

1. Introduction

“Hier konnte niemand sonst Einlaß erhalten, denn dieser Eingang war nur für dich bestimmt. Ich gehe jetzt und schließe ihn.”

Franz Kafka, ‘Vor dem Gesetz’ (Selbstwehr, 1 January 1915)

It is easier to imagine the end of law than the end of the state as the law’s basic unit. The optimism of the early 2000s promised an overcoming of the state form. The worst excesses of state power would be outlawed by international institutions, their inefficiencies obliterated by markets, their borders dissolved by love and trade. At the End of History, man would triumph over the rigid anachronism of sovereignty or at least over whatever in it was rigid and anachronistic. Today, that optimism and its cosmopolitan promise seem irretrievably lost.

In international relations, globalisation meant only the temporary loan of authority by states to inter-state institutions.¹ The “rules-based order” was succeeded not by bolstered cosmopolitical legality but by militarist “realism”.² The state’s position as the basic unit of global

1 See Martti Koskeniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge University Press 2003) 511–513.

2 Monica Hakimi and Jacob Katz Cogan, ‘The End of the US-Backed International Order and the Future of International Law’ (2025) 119(2) *AJIL* 279, 286–289; see also John Mearsheimer, ‘The Inevitable Rivalry: America, China, and the Tragedy of Great-Power Politics’ (2019) 100(6) *Foreign Affairs* 48.

politics did not shrink but grew at the expense of other political imaginaries.³

The same is happening within states. The neoliberal state apparatus is stripped back to its “core military and police functions”.⁴ The gentler machinery of the welfare state is continuously scrapped so that the rougher machinery of the realist state can be reinforced.

The “intractable persistence”⁵ of the state appears safe from harm or progress. The position of the state as the “most comprehensive legally-based social organisation of the day”⁶ remains secure. Not only secure but ascendant. One might quip in a distortion of St. Anselm that if the state grows in reality, it must also be growing in the imagination. Rather, the vindication of the state in reality has caused it to swell so much in the imaginary that it has, even there, crowded out all alternatives.

If one wished to see the discarded promise realised, one would have to contend not just with reality but also with the imaginary; a fiercer foe. There are of course the practical problems of enforcement and justice. How could any rights be secured without a state? How could rights to, say, land even be asserted except within a state? How could any law, let alone a just one, be promulgated? Who would it bind? All of these questions are logically prior to the impossible question of how a humanity mired in increasingly dire crises could even begin building such an alternate reality. And all of these questions are impossible to answer if one is unclear about what is meant by the state. We often are unclear; confounding territory with statehood and statehood with government. Thus, the present interrogation of the basic ontological

3 cf Manfred Steger, ‘Political Ideologies and Social Imaginaries in the Global Age’ (2009) 2 *Global Justice: Theory Practice Rhetoric* 1.

4 Mark Fisher, *Capitalist Realism* (Zero Books 2009) 2 and 65; see also Loïc Wacquant, ‘Three steps to a historical anthropology of actually existing neoliberalism’ (2012) 20(1) *Anthropologie Sociale* 66.

5 Timothy Brennan, ‘Cosmopolitanism and Internationalism’ (2001) 7 *New Left Review* 75.

6 Joseph Raz, ‘Why the State?’ (2014) King’s College London Research Paper no. 2014–38, 18–20 <<https://doi.org/10.2139/ssrn.2339522>> accessed 13 August 2025.

structure is a clarification of what is meant by what and for what material reasons.

But this is not, and could not be, an exercise in conceptual hygiene. The categories through which law imagines and constrains political community emerge from the material conditions law organises. If, as I argue, territory has been falsely elevated from contingency to common sense to Law of Nature, this is not because jurists have reasoned badly about the state. It is because the material developments that produced the state also produced real, analogous developments in the ideological superstructure of law. The Leviathan is no more an accident than a necessity; *both* negations must be asserted to expose its contingency.

Modern legality and statehood have their genesis in early capitalism. The consolidation of capitalism tracks a transition from contractarian statehood — of which Kant is perhaps the last theorist — to total statehood — of which Hegel is arguably the first. As the legal form mirrors the requirements of economic interaction, so the state form mirrors the emergent structure of a closed market economy.

The transition from feudalism to capitalism entailed two transitions in the primary drivers of economic activity: from land ownership to capital ownership, from rent extraction to profit extraction.⁷ If changes in the mechanics of wealth extraction were tracked by changes in the content of legal norms, the emergence of ecosystems of capital ownership was followed by the birth of statehood.

Today, capital ownership remains the foundation of the economy but rent extraction is regaining a place alongside or above profit extraction.⁸ If the state form organisationally corresponds to capital and the legal form to extraction, the reasonable inference is that the legal form is now poised to adapt while the state form will remain stable. Contrary to neoliberal vocabularies of deregulation and small government, the

7 Karl Marx, *Grundrisse: Notebook II – The Chapter on Capital* (1844) 239–250; see also Don Munro, *Marx's Theory of Land, Rent, and Cities* (Edinburgh University Press 2022) 71–81.

8 See Nicholas Gane, 'Capitalism is capitalism, not technofeudalism' (2025) 25(4) *Journal of Classical Sociology* 353–368 <<https://doi.org/10.1177/1468795X241269293>> accessed 20 August 2025.

replacement of profit with rent requires *more* regulation and intervention as wealth accumulation increasingly depends on ownership rather than activity.⁹ Statehood rises from purported decline, trailing the most recent transformations of the economy.

The work is an intervention in three parts: (i) on the concept of statehood, (ii) on Kant's state, and (iii) on the replacement of the early capitalist Kantian state by the consolidated Hegelian state.

In the first part, I lay out a case against contemporary state ontology. I begin with the observation that while it is accepted that the state is a historically contingent form of political organisation, it is still treated by law and much of political theory as a socially necessary one. I argue that the hard limit on the political imaginary — the impossibility of conceiving of a normative ordering of society without a state — is the result of an ontological sleight of hand in the concept itself. Essentially, all norms are said to emanate from states *and* the state is thought of as grounded in territory. But since territory is a normative category, the state seems to presuppose its own existence. Against this, I propose to ground the state not in territory but in government — in a-territorial civil authority.¹⁰

In the second part, I argue that my view is compatible with Kant's theory of the state. Focusing on Kant's juridical doctrine of the Original Community of Land (OCL), I argue that states enjoy only a contingent ownership of territory which temporarily suspends the juridical relation between people and land. This allows for an account of actually existing states that does not presuppose territory but remains grounded in government.¹¹

In the third, I consider why the territory-grounded state historically won out over the government-grounded state. I present a materialist

9 Slavoj Žižek, *The Relevance of the Communist Manifesto* (Polity Press 2019) 13.

10 Consider the recent ICJ opinion that loss of all territory does not necessarily mean that a state ceases to exist. see *Obligations of States in Respect to Climate Change (Advisory Opinion)* [2025] ICJ General List No. 187, para 363 <<https://www.icj-cij.org/case/187>> accessed 4 September 2025.

11 cf Craig Green, 'Beyond States: A Constitutional History of Territory, Statehood and Nation-Building' (2023) 90(3) *University of Chicago Law Review* 813, 823.

account in which the transition into capitalist class society led to the practical expropriation of territory from citizen-landowners to the state as such. This territorial state, widely associated with Hegel, has been the subject of extensive Marxist critique. I supplement this critique in two ways. First, I extend Evgeny Pashukanis' critique of the legal form; the idea that legal relations invert the logic of economic relations in order to preserve the latter. In conjunction with Marx's own observations on Hegel's state theory, this conceptualisation can explain the concept of the state as a fetish; a reversal of material reality. Second, I show how Pashukanis' refusal to engage with Kantian jurisprudence forms a limit on his analysis. A synthesised view, I argue, rescues the emancipatory potential of Kant's state and allows a more nuanced historicisation of 19th century liberal state theory.¹²

This is a highly compressed and practically motivated account of the state's intractable persistence in an otherwise changing world. Its aim is merely to lay out the case in a way that can exceptionally permit the juridical imaginary to broaden rather than contract; to clarify the legal vocabulary in a way that makes real political community conceivable outside the historical contingency of territorial statehood. If non-territorial political community sounds nevertheless like a blurry mirage, this speaks to how completely the state has conquered the juridical imaginary. It also speaks to the necessity of liberation.

12 See Georg Lukács, *The Young Hegel* (Merlin Press 1975) esp 96–98 and 146–147; Thomas Malcolm Knox, 'Hegel and Prussianism' (1940) 15(57) *Philosophy* 51, 53–54.

