

Farewell to the Weberian State?

Classical Theory and Modern Bureaucracy

by Edward C. Page

Classical theories of bureaucracy, of which that of Max Weber is the most impressive example, seem to be out of kilter with contemporary accounts of change within the civil service in particular and modern politico-administrative systems more generally. Hierarchy and rule-bound behaviour seem hard to square with an environment characterised by new public management, "governance" and postmodernity. Is there any case for taking such classical theories of bureaucracy seriously any more? There are two lines of defence of Weberian theory. The least promising defence is one that tries to salvage the reputation of the man – by showing that he was well aware of the fact that states did not run on hierarchies and formal rules and by showing how the idea that empirical reality does not conform to theoretical "expectations" misses the point of the methodology of ideal types. The more promising defence seeks to argue that concepts and ideas found in Weber's analysis have something to offer contemporary discussions of bureaucratic reform by exploring a number of concepts from Weber's sociology of law, including the expansion of free contract, forms of association and forms of contract.

Klassische Bürokratietheorien – darunter auch und gerade jene Max Webers – scheinen auf aktuelle Entwicklungen des öffentlichen Dienstes bzw. moderner politisch-administrativer Systeme nicht mehr anwendbar zu sein. Hierarchie und regelgeleitetes Verhalten sind auf den ersten Blick kaum mit einer Umwelt zu vereinbaren, die durch new public management, „governance“ und Postmoderne gekennzeichnet ist. Sind solche Bürokratietheorien überhaupt noch zeitgemäß? Man kann die Webersche Theorie auf zwei Arten verteidigen. Wenig ertragreich ist der Hinweis, dass Weber sich sehr wohl bewusst war, dass Staaten nicht aufgrund von Hierarchien und formalen Regeln funktionieren oder dass das Argument, die empirische Realität stimme nicht mit den theoretischen Erwartungen überein, am methodologischen Sinn des Idealtypus' vorbeigeht. Erfolgversprechender erscheint der Versuch, Konzepte und Argumente Webers auf die gegenwärtige Diskussion zur Verwaltungsreform zu übertragen. In diesem Zusammenhang kann man einige Begrifflichkeiten aus seiner Rechtssoziologie mit Gewinn heranziehen, etwa die Entwicklung der Vertragsfreiheit oder die Unterscheidung von Verbands- und Vertragsformen.

I. Introduction

Classical theories of bureaucracy seem to have become redundant overnight. While Weber's sociology might have been able to encompass systems as varied as ancient Mesopotamia, Imperial China, the Roman City of classical antiquity and

the Kingdom of Bavaria in the broad sweep of his analysis, he seems to have had more difficulty with the “reinvention of government” and “new public management” reforms of the last few years of the twentieth century. Part of *Weber's* problem, of course, is that he is dead. He is simply not around to interpret the changed economic, social and political environment in the way that he was able to in his essays about the German political system after the collapse of the *Kaiserreich*.¹ Whether *Weber's* approach to understanding the character of the modern state can really be completely undermined by such relatively short-term changes, should be open to debate. The central question of this contribution is whether it is possible to defend *Weberian* theory in the light of the apparently massive changes in modern bureaucracy that have accompanied recent administrative reforms.

There is a perfectly valid question that needs to be addressed before one launches into a defence of *Weberian* bureaucratic theory: why do it? Why bother trying to resurrect approaches developed a century ago in contexts so radically different from the contemporary state? Given the scale of challenge to *Max Weber* in much contemporary writing, outlined in the second part of this article, the choice is between forgetting about classical theory except as an historical oddity on the one hand and defending him on the other. I have taken here the role of defending *Weber* in part because it is intuitively implausible that such a rich, broad and historically robust theory can be wrecked by a set of reforms that have yet to prove they are anything other than ephemeral and superficial compared with the magnitude of the changes dealt with in his historical sociology. In part I have tried to frame a defence of *Weber* because defences of classical bureaucracy theory in the face of new trends in civil service structures are rarer than attacks. This essay thus makes several allusions to a court and witnesses for the defence. As one thinks about what such a case for still taking classical bureaucracy theory seriously might look like, the drawbacks of ditching it seem to become more apparent. Hence another way of approaching the question “why bother?” is to outline what we lose when dumping classical bureaucracy theory – to which the answer is broadly “perspective”.

But we have been here before. *Weber* and classical bureaucracy theory has been challenged at least since the 1930s. *Robert Merton's* discussion of goal displacement² and *March and Simon's* discussion of the limits of pure rationality³ pointed to the tension between the ideal type and empirical reality – although as *Crozier*

1 See *Weber, M.*: *Gesammelte politische Schriften*, 5. Aufl., Tübingen, 1988.

2 *Merton, R.*: *The Unanticipated Consequences of Purposive Social Action*, in: *American Sociological Review* 1 (1936), 894–904; *idem*: *Bureaucratic Structure and Personality*, in: *Social Forces* 18 (1940), 560–568.

3 *March, J./Simon, H.*: *Organizations*, New York, 1958.

points out, they do not “question the dynamic part of the Weberian model, its analysis of the unrelenting evolution toward large-scale bureaucratic organization”⁴. Perhaps more direct criticisms came from the organisational sociology of the 1960s – reviewed and rebutted in *Mayntz’s* classic defence of the ideal type⁵. The third part of this essay looks at this defence of the *Weberian* ideal type and its limitations in the context of contemporary discussion of civil service change.

It is not hard to show that *Weber* was right, if that is all one is interested in doing. However showing that he, and classical sociological theory more broadly, has something to say in the contemporary environment of civil service change is less straightforward. The fourth part of this contribution seeks to show how it is possible to see contemporary patterns of change as perfectly consistent with classical theories and outlines some of the avenues that are opened to us when we take them seriously. In doing so I draw on an aspect of *Weber’s* sociological theory that has been relatively neglected over the years – his sociology of law. This offers us a very different picture of the internal organisation of the state from that which was always assumed to result from his sociology of the state. In truth, it probably is not a different picture at all.

II. Why Defend Classical *Weberian* Bureaucracy Theory?

1. Is it Under Attack?

As has been noted, classical *Weberian* bureaucracy theory has been challenged – whether implicitly challenged as neglecting aspects of “real world” behaviour or explicitly as postulating hypotheses that have been flatly falsified – for many years and by many different subdisciplines within social science.⁶ What is offered here is not a summary of all these attacks, but a sketch of the major lines of criticism emanating from recent literature which has public administration, and especially the civil service, as its focus.

Let us start with a useful fiction – we will have reason to look at this fiction again, but it looks like the closest to agreement that is likely to exist among public administration scholars. The fiction is that at one time in the earlier part of the

4 *Crozier, M.*: *The Bureaucratic Phenomenon*, Chicago, 1964, 183.

5 *Mayntz, R.*: Max Webers Idealtypus der Bürokratie und die Organisationssoziologie, in: *Kölner Zeitschrift für Soziologie und Sozialpsychologie* 17 (1965), 493–502.

6 See the essays collected in *Mayntz, R.* (ed.): *Bürokratische Organisation*, Berlin, 1973.

twentieth century the public administration of the state contained a number of distinctive features which not only made public administration look and feel different to private sector administration, but also made administrative systems resemble each other across Europe, if not across the developed world. These characteristics of public administration seemed to have much in common with the characteristics of the “ideal type” of bureaucracy outlined by *Max Weber*: permanent civil servants with pensions, security of tenure and obligations to non-partisanship (leaving aside “political” civil servants, a category also identified by *Weber* as an exception) organised in hierarchical ministerial structures, allocated specific tasks or “competencies”, recruited by examination and promoted by some form of “merit” (including seniority).

While this was associated with the *Weberian state*⁷, it probably reached its high point in the immediate postwar years – it is closer to the world presented by *Brian Chapman*⁸ than that of *A. Lawrence Lowell*⁹. The reasons for the *Weberian state* no longer appearing to be relevant are both empirical and normative. In normative terms, the *Weberian state* is out of kilter with the age: “it developed in a slower-paced society, when change proceeded at a leisurely gait. It developed in an age of hierarchy when only those at the top of the pyramid had enough information to make informed decisions. It developed in a society of people who worked with their hands, not their minds. [...] Today all that has been swept away.”¹⁰ To hang on to it would therefore be to fail citizens – it is not the way that a modern public administration should be run. Modern entrepreneurial governments should

“promote competition [...] between service providers [...] empower citizens [...] by pushing control out of the bureaucracy, into the community. They measure the performance of their agencies, focusing not on inputs but on outcomes. They are driven by their goals – by their missions – not by their rules and regulations. They redefine their clients as customers and offer them choices. [...] They decentralise authority, embracing participatory management. They prefer market mechanisms to bureaucratic mechanisms. And they focus not simply on providing public services, but on catalysing all sectors – public, private and voluntary – into action to solve their community’s problems.”¹¹

If the *Weberian state*, with its hierarchy and control was about “rowing” the boat, the valid role of the entrepreneurial modern state was steering.¹²

7 *Clegg, S.*: *Modern Organizations*, London/Newbury Park, Ca., 1990; *Osborne, D./Gaebler, T.*: *Reinventing Government*, Reading, Mass., 1992.

8 *Chapman, B.*: *The Profession of Government*, London, 1961.

9 *Lowell, A. L.*: *Government and Parties in Continental Europe*, London, 1896.

10 *Osborne, D./Gaebler, T.*, op. cit., 15.

11 *Ibid.*, 19–20.

12 *Ibid.*, Ch. 1.

Empirically many of the characteristics of the modern state seem to be moving away from the *Weberian* state. One reason for arguing this is tied closely to the normative argument – as governments increasingly come to the view that they should be doing more steering than rowing, they have introduced measures that tend to draw away from the *Weberian* model.¹³ *Rhodes* offers a somewhat nuanced view of changes towards “governance” and the relationship to classical theory. They have not destroyed bureaucracy: bureaucracy is unlikely to wither away. “Bureaucracy remains an important governing structure in Britain, but administrative orders do not work for all policy areas in all circumstances; they are as likely to provoke avoidance and confrontation as co-operative action.”¹⁴ Alongside bureaucracy has grown up the market and “networks” as forms of administration. But the basic point is not dissimilar from critiques of *Weberian* bureaucracy: there is something going on in the modern state that challenges traditional bureaucratic theories of the state.

2. Because He’s Worth it?

To argue that *Weber* is worth holding on to despite these apparently strong challenges is not to say that public administration could not survive without him. It has managed to evolve largely independent of any serious development of his ideas despite the fact that he is routinely cited as the “founding father” of the study of bureaucracy. It is quite possible, as the thriving field of public administration has shown, to develop an understanding of how things work without him. In fact, *Weber’s* own writing on contemporary issues, with some notable exceptions (above all his commentaries on *Bismarck’s* legacy in the German political system and “Politics as a Vocation”) often make with scant or no reference to his broader sociological thought. We can read his thoughts on the U-Boat War, the prospects for peace after World War I and constitutional reforms in Russia largely devoid of ideal types and iron cages.¹⁵ So why bother examining the case for holding on to him despite the fact that societies and politics seem to have moved on?

The simple answer to this question is “perspective”. *Weber*, and many classical theorists of bureaucracy, among whom one could also include *Tocqueville*, *Hintze*

13 For an excellent description and analysis of new public management in comparative perspective see *Pollitt, C./Bouckaert, G.: Public Management Reform, Oxford, 2000.*

14 *Rhodes, R. A. W.: Understanding Governance, Milton Keynes, 1997, 56.*

15 *Weber, M.: Schriften, op. cit.*

as well as *Durkheim*, had two impressive characteristics that we risk losing if we dismiss them as irrelevant to the modern world. The first characteristic is an ambitious imagination. The perspective they offer is not one measured in decades but centuries and millennia; and not on countries but continents if not on world history. *Max Weber's* own writings on law, economy and the state embrace, to name a few, ancient China, Egypt, medieval Islamic and European systems as well as the modern European and American state. The second characteristic is a grasp of a range of empirical knowledge, not necessarily bigger than contemporary scholars,¹⁶ but certainly different, including detailed knowledge of the social, legal religious and political systems as well as the philosophies, mores and superstitions of the wide range of countries and epochs they embrace.

Do we need this perspective? One indicator that we do is highlighted somewhat by the ahistorical character of the debate about whether "traditional" bureaucracy is dead or whether new forms of governance are taking over.¹⁷ For example, we simply do not know in Britain how relevant units within the civil service that later became Next Steps Agencies actually operated prior to agencification to come up with a proper assessment of the impact of this change.¹⁸ Another is seen in the tendency to invent your own state or society – the implication being that putting a label "state" or "society" after a descriptor implies something new and profoundly different to what went before, a sort of "The Do-It-Yourself State". Thus we have had, to take one from each of the recent decades, "mass society"¹⁹, the "corporate state"²⁰, the "dual state"²¹, the rise of the "regulatory state"²² and the "hollow state"²³. At a minimum such labels describe trends and things happening that were either new or had not been noticed much before. Whether they mark a lot more than this – a genuinely new kind of state or society – and in what ways they do this, can only be established by way of *systematic* comparison with what went before. And here is where classical theory is indispensable – and here I mean serious consideration of classical theory and its context rather than the tokenistic use of disembodied chunks that have entered the debate around New Public Management as discussed above.

16 Cf. *Finer, S. E.*: A History of Government from the Earliest Times, 3 vols., Oxford, 1997.

17 See the review in *Rhodes, R. A. W.*, op. cit.

18 See *Hogwood, B. W.*: A Reform Beyond Compare?, in: *Journal of European Public Policy* 1 (1994), 73–94.

19 *Kornhauser, W.*: The Politics of Mass Society, London, 1960.

20 *Pahl, R./Winkler, J. T.*: The Coming Corporatism, in: *New Society*, 10 October 1974, 72–76.

21 *Saunders, P.*: Social Theory and the Urban Question, 2nd ed., London, 1986.

22 *Majone, G.*: The Rise of the Regulatory State in Europe, in: *West European Politics* 17 (1994), 77–101.

23 *Rhodes, R. A. W.*, op. cit.

A second reason for thinking this perspective might be worthwhile is that the multiplicity of connections that *Weber* (and other classical theorists) saw between bureaucracy, state, economy, law and society offer the possibility of new insights into the way in which contemporary bureaucracies are developing – new avenues to pursue in terms of empirical research and new ways of looking at apparently familiar problems. This point requires some elaboration and this will wait until later in the fourth section.

III. Defending *Weber's* Honour

There are two ways of approaching the defence of *Max Weber*. One, to put it bluntly, showing that he was never as daft as to believe that the modern state, whether his or ours, could be described as running according to the “ideal type”, thus showing that *Weber* was not an idiot, and that within his own terms it is hard to fault him. The second is to go beyond the person and argue positively that his thought might have something to contribute to our understanding of contemporary bureaucracies, not only because it offers an interesting theoretical framework in general,²⁴ but more specifically because it touches themes which have a direct relevance to the sorts of debate surrounding postmodernity, new public management and the hollow state and which offer to link the developments that give rise to them to a longer-term historical and theoretical perspective. The first defence is developed in this section, the second in the next.

1. *Je ne suis pas weberien*

We have some circumstantial evidence that *Weber* might not have believed that the hierarchical *Weberian* state characterised even his own experience of the Prussian state – primarily in the fact that it is impossible to see, despite the cliché that *Weber's* ideal type was based on his experience of Prussian bureaucracy in the late nineteenth and early twentieth centuries, the Imperial German state as *Weberian* in its Aunt Sally meaning. Let us go through some of the salient features of Prussian/*Reich* administration before World War I. Firstly, the *Reich* was highly decentralised – a federal state in which the 26 *Länder* had extensive powers of administration. They collected taxes and with the exception of social insurance, a

24 See Page, E. C.: *Political Authority and Bureaucratic Power*, Brighton, 1985.

federal or *Reich* responsibility, domestic public programmes were largely a matter for the *Länder*. *Cullity* estimates that there were 2.6 million public employees in 1907,²⁵ *Reich* Offices in Berlin were, so *Jacob* informs us, staffed by 1,300 employees²⁶. The major domestic *Reich* service, social insurance, was delegated to the *Länder* and to the thousands of autonomous agencies or *Kassen*. *Jacob* describes the attempts by the *Reich* to gain stronger direct control of the administration of social insurance as “unusual [...]. In all other spheres the *Reich* contented itself with marginal controls. It delegated the administration of all its other programs to the *Länder* even though it lacked guarantees that the *Länder* would administer its policies energetically or uniformly.”²⁷

Secondly, what centralisation there was did not come as a direct result of formal/legal hierarchical powers, but rather through something not dissimilar to what today might be termed the exercise of governance through seeking to mobilise the efforts of other organisations. Take *Jacob's* description of the role of the *Landrat*:

“Despite the presence of [...] specialists, the *Landrat* remained principally responsible for a balance governmental program in his county. He acted as a general coordinator. He was able to assume such a role even though he possessed no hierarchical authority over the specialists. Rather he capitalised on various characteristics of his office which gave him a commanding position in the county.”²⁸

And these characteristics included his access to information, social prestige, long tenure in office. In the case of the District Office, between the *Landrat* and the *Reich* ministries, the hierarchical control on which this institution was based undermined the ability of the District Officer to control the affairs of the District. “The result was that specialists in the district offices increasingly initiated important activities without consulting their chief.”²⁹

Thirdly, the concept of an agency, in which routine administrative tasks were separated from policy leadership was integral to Prussian/German legal thought. The agency tradition in German legal thought, associated with the nineteenth century theorist *Otto von Gierke*, envisaged the state as a series of *Behörden*, authorities with clearly defined functions and with their relationship to other public bodies defined through law.³⁰ Admittedly the reasons for agency structures

25 *Cullity, G.*: The Growth of Government Employment in Germany, in: *Zeitschrift für die gesamte Staatswissenschaft* 123 (1967), 201–217.

26 *Jacob, H.*: *German Administration since Bismarck*, New Haven, 1963, 31.

27 *Ibid.*, 42–43.

28 *Ibid.*, 56.

29 *Ibid.*, 60.

30 *Becker, B.*: *Öffentliche Verwaltung*, Percha, 1989, 224.

were far removed from the arguments associated with “Next Steps” in Britain – efficiency, flexibility, closeness to customers and freeing central administration to concentrate on broader strategic issues. In Germany the monarchical form of government made Emperor and Chancellor the focus of legitimacy, with administrative services directly responsible to the monarch – ministers themselves were likely to have an advisory role and less direct authority over state services. In his comparative study, *Hintze* argues that this reflects a general principle in the development of modern ministries: “the stronger the [power of the monarch] [...] the looser the structure of the ministries: the stronger the parliamentary control, the closer the integration of the ministry into a solidary unit. [...] Parliamentary government needs a closed, unitary ministry as an organ of government.”³¹

Fourthly, the mode of operation of state enterprises similarly did not reflect the exercise of hierarchical authority. While we have little by way of systematic information on the way public utilities were run under the Imperial regime, the traditional direct state control of public enterprises was certainly not the only way. As a commentator somewhat later (in 1930) pointed out:

“Forms of enterprise so widely differing as banks, slaughter houses and electricity generating stations may be managed by this [direct municipal control] method which, as the simplest and most primitive form of public enterprise, is likely to fall into disuse as the scope of public control becomes wider and more complex. In Germany the limitations of this form had been realised before the [Great] war [...]. There are no conclusive statistics [...] but a few samples from different authorities suggests that the *régie* (dependent) form is rapidly diminishing and already includes less than one-half of the total public enterprises.”³²

The hierarchical principle of direct control of the state apparatus did not appear to apply across the board to state enterprises even in *Weber’s* time.

And finally, while only one person’s view of the culture of the Prussian bureaucracy, *Lowell’s* thumbnail comparative characterisation of the German bureaucrat at the end of the nineteenth century does not coincide with the received notion of the impassive cog in a powerful and strongly hierarchical machine:

“[The bureaucracy of Prussia] is certainly one of the most efficient bodies of officials in the world. Its members are intelligent, honest, and active, and although somewhat rigid and autocratic, do not appear to be excessively tied down by routine. Nor is the administrative system in its actual working highly concentrated as compared with those of other continental nations, for the officials do not feel obliged to refer every

31 *Hintze, O.*: Staat und Verfassung, Göttingen, 1962, 276. Author’s translation.

32 *Davis, W. E.*: Control of Public Utility Services in Germany, in: Public Administration 8 (1930), 425–429, here 425.

important question to their superiors, but are willing to act on their own responsibility within their spheres of duty.”³³

The evidence suggests that the *Weberian* state, if we consider it as a single continuous set of superior-subordinate relations which performs according to the exercise of hierarchy, was not an accurate description of the *Wilhelmine* state. Nuanced and complicated politico-administrative relationships, in which the ability to coerce was often limited, characterised the Prussian and German states of *Weber's* time. Of course we would be hard pressed to call any of this post-modern, or “new public management” (although we would find it easy to apply governance models here). But the point is not to show that NPM or governance existed in *Weber's* day, but rather to suggest that it may be mistaken to view the “ideal type” in *Weber's* analysis as simply an extrapolation from the contemporary Prussian state. To identify it closely with the Prussian state makes it rather easy to dismiss as outdated – the Prussian state on which the ideal type seems to be based no longer exists and the theory must also be obsolete. Second, the brief description of *Wilhelmine* administration suggests that *Weber* himself must have been familiar with many aspects of modern state administration which did not fall into a “*Weberian*” category. The exercise of hierarchical power within a unified state organisation was not how state administration actually worked. In fact we know he was well aware of this through his writings,³⁴ and may conclude that it is unlikely that *Weber* was a “*Weberian*” in the sense that he believed that hierarchy, specialisation and such like described how his own state worked, and, as *Marx* disowned popularisations of his thought, *Weber* might be able to claim: “*je ne suis pas weberien*”.

2. Hiding Behind the Ideal Type?

Another way of expressing the case against *Weber* that contemporary experience disproves the theoretical perspective he adopts is to show that modern organisations cannot possibly work, or work effectively or satisfactorily, if they are based on the “ideal type” of bureaucracy, as he sets them out in his famous list covering rule-bound behaviour, hierarchy, impartiality and so on.³⁵ In fact, this is a very traditional criticism of *Weber* which underpinned a large amount of organisational sociological analysis in the 1950s and 1960s. Such arguments took the form that the ten “characteristics” of bureaucracy did not seem to be related

³³ *Lowell, A. L.*, op. cit., 293.

³⁴ See, for example, on federalism in *Weber, M.*: *Schriften*, op. cit.

³⁵ *Weber, M.*: *Wirtschaft*, op. cit., 126–127.

to each other empirically,³⁶ such that as organisations became more “bureaucratic” on one measure, they did not become so on another, or that efficient organisations were not necessarily bureaucratic.³⁷ Such arguments are not very far away from *Clegg*³⁸ or *Osborne and Gaebler*³⁹ when they suggest that a modern state cannot run effectively – provide efficient services in a responsive, accountable manner – on the basis of *Weberian* rule-bound behaviour.

Mayntz not only offers a good account of these earlier criticisms, she also puts forward the powerful argument in defence of *Weber* against the claims of organisation sociologists that he was wrong because what they found in their empirical studies of (mainly business) organisations showed that organisations did not work, or could not work well, on the basis of strict formalised hierarchical relationships between superiors and subordinates and the observance of written rules.⁴⁰ *Weber* was not an organisational sociologist, still less a management consultant, and used a distinctive methodology, the *ideal type*, to understand how public authority is exercised in the modern state and to use these ideal types as means of raising questions about political institutions and starting to offer answers to them. The ideal type is not to be interpreted as a faithful image of reality, still less the image of a form of political system we should strive to create. As *Mayntz* put it:

“Starting from the view that *Weber*’s concept of bureaucracy was incomplete as a description of reality, people tried to modify it on the basis of empirical results and thus add the missing bits. What was missing in the concept of bureaucracy above all was the incorporation of informal elements in the organisation, of those deviations and supplements to the way things ought to be according to the formal position, which arise from the social character of those in the organization and their personal values and needs. This organisational sociological criticism of *Weber*’s ideal type is similar to the business sociology critique of the classical model of organisational theory (a theory which originated with *Taylor*), as *Weber*’s concept of bureaucracy proved to be a close relation of the prescriptive model of classical organisation theory with its emphasis on hierarchical authority, formal structures, rule-bound behaviour and efficiency. Both critiques were based on the same misunderstanding. Of course *Weber* and the earlier organisation theorists were aware of the so-called informal phenomena, but they did not see it as their task to describe reality, but to formulate a maximally rational scheme of the way things might be expected to be.”⁴¹

36 *Udy, S. H.*: Bureaucracy and Rationality in *Weber*’s Organization Theory, in: *American Sociological Review* 24 (1959), 791–795.

37 *Blau, P. M./Scott, R. W.*: *Formal Organizations*, San Francisco, 1962.

38 *Clegg, S.*, op. cit.

39 *Osborne, D./Gaebler, T.*, op. cit.

40 *Mayntz, R.*: *Webers Idealtypus*, op. cit.

41 *Ibid.*, 495. Author’s translation.

Weber's purpose was not to set out the conditions for an efficient organisation but to describe and understand the nature of bureaucracy as an historical phenomenon. The "efficiency" used to explain the development of the bureaucratic state is not that of the business sociologists – involving some idea of getting tasks effectively done with the lowest input of effort in the quickest time – but efficiency in exercising dominion or rule, *Herrschaft*. Thus critiques of ideal types for being untrue to reality miss the central point of *Weber's* methodology and can be easily rebuffed on those grounds. Very similarly one might argue that the *Osborne* and *Gaebler* as well as *Clegg's* views of the *Weberian* state similarly miss the point of the ideal types – that ideal types are not reality, and the fact that reality deviates from them does not invalidate them.

Of course this is all true. The central point of *Weber's* approach is that the ideal type allows one to look at the relationships between different components of bureaucracy and bureaucratic rule and identify tensions and problems. Thus he was not primarily concerned with describing empirical reality. The ideal type was less an accurate description of reality and more of an identification of the underlying logic of a bureaucratic state. This view itself is not without its problems. One of the problems of this is the somewhat ill-defined semi-detached relationship between ideal type and reality. The ideal type is based upon empirical reality (that is how *Weber* claimed he came up with ideal types in the first place, through observation of regularities in sociological investigation). Ideal types are even used to predict future empirical reality: the development of bureaucracy is the future of the state just as capitalism is the future of the economy. But the ideal type is immune from any criticism that it does not fit empirical reality because it is only an ideal type, an abstracted version of reality, the validity of which is not contingent on the correspondence between it and any one political system.⁴² *Weberian* ideal types are thus having it both ways. Having it both ways is not so much a crime in itself, but when ideal type and reality appear to be travelling in quite opposite directions, as critics of the *Weberian* state suggest they are, it becomes a less credible position.

To hide behind the argument that *Weber* is dealing with ideal types and not reality means that we have to explain the divergence between the two either by suggesting that the reality is a flash in the pan, or that it represents deviation within a tolerable band of acceptability from a general pattern or trend. *Wirtschaft und Gesellschaft* is full of discussions of empirical exceptions to general rules, and actual cases where processes of development worked in reverse. In fact democracy

⁴² For a discussion of *Weber's* use of ideal types and its criticisms see *Mommsen, W.: The Political and Social Theory of Max Weber*, Cambridge 1989, chapter 8.

was only possible if the ideal type of bureaucracy were prevented from developing to its fullest extent. The problem with such a defence of *Weber* is less establishing the tolerable band of deviation from reality within his ideal type than admitting that the ideal type has nothing to say about the way in which society is going in the short- to medium-term. To emphasise *Weltgeschichte* seems to imply that *Weber's* classic theory has little to contribute to our understanding of what is going on *today*. When we are talking about the millennia of development of human civilisation embraced by *Weber*, the actions of a few NPM reformers, some losses of government power, privatisations or even “deprivileging” the civil service become insignificant blips on the radar screens of history. This suggests that there are two separate intellectual enterprises at stake here – one charting the broad course in which progress is measured in centuries and another where progress is measured in decades. To accept this implies accepting that *Weber* has little to add to our understanding of the contemporary world of bureaucracy.

IV. Outlining Classical Contributions to Contemporary Developments

It would be disingenuous, or more accurately, silly, to try to pretend that *Weber* or any of his contemporaries, or even classical social theory actually predicted new public management, postmodernism, hollowing out, steering not rowing, or any of the phenomena that seem to challenge the *Weberian* state. *Weber's* writing on his contemporary bureaucracy was dominated by his concern with the fact that *Bismarck* had deprived Germany of any substantial hope of giving direction to its bureaucracy by eradicating a truly *political* class. It was generally, however, devoid of predictions about the future. He allows himself glimpses into the future when discussing issues such as the reconstruction of Germany after the Great War, but it must be said that this appears to be done with some diffidence⁴³ and such glimpses generally absent in his world-historical discussions. So what is the status of anything that one can find in *Weber* that has a bearing on such contemporary developments in bureaucracy? In developing such observations as one may find in *Weber* in the context of NPM and similar contemporary developments one is clearly engaging in an act of creative writing as opposed to a simple application of an existing framework. Yet finding a link offers the promise of understanding recent developments in the context of a longer-term perspective.

43 *Weber, M.: Schriften, op. cit., 448.*

So where might one look for this holy grail linking *Weber's* long term perspective with contemporary developments? There are some points developed in *Weber's Staatssoziologie* (sociology of the state) which only make sense in the light of his more neglected *Rechtssoziologie* (sociology of law)⁴⁴. Three strands need to be laid out before we can put them together in an attempt to weave them together into one argument about how *Weber's* legal theory has a bearing on contemporary bureaucracy.

The first strand is related to *Weber's* repeated insistence that the state is an *Anstalt*. The term is hard to translate. Literally it means "institute" but probably more accurately is translated as "institution". It is used quite often in conjunction with the state. It is used even as an adjective to describe the state – one key section describing the state in his "Politics as a Vocation", (placed in the posthumous collection *Wirtschaft und Gesellschaft* as the section containing his famous and widely used definition of the state as having the monopoly of the legitimate use of force) is entitled "*Der rationale Staat als anstaltsmäßiger Herrschaftsverband mit dem Monopol legitimer Gewaltsamkeit*", and elsewhere in *Wirtschaft und Gesellschaft* the "*Anstalt*" character of the state as exercising the monopoly of the legitimate use of force can be found.⁴⁵ And it is easy not to pay too much attention to this as this term seems to add relatively little on its own. Yet it is one of several terms used to describe some form of association – or *Verband*. The term *Anstalt*, is an association of which one is a member without joining and because of ones personal characteristics (e.g. birth or nationality). It relates to legal-historical concepts of legal personality and, ultimately, the relationship to its constituent organisations.⁴⁶

The tendency for some associations (*Verbände*) within the state to have autonomy, of the kind one might associate with principal-agent models of government relationships among government organisations, or with relations between state organisations and the private sector, is dealt with in his discussion of "autocephalous" and "heterocephalous" organisations, with heterocephalous organisations governed from outside and autocephalous from inside. "An organisation can be partly one and partly the other. The autocephalous federal states of Germany can be heterocephalous in areas of Imperial responsibility."⁴⁷ The state as

44 See *Weber, M.*: *Wirtschaft*, op. cit., chapter VII; *Kronman, A. T.*: *Max Weber*, London, 1983; *Rocher, G.*: La réception de l'œuvre de Max Weber dans la sociologie du droit aux Etats-Unis, in: *Droit et Société* 9 (1988), 269–300.

45 *Weber, M.*: *Wirtschaft*, op. cit., 821. Emphasis added. Compare also with *idem*: *Schriften*, op. cit., 511 and *idem*: *Wirtschaft*, op. cit., 29.

46 See *ibid.*, 28.

47 *Ibid.*, 27. See *Weber, M.*: *Gesammelte politische Schriften*, 5. Aufl., Tübingen, 1988. Author's translation.

an *Anstalt* is made up of many *Verbände*, autocephalous and heterocephalous, which have emerged within the modern state through “administrative technical necessity”⁴⁸. The state, far from being a perfectly integrated hierarchy is made up of a variety of organisations – he lists⁴⁹ schools, poorhouses, state banks, insurance institutes, savings banks which he sees as predominantly heterocephalous – which are “constructed as corporations” but, because they have no members and membership rights, are state organs. *Weber’s* differentiation between different types of association, of which the state as an *Anstalt* is one, needs further elaboration. However let us leave the discussion of the organisational makeup of the state here with the observation that *Weber’s* sociology of law sees the state as a somewhat more internally differentiated entity than is apparent from his sociology of the state. We will return to it later once an idea more central to his legal sociology than the internal differentiation of the state has been developed.

Let us move on to the second strand. One of the central features of *Weber’s* sociology of law is the discussion of contract – “more of the *Rechtssoziologie* is devoted to the subject of contract than to any other single topic.”⁵⁰ By contract he means the “freely entered into agreement as the legal source of rights and duties” for those involved in the agreement.⁵¹ Throughout his sociology of law *Weber* emphasizes the tendency for the scope of contractual relations to expand (using the term freedom of contract or *Vertragsfreiheit*). “The essential material distinctive characteristic of modern law, especially private law, over older law is above all the strongly increased significance of legal relationships, above all contract, as the source of enforceable claims.”⁵² He also argues that within public law such contractual relations are also very substantial.⁵³ This expansion is a general tendency that *Weber* himself equates indirectly with his more famous world-historical tendency to bureaucratisation:

“The increasing incorporation of all individuals and activities into an institute based, at least today, primarily on formal legal equality is the work of the two big rationalizing forces: the extension of the market on the one side and on the other the bureaucratisation of the operations of the voluntary associations.”⁵⁴

48 *Ibid.*, 429; *Weber, M.*: *Schriften*, op. cit., 479. Author’s translation.

49 *Weber, M.*: *Wirtschaft*, op. cit., 429.

50 *Kronman, A. T.*, op. cit., 96.

51 *Weber, M.*: *Wirtschaft*, op. cit., 401. Author’s translation.

52 *Ibid.*, 399. Author’s translation.

53 *Ibid.*, 400.

54 *Ibid.*, 419. Author’s translation.

And this incorporation involves the spread of free contractual relationships. “The degree of contractual freedom [...] is primarily a function of the extent of the market.”⁵⁵

The third strand is related to the second. Contracts can be found in the most primitive societies. The characteristic feature of modernity (and this is related to the big underlying theme of *Weber's* whole *oeuvre* of the onward march of rationality and the banishment of superstition and ascription) is that certain types of contract become more important. The two main types of contract that *Weber* distinguishes are *status* contracts and *purposive* contracts.⁵⁶ A *status* contract affects an individual's position across the totality of relations with others – “someone shall become hereafter a child, a father, wife, brother, master, slave, fellow tribesman, comrade in arms, protector, client, follower, vassal, serf, friend [...] to create a fraternal relationship like this does not mean that each side performed certain tasks for specific purposes [...] it meant that one was qualitatively different to what one was before.” A *purposive* contract creates specific mutual obligations “quantitative, limited, abstract, and normally purely economically framed”.⁵⁷ “An individual enters a purposive contract for a particular reason or purpose, for example, to obtain the money or material goods he requires to satisfy certain needs. Each individual has many different ends or aims, however, not all of them are served by any particular contract. To pursue them all, he must make a number of arrangements with different individuals. As a result he finds himself at the centre of a web of contractual associations.”⁵⁸

If we take these three strands, the organisational differentiation of the state, the trend to the extension of the sphere of free contract and the development of purposive contracts we can try to bring them together. Bureaucratisation is part of the process of rationalisation – the demystification of the world. This process of rationalisation also entails the extension of the scope of free contract and the development of purposive as opposed to status contracts. We also know that *Weber* saw the development of contract as affecting the public sector – examples of all types of contract and contract-style relations can be found in his *Rechtssoziologie*. It is quite possible to see the development of free purposive contracts not only as a characteristic of the relationship between the state and external bodies such as private firms.⁵⁹ Contractual relationships might also actually become

55 *Ibid.*, 398. Author's translation.

56 *Ibid.*, 401.

57 *Ibid.*, 403. Author's translation.

58 *Kronman, A. T.*, *op. cit.*, 105–106.

59 The role of contract with capitalist undertakings is discussed by *Weber*, see *Weber, M.*: *Wirtschaft*, *op. cit.*, 427.

an established feature of the internal organisation of the state, the relationship between the state and its employees as well.

At this point the discussion of possible implication of *Weber's* theory of law for his theory of bureaucracy is stepping beyond what he actually said, although there are grounds for believing that *Weber's* discussion entertained the possibility of what I am about to describe. The implication is, in broad terms, that the extension of free purposive contracts can come to affect the state apparatus itself and can transform the bureaucratic state. It can do so in at least three ways. The first way is one familiar to *Weber* – through shaping the relationship between the state and service providers, through the use of contract rather than direct service provision.

Second, the development of free, purposive contract, can alter the relationship between the state as employer and the civil servant as employee. *Weber* compares earlier forms of relationship between states and their employees to a form of contract.⁶⁰ The traditional German form of *Beamte* contract itself can be seen as having elements of a status contract as it covers pay, pension, working conditions, political rights and, at least earlier in this century, involved substantial social status. Such a development of free purposive contracts as a basis for state employment would involve a substantial deprivileging of state service in many European nations.

Third, the development of purposive contract relations within the state can alter the relationship between organs of the state. Here the status and obligations of government organisations and their relationships with others will be formalised in sets of specific agreements setting out rights and obligations with respect to particular services and contributions to that service. This on the face of it seems to be the most fanciful of the three ways in which the development of free purposive contract can transform the bureaucratic state. While it would be entirely misleading to say that *Weber* predicted this development, he does discuss explicitly the possibility of looking at contract-type relationships between different organisational units of the same state:

“In the area of legal relationships within the public sphere the contemporary role of contract based agreements is in purely quantitative terms hardly small. Every civil service appointment is based on the power of a contract. In the same way many important processes in the administration of constitutional nations (above all the settlement of a budget) are, if not formally then de facto, based on free agreement between several independent organs within the state (*Staatsanstalt*) where the one cannot legally compel the other to do as it wishes.”⁶¹

⁶⁰ *Ibid.*, 400.

⁶¹ *Ibid.* Author's translation.

Ultimately free contract undermines hierarchical relations among the differentiated organisations of the state, and this is acknowledged by *Weber*.

The expansion of the role of contract, thus viewed, modifies but does not substantially undermine the notion of bureaucratisation, above all because it refers to relations between the organs of the state, and the relationship between the state and its employees rather than the internal characteristics of the organisations that make up the public sector. As *Weber* is at pains to emphasise throughout his work, bureaucratisation is not simply a feature of state organisation but also of private organisations. It is possible for a bureaucracy to regulate its relations with other organisations or its employees by contract or contract-like arrangements. Moreover, this contractualisation can be regarded as a trend affecting different parts of the state, as well as different states, to varying degrees, rather than a rapid conversion of the state as a whole.

V. Conclusions

This particular case for *Weber* is based upon a discussion of his sociology of law and its implications for his sociology of the state. Whether the case stands up depends only in part on the textual plausibility of this account of what *Weber* said. More importantly, perhaps, the whole point of linking these two parts of his thought is that the resulting perspective can offer some benefits for understanding contemporary developments in civil service reform in particular and the reform of the state more generally. So what are the benefits that can result from this approach?

First, this view holds promise of linking a range of features of civil service and public sector change as part of the same process. A variety of keywords, including hollowing out, deprivileging, the regulatory state, postmodern public administration, are touched by the extension of contract, and these have already been alluded to. Some of the specific features of administrative reforms – such as the use of *contrats de plan* in France or public service agreements in the UK – also bear a direct resemblance to the contractualisation of the state. It is quite possible to extend the application of the point about developing contractual relations within the state to non-economic areas. For example, one general trend in the relationship between civil servants and politicians is the tendency to rely less on traditional institutions based on trust (such as membership of the party as a basis for appointing a “political” civil servant) and more on specific *ad hominem* arrangements – an “institutionalisation of trust”⁶². These could also be regarded as a

62 *Page, E./Wright, V. (eds.): Bureaucratic Elites in Western European States: A Comparative Analysis of Top Officials*, Oxford, 1999, chapter 13.

contractualisation of relations of trust. Thus while it is not new to point to the increasing use of contracts in the delivery of state services⁶³ the recourse to *Weber* broadens the scope of what may be expected to be covered by contract and contractual style relationships. In this sense one advantage of the approach is that it does *not* necessarily postulate a completely new view of what is happening by way of administrative change (although it can suggest some neglected topics, see below) – it encapsulates many concepts and trends detected in the literature on how civil services and the state have changed.

A second reason for believing this approach holds promise is that it offers the possibility of maintaining a continuity between a long range perspective on bureaucracy and current developments. Instead of ditching *Weber* and other classical theories it is possible to maintain the account of the longer term developments they contain and build upon it. We can incorporate the rich seam of administrative history discussed by *Raadschelders*⁶⁴ with our understanding of contemporary developments. Thus for example, we can take the hugely impressive (but still largely untranslated) work of *Otto Hintze*⁶⁵ on the development of the civil service over the past millennium and complete the last section on the contemporary civil service (which does, incidentally see the increasing erosion of the difference between civil service and private sector employment contracts, although not quite in the way envisaged by the variant of *Weberian* theory proposed here). The development of knowledge and understanding of social and political phenomena does not necessarily involve jettisoning the old in favour of the new. It can be cumulative.

The final reason for being interested in this approach to civil service change and bureaucratisation is that it focuses attention on a strand in sociological-theoretical literature that has had relatively little exposure in the field of political science generally and public administration in particular – forms and bases of association and associative life. Reading *Weber* on contract one is struck by the similarity in terms of the intellectual concerns, if not the direct conclusions, with *Emil Durkheim's Division of Labour in Society* discussion of organic and contractual solidarity⁶⁶ and indeed a much wider literature on forms of association⁶⁷.

63 *Harden, I.*: *The Contracting State*, Milton Keynes, 1992, is an outstanding example of legal scholarship in this area.

64 *Raadschelders, J. C. N.*: *Handbook of Administrative History*, New Brunswick, NJ/London, 1998.

65 *Hintze, O.*: *Der Beamtenstand*, in: idem: *Soziologie und Geschichte*, Göttingen, 1962, 66–125.

66 *Durkheim, E.*: *The Division of Labour in Society*, New York, 1933.

67 See, for example, *Hayward's* discussion of *Alfred Fouillée* (*Hayward, J. E. S.*: 'Solidarity' and the reformist sociology of Alfred Fouillée, 2 parts, in: *The American Journal of Economics and Sociology* 22 (1963), 205–222 and 303–312).

Weber recognised the potential for the growth of contract to change the whole basis of society as individuals developed increasing autonomy by managing their own unique web of contractual relations. He dismissed this notion,⁶⁸ however, on the grounds that market inequalities meant that contractual freedom would benefit the economically powerful and thus fall short of producing greater personal autonomy for citizens and workers. While it is possible for the organisations of the state to have quasi-contractual relations with each other, *Weber* is very clear that modern organisations are characterised by discipline, “military discipline” even, in their *internal* working.⁶⁹ For *Durkheim* the spread of contractual relations was far more likely to lead to personal autonomy and a new form of solidarity based on interdependence – “organic” as opposed to a “mechanical” solidarity.⁷⁰ The concern with the effects of contractualisation raises the question of how changes in patterns of working life actually change internal relations within bureaucracies.

This is where my case for *Weber* rests. It is little good in itself showing that *Weber* was “right”. He is dead and I should not think he was in much of a position to care very much about this. The general line of defence is based on the desirability of cumulative social science inquiry and the undesirability of jettisoning intellectual effort, especially of the calibre of *Max Weber*, unnecessarily. None of this should make much difference to our understanding of the progress of civil service reform. Anyone who started an explanation of, say, the implementation of the focus on delivery in British government, with a discussion of *Weber*, is likely to be asking for trouble as there would be a severe mismatch between the long term ambitions of the theory and the shorter term ambitions of the empirical inquiry. The focus on *Weber* is most likely to be useful when we try to evaluate the nature and significance of contemporary politico-administrative changes in the light of the much longer term sweep of history.

68 *Weber, M.*: *Wirtschaft*, op. cit., 439.

69 *Ibid.*, 686–687.

70 *Durkheim, E.*, op. cit.