not necessarily require such a framework to function. Wood, of course, would not concur, because for her the guarantee of private property, the day-to-day stability of the system, combined with the disciplining of laborers, have been and still are preconditions for capitalist accumulation. “The state lies at the very heart of the new global order” (Wood 2003:139).

In analyzing this new global order Ellen Wood sticks rigidly to her line of reasoning when she insists on the purely economic character of capitalist imperialism. For her, violent and belligerent forms of appropriation are the expression of pre-capitalist social and political relations. They have been superseded by that new form of imperialism which has been brought about by capitalism: economic imperialism (2006:17 and passim). Instead of colonial Empires we now have an “Empire of Capital”. The difference between “economic imperialism” and all the older forms of imperialism is capitalism’s “unique capacity of economic power to detach itself from direct political coercion” (2006:18).

This contention leaves Wood with the necessity to explain the fact that wars still do happen under capitalism. Focusing on the current epoch she maintains that the state is called upon to create an international order which is “congenial” for the movement of capital on a global scale (2006:26). Staying within her theoretical edifice we might say the state can no longer resign itself only to shaping the infrastructure of the national territory but also must do so on a global scale. According to
Wood the establishment of such a congenial order is above all a “military project”. But while in former times military force was used in order to achieve specific results, it is now employed for the demonstration of predominance, military and otherwise (2006:27). This, however, furthers the tendency of political strategies to be shaped by military logic. In order to illustrate this hypothesis she refers to the war in Iraq. According to her, the oil-producing countries of the Middle East have no interest whatsoever in denying their product to anyone who is willing to pay the price demanded (2006:27). Military force, therefore, is not used to safeguard the access to oil supplies, but to establish a sort of general supervision of the global system.

There is much to be said for this reasoning. One can easily follow the militarization of politics maintained by Wood by simply looking at official publications. For example, in the “Bottom Up Review” to the Congress by Secretary of Defense Les Aspin in 1993, the objective of defense after the end of the Cold War is very clearly spelt out as the promotion of the political and economic power of the USA. This includes the safeguarding of “a healthy free trade regime”.16 In A National Security Strategy for a New Century, which was published in 1997, the functions of the military to “shape” and “prepare” have been accorded even more importance, as has the orientation towards potential(!) threats. “Our primary economic goal remains to strengthen the American economy.”17 At the same time, the orientation of military strategies towards potential threats and the defense of economic interests everywhere in the world first spelt out by the US government has been accepted by the member states of NATO, thereby transforming the alliance into an instrument for the defense of any vital interest of its member states by military means. This includes the management of crisis by conducting “non-Article 5 crisis response operations”,18 in other words, by conducting military operations “out of area”—outside of the NATO member states—in order “to keep risks at a distance”.19

If these remarks strengthen Wood’s interpretation of recent developments they do not support her assumption that the plurality of states has been satisfactorily established not only as a historical fact but also as a continuing structural prerequisite of capitalism. It is only when competition between states is considered to be essential for the reproduction of capitalism that this continuation can be explained (Hirsch and Kannankulam 2011). We will come back to this.

David Harvey’s use of the term “imperialism” implies a conception which takes the competition between capitalist states for granted. But his theoretical edifice is not quite as clear as that. What Harvey has been dealing with all along is the spatial dimension of the “logic of capital”. It derives from the fact that capital is constantly in need of a “spatio-temporal fix”20 (1982, 1989, 2001, 2003). Because of the tendency of over-accumulation the advantages of certain locations
have to be made use of wherever they can be found. This suggests a geographical version of Schumpeter’s concept of “pioneer profit”. Since for Harvey the exploitation of advantages that can be found in new locations is equivalent to the use of new technology (2003:94) it is very clear that his notion of a “spatio-temporal-fix” is not to be understood as implying any structural necessity of the territorial expansion of direct political domination. Instead, it implies the necessity of a continuous territorial mobility of capital (see also Belina 2006:59–60). But capital has to overcome political as well as economic obstacles to its mobility. Many investments require a specific infrastructure and/or large quantities of locally fixed constant capital (Harvey 2003:99–100). Sometimes the profitable use of this capital is endangered not only by economic risks, but also by political and even terrorist threats. Therefore the “geographical patterning of capital accumulation” (2003:101) is principally unstable. If this argument sets Harvey’s concept against the general continuity of geographical patterns of exploitation as it has been formulated by Immanuel Wallerstein and others in the context of their theories of a capitalist world system, Harvey nevertheless holds that temporally stable geographic configurations are possible. He calls them “regions”, specifying that regional economies “achieve a certain degree of structured coherence to production, distribution, exchange, and consumption, at least for a time” (2003:102).

But according to Harvey the “geographical patterning of capital accumulation” is not only brought about by the logic of capital but also by the territorial logic of power as expressed through the politics of state and empire (2003:103f). In refraining from interpreting the state as the agent of national capital Harvey avoids an instrumentalist conception of the capitalist state. On the other hand, his “logic of territory” concept brings him very close to authors who postulate that there exists something like a trans-historical nature of “the state”. In those interpretations the historical specificity of states comes in via the linkage between the logic of power and the logic of a historically specific mode of production (see, for example, Mann 1986, 1993). And indeed, if we do find thorough analyses of present-day hegemonic policies, as well as analyses of the valorization of capital in Harvey’s publications, there is no discussion of the possibility that there is a “territorial logic” which is specific to capitalism. When Harvey writes that capitalist imperialism is the result of a dialectical relationship between the territorial logic of power on the one hand and the capitalist logic of power on the other (2003:184) then the reference to dialectics—as so often in the history of Marxist theory—only conceals the fact that no precise analysis of the relation in question is delivered. Indeed, Harvey himself remarked, that he has used the generic term of a territorial logic of power to obscure the absence of a theory of the state in his work (2007:67).
The theory of imperialism minus a theory of the state that Harvey presents is founded on the crisis theory of the tendency towards over-accumulation. In the present epoch, strategies that are termed “neoliberal” are deployed to overcome the tendency towards over-accumulation. Harvey calls “imperialism” the use of state power to establish economic liberalism throughout the world. His focus is on the causes and the relevance of the neoliberal hegemony of the USA in the period from the 1970s to the year 2000 and on the serious difficulties which this hegemony has encountered in recent times (2007:70). During this period the model of a “neoliberal state”—that is, a state which actively furthers the valorisation of capital—was established in the USA and has since been spread across the world through the policies of US-American governments and the IMF.

This is an argument and a terminology which can be used to promote public debate. But if we insist that the theoretical concept of imperialism should be stringently developed we do not get very far with Harvey. According to him the economic content of neoliberalism is “accumulation by dispossession”. He wants us to accept this as a partial reformulation of Marx’s theory of “primitive accumulation”. But Marx termed “primitive accumulation” the separation of producers from their means of production and hence their subjugation under the laws of the market, while Harvey wants to include processes of redistribution in the concept. “Why would we want to classify as accumulation by dispossession the normal capitalist process of exploitation . . .?” asks Robert Brenner (2006:101; see also Fine 2006:143–147). In his response to this critique Harvey points out that the term “primitive accumulation” is only understood by people who know Marx, while those who do not, immediately understand what is meant by “accumulation by dispossession” in relation to pension rights, the privatization of water, the loss of health-care rights and other current developments (2006:158). If this is the endearing remark of somebody who, all along, has been striving to overcome the boundaries of academic discourse, it also makes it very clear that the term “imperialism” is used for the sake of political provocation. In theoretical terms, however, the foundations are not strong enough.

The debate about competition between capitalist states (that is, imperialism) suffers from an inclination to interpret capitalism predominantly as an economic system. Competition with other states is either considered to be more or less determined by problems of capital accumulation or is interpreted as being more or less contingent in relation to conditions of accumulation. If Benno Teschke and Hannes Lacher overlook the continued tendency of capitalism to reproduce uneven development—that is, the prerequisite for the achievement of super profits—this fails to prove Alex Callinicos’ assertion that the
continued existence of the “law of uneven and combined development” amounts to a theoretical explication of the plurality of states.

This plurality can only be successfully established if the competition between states is considered a prerequisite for the reproduction of capitalism. Joachim Hirsch and John Kannankulam have suggested this should be done by integrating form analysis into the analysis of international competition (2008). If they agree with Alex Callinicos in stressing the continued importance of seeking extra profit they maintain that this is (also) possible by making use of the capacity of capitalist states to organize supra-class coalitions. These coalitions aim at securing advantages in the context of global competition. Since exclusion is inherent in the regime of citizenship it is possible to mobilize nationalism for economic ends. Hirsch and Kannankulam contend that if the conditions both of accumulation and the realization of profits have become global, classes have not. Classes are still fractioned because of the existence of competing nation states (2008). This results in competition between states becoming one of the structural elements of capitalism.

While China Miéville (2005) is not trying to establish the structural requisite of the competition between states, he explains how the coercion inherent in this competition functions in the realm of legally equal sovereign states. He starts out by revisiting Pashukanis and spells out very clearly that his concept was not that of a legal form without content. Despite his reservations against the practice of criticizing only the (class) content of law, Pashukanis asserted that the legal form is a form of bourgeois society (see also Arthur 1978:28, cited by Miéville 2005:118). Hence it not only refers to commodity exchange but also to “social relations of exploitative inequality embedded in the wage relation” (Miéville 2005:118). It is because of the commodification of labor that exploitative class relations can be “brought in the realm of the juridical as a commodity form” (2005:120). While all of this reads like a revisiting of the derivation debate, as indeed it is, Miéville goes much further. His proposal of a Marxist theory of international law begins by pointing out that “violence—coercion—is at the heart of the commodity form” (2005:126). Contracts cannot exist without constraint. In agreement with Colin Barker (1997:27–28, cited by Miéville 2005:127) and in opposition to Pashukanis, Miéville contends that coercion backed by force is implied in the generalized form of law and directed by one individual towards another (2005:127). This, of course, implies that the capitalist state in the form of the bourgeois state—that is, a state which usually manages effectively to rule out the use of direct coercion between persons—is not a necessary form of capitalism. The bourgeois state superimposes itself onto the legal form.

Miéville’s contribution to the theory of international law consists of the application of the analysis of the legal form to the sphere
of competition between states. In modern international law all states have become formally equal and the relation between states has been juridicalized (in every international conflict all the states involved refer themselves to one or the other of the internationally established rights). But in contrast to the commodity form in bourgeois societies, legal relations in the sphere of international law are non-guaranteed. Between two rights, force decides. Hence the futility of any attempt to criticize imperialism with legal arguments.

Looking behind the screen of formal rule over colonized people Miéville contends that imperialism is a continuous element of capitalism. There were and there are shifts in policy. (2005:274). The phase of formal colonialism was one of these shifts. It was, as most experts on colonialism now agree, a very costly deviation from the strategy of making use of formal sovereignty. Individual owners of capital found new possibilities for profit; individual state employees, including members of the army and the navy, profited from new career possibilities; and settlers could make use of chances for the economic advancement of their families. On the whole, however, colonialism did not open up new markets for the products of “national capitals” (Bairoch [1971] 1992; Giraud 1996). The national economies of industrialized societies have not really profited from the sufferings and the long-term economic damage that was inflicted on subjugated people. The historically exceptional strategy of formal political domination apart, strategies of imperialism centered on the profitable use of the formal equality of sovereign states. This strategy has already been inaugurated in the first decades of the nineteenth century. Miéville does not enter into the analysis of formal rule but shows that the US strategy of imperialism through the recognition of formally independent postcolonial states pre-dates the phase of colonialism of the end of the nineteenth century. He does not have to explain expressly that this strategy became global when in 1960 the United Nations—in the General Assembly’s Resolution 1514—decided to “grant” independence to colonial countries and peoples. By this declaration and its subsequent interpretations the requisite of effective sovereignty was erased from the sphere of international law. Instead, it is in the realm of the formal equality of states that coercion is applied. While this analysis is not new (see, for example, Chemillier-Gendreau 1995:321), Miéville’s stringently worked out suggestion of applying the analysis of the legal form of capitalism to the sphere of the competition between states is important enough to provoke further analysis.

Why the Political Form of Capitalism Should be Revisited
Recent historical development has come as a contradiction to dominant conceptions of materialist state analysis. Theoretical conceptions of the
The separation between state and society which focus on a separation of functions are inadequate for a theoretical integration of the dramatic enlargement of the “empire of civil society”. The inadequacy of dominant conceptions of regulation theory, on the other hand, becomes evident by the simple fact that they do not offer any guide for the analysis of those states which, though they have been molded according to the institutional pattern of bourgeois capitalist states, do not resemble them in any way. How does regulation theory deal with states which, according to the dominant political lingo, have “failed” or are in danger of “failing”? The globalization of capitalism has barred the simple option of declaring that they are not in fact capitalist states.

In what follows I will try to further explain these critical remarks by pointing to some developments that are conspicuously absent from recent debates on state theory. If there has been discussion about the reasons for and the effects of privatizing social services which, at least in some capitalist states, had been considered the obligation of the state, reference to the privatization of prisons and of military services is rare. But what are we to do in theoretical terms about the fact that military services are increasingly organized in the form of private business? The world market for these services has been growing immensely in recent years. Already some years ago it was possible to lease a complete, if small, air force—planes, flying and maintenance personnel included (Singer 2003:173). The US administration could decide on the use of arms in its “war against drugs” without informing Congress because it was paying a private firm to do the job. P.W. Singer is certainly correct in contending that international security has become complicated both by potential market dynamism and by the fact that the locus of judgment on how military operations are carried out in the field is no longer solely within state control (2003:169). Deborah D. Avant sums up her analysis of the market for force by stating that it has led to a less stable control over force (2005:7). In any case it weakens the possibility of any democratic control over the use of military force.

Privatizing military services is an encroachment on the state’s monopoly of the legitimate use of violence. But processes of globalization have also reduced the ability of states to codify law. In recent years more and more cases of conflict arising in international business transactions are submitted to private arbitration bodies. If parties to arbitration can fall back on national courts this does not alter the fact that a growing number of contracts function independently of state sanction. The incongruity between the reach of capitalist relations and the reach of national sovereignty has resulted in manifold forms of private governance. The most important of these is regulation by contract (Collins 1999). Contracts assume an agreement between equals, be it between states, between a state and a company, or between two or more business partners. Although differences of power and hence of
coercion are never absent, contracts offer stability for a certain time and hence the possibility of achieving at least some of the economic aims of all the parties concerned (Dezalay and Dryant 1996:76 and passim). *Lex mercatoria*—as private forms of governance and litigation are sometimes called in reference to practices of international trade developed in medieval times—concerns the governance of market relations, not of class relations; but from the contract concluded between the management of a ship and its charterer, to the contract concluded between an oil company and a government the conditions of contracts and results of litigation often also affect labor conditions.

Another affront to the functional conception of the separation between state and society is apparent in the commodification of national sovereignty. When governments of sovereign states offer offshore conditions on the respective world markets, they are not offering to sell parts of their sovereignty but are marketing a deviation from their sovereign competence in national regulation. The creation of specific legal spaces for non-citizens amounts to the creation of “islands” within the generality of national law. While the term “offshore” now commonly used for these spaces suggests far-off regions, offshore conditions are offered not only by small island states in the Caribbean Sea or the Pacific Ocean but also in the centers of highly industrialized capitalist states.

These legal spaces come in three versions: the establishment of financial services outside of national laws, the offer of special conditions for foreign investors in so-called export-processing zones and the offer of registration in the national ship register. Some offshore conditions are publicized with a more-or-less open declaration that national legal regulation which formally also applies to investments under offshore conditions will not in fact be applied. But the fact that the line between legality and illegality is often not very strictly drawn or observed does not alter the fact that the legal exception from the generality of national law has in each of these cases been decided upon by a government. It has been convincingly argued that in the 1960s and 1970s governments of highly industrialized countries, instead of trying to prevent these developments, actually accepted and sometimes even encouraged the possibility of conducting business outside the realm of national taxes, national bank laws and national regulations of labor (including the possibility of managing ships under “flags of convenience”). The possibility of circumventing the high standards of national regulation seemed—at least for some time—to be a means of avoiding conflicts with national interest groups. However, “the onshore regulators then often found that they had helped to create a monster they could not properly control” (Picciotto 1999:54). In Sol Picciotto’s terms this monster is the “state as legal fiction” (1999). There is no doubt that
the offshore phenomenon has advanced the process of deregulation and hence the processes of globalization.

If the offshore phenomenon has to be seen as a critique of functional explanations of the separation between state and society it should also be realized that many postcolonial states, especially those in sub-Saharan Africa, constitute a critique of conceptions of state theory that focus on the state apparatus. If political judgment has been ready to accept rankings of states which range from those with a general resemblance to wholesale models of a rational and efficient Weberian state to those that are in danger of failing or have already “failed”, there is also a continuing serious theoretical discussion about how best to theoretically understand the African state. This has remained more or less unnoticed by those taking part in theoretical debates about the capitalist state. But it is in this very task of attempting to grasp theoretically the nature of the postcolony (Mbembe 2001) that state theory could seek to prove that it is able to achieve more than a sophisticated description of state apparatus. Only a few remarks about the theoretical issues this raises are possible here.

Although many men and women fought for their emancipation from colonial domination, the sovereignty of post-colonial states was not a result of their effective appropriation of the means of power but of the decision of hegemonic states to grant them sovereignty. International law defends this sovereignty not only in regard to other states but also in regard to people within a particular state asserting their demands for autonomy. Furthermore, the granting of sovereignty not only constitutes sovereign national states but also the “nations” that are to be the proprietors of this sovereignty.

Endeavors to tackle analytically the “African state” have been developed more or less separately from the discussions outlined above. Leaving aside the politically motivated practice of interpreting the actual circumstances as the result of “bad governance” there are those who maintain that the granting of sovereignty has produced only “quasi-states” (most prominently, Jackson 1990:21 and passim) and expect that these will, in the course of time, become real states. This concept dovetails neatly with the long-dominant assumption of a universal historical path of development. But if the concept of a “real state” not only refers to the formal state apparatus but to the essentials of the bourgeois capitalist state, it should be remembered that the latter was the result of historical processes which, among many other important elements, experienced a pre-bourgeois and pre-capitalist development of public debate and public opposition—something that was definitely absent from colonial states. And if today almost everybody agrees that the development of social policy in western states was not only brought about by “good government” but has been effectively demanded by organized labor then it must be accepted that the potentially global competition between workers has thoroughly changed the conditions
for the success of organized labor in countries where specialized labor power is rare.

While some contend that the African state has “not yet” become a real state others eliminate the theoretical problem by arguing that African capitalism has “not yet” become “real” capitalism. But even if many children, women and men in Africa are engaged in subsistence agrarian production—albeit often with very limited success—others work for big international companies. Many women were employed in textile firms until the end of the quota system for the export of textiles made it possible for their Chinese owners to relocate these firms to China. And there are all those employed in tasks which are usually captured by the term “informal labor” and of whom Jan Breman rightly insists that we should not consider their labor as being outside of capitalism but as being integrated in its structures, albeit as its “dirty belly” (2000:17). These are not the only forms in which citizens of African states are integrated and affected by global capitalist competition. Many members of governments and state administrations are involved in money laundering, in diamond smuggling and other valuables, in the trade in women, children and drugs. Participation in illegal international transactions has become so intense that some experts on modern Africa talk about the criminalization of the state in Africa (Bayart 2004; Bayart, Ellis and Hibou 1997, 1999; Hibou 1999). Corruption is not seen as an aberration from the normal working of the administration but as its essence (Chabal and Daloz 1999). In other words national sovereignty is exploited for almost exclusively private means (Mbembe 1999; 2001; Reno 1999). Historical analysis not only reveals that the implantation of the institutional apparatus of bourgeois capitalist states has not simply erased the fundamentally different pre-sovereign development but also that the political strategies of corruption used by the competing powers during the Cold War have implanted the practice of exploiting national sovereignty for private gain. If at that time it became common practice to sell the “national voice”, more or less openly, in the general assembly of the UN, private gain is now possible when permits for export or import are granted, licenses for the production of oil are issued, the importation of dangerous waste is permitted, and so on.

Experts trying to grasp the special character of the African state often make use of concepts like patrimonialism or neo-patrimonialism. Sometimes “praetorianism”, “sultanism”, the notion of the prebendary state or even feudalism are suggested, and bolstered by reference to the political sociology of Max Weber. What all these terms are supposed to express is the importance of hierarchical personal relations and the absence of a society as a separate realm from the state (Kößler 1994). But the personal relations to which all the analytical concepts refer function in parallel with a state apparatus which formally corresponds with the institutions in “real” capitalist states. The administration in each
of these states is formally molded after the pattern of modern impersonal bureaucracy. Even if the result of litigation can often be bought, formal equality before the law has been instituted in all of these states, and if general elections usually result in the giving access of successful members of the opposition into the net of reciprocal personal favors, they are, nevertheless, an institution that was absent under patrimonialism or sultanism.

If we are not content with describing the ways in which local forms of capitalism in African states differ from those in de-industrialized regions of developed capitalist economies, or with an explanation of the ways in which the African capitalist state differs from the bourgeois capitalist state, Fordist or otherwise, then we must once more try to answer the question of what constitutes the essence of the capitalist state.

Endnotes

1 If it is easy with hindsight to see the theoretical flaws of this conception we should also remember that, at the end of the nineteenth century, the labor movement had hardly any choice but to consider it an adequate expression of reality. After the end of the “Old Regime” workers and servants, be they male or female, experienced a state which was “the state of the bourgeois”. No equality in the right to vote for men, total exclusion of women from the *body politic*, class justice, criminalization of the poor, prohibition of trade unions, the use of troops in order to suppress strikers, all these expressions of state power clearly and daily told workers how state power was used in order to safeguard the economic position of capital owners.

2 The title of Miliband’s book “The State in Capitalist Society” (1969) adequately expresses this theoretical concept. Miliband explained the instrumental nature of the state as the result of linkages between the personnel of the state apparatus and dominating groups (especially chapter V).

3 If this debate has also influenced debates on state theory in other countries (see for example Reuten and Williams, 1989) it was in West Germany that it was to become most influential for the production of Marxist theory.

4 All the participants agreed on the fact that Marx himself had not worked out a theoretical concept of the capitalist state. Going back to Marx’s writings some concentrated on his early writings while others focused on “Capital”.

5 For a thorough critique see Wirth (1972) and her extensive bibliography on the debate.

6 Edgar Wolfrum has pointed out that in the BRD the peak of expectations from planning was in the time of the coalition between CDU and SPD (2006:230). On literature which appeared during this time see Wolfrum (2006: note 108); see also Grottian (1974) and Grottian and Murswick (1974).

7 For a discussion of the changes in the theoretical conception of the state in the publications of Offe, see Ronge (1977:206–212).

8 John Holloway and Sol Picciotto (1978) have translated extracts of those contributions to the derivation debate which they thought were most important, thereby furthering its international influence. But in their introduction to the collection they have not only evaluated the German essays but have themselves offered a very stringently argued contribution to the development of a Marxist theory of the state.

9 Flatow and Huisken maintain that specific state activities are engendered by the requirements of capitalist production and reproduction. These requirements work “behind the back” of the agents. They assume not only that the state is separated from society but also that it is able to—at least partially—surmount the anarchy of
capitalist production. A closer look at reality must disappoint: in the real world, states rarely function according to this theory.

10 Kosmas Psychopedis has pointed to the dangers of any over-emphasis of the element of struggle. It might be understood “as an irrational and spontaneous act regardless of the historical and social relation and the social division of labour” (1991:190f).

11 It is, for example, also present in the writings of Perry Anderson and, following Anderson, in those of Teschke (see, eg, Teschke, 2003).

12 Holloway considers that the theory of the “Empire” which has been suggested by Hardt and Negri is only another term for neoliberalism (2002:187).

13 On the difference between pre-bourgeois merchant capital (Kauffmannskapital) and capitalist trading capital (Handelskapital) still unsurpassed, see Marx (1972, Vol 20, chapter 20).

14 Wood ([1999] 2002:174ff) also maintains that there was no autonomous development towards capitalism on the continent. She points out that in France small peasant production continued for a long time, as did the private usufruct of the results of the tax state. I would insist, however, that the French Revolution did bring about the separation of state and society in France in the sense that this is conceived by Buckel. The form of the bourgeois state was constituted before the breakthrough of capitalist social relations.

15 Colin Barker has already remarked years ago that Wood refrains from really analyzing “the state” (1997:part 6).


17 A National Security Strategy for A New Century (www.fas.org/man/docs/strategy97.htm). For the “shape” and “prepare” functions, see some of the sub-titles in this report.

18 The Alliance’s Strategic Concept (approved April 1999) (http://www.nato.int/docu/pr/1999/p99-065e.htm), Article 4.

19 The Alliance’s Strategic Concept (approved April 1999) (http://www.nato.int/docu/pr/1999/p99-065e.htm), Article 48.

20 In earlier publications he uses the term “spatial-fix”.

21 For his concept of the different logics Harvey explicitly refers to the work of G. Arrighi. But Arrighi remarked that in his own work not only the territorial logic but also the capitalist logic are conceived of as determinants of state activity (2005:28, note 15). In contrast to Harvey he also refrains from assuming that all market processes are steered by capitalist logic.

22 Even if offshore conditions are sometimes only valid in specific places, it is theoretically imperative that offshore is not to be understood as a territorial category but as a legal space. (see Hampton 1996).

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