Liberal Democracy as a Means of Controlling State Violence

1. THE LEGITIMACY OF STATE VIOLENCE

But how does the state gain legitimacy for its use of violence when it's used in ways that no individual could legitimately act, such as punishing people for being free riders, taking their money to use for projects they don't support, and waging war? As philosopher Michael Huemer notes, our ethical judgements are inconsistent between evaluating actions by individuals or by governments.

> Acts that would be considered unjust or morally unacceptable when performed by nongovernmental agents will often be considered perfectly all right, even praiseworthy, when performed by government agents.[1]

Huemer calls the special moral status we grant to government the problem of political authority, and argues that such legitimacy is an illusion, that nobody can have a right to rule, nor can anybody have an obligation to obey.

In the Anglo-American political tradition, the justification of state legitimacy comes from social contract theory. In this theory the violence of the state is justified by comparing it to the supposedly much greater violence in a state of nature. In his 1651 book *Leviathan*, British philosopher Thomas Hobbes described this state of nature as a "war of all against all," where our lives would be, in his famous phrasing, "solitary, poor, nasty, brutish, and short." Writing in his *Second Treatise of Government* in 1689, John Locke thought it wouldn't be so violent, but thought that theft would be so endemic that nobody would ever make efforts to farm or build, because the fruits of their labor would be taken from them. For each of them, the legitimacy of state violence stemmed from the rights of individuals to protect themselves from others, with individuals transferring that right to the state by mutual consent. Locke described this as a right to protect one's "property, that is, his life, liberty and estate,"[2] a phrase that was transformed in 1776 by Thomas Jefferson, who in the *Declaration of Independence* justified revolution by referring to an inalienable right to "life, liberty, and the pursuit of happiness."

The justification of state violence as coming from a “covenant of every man with every man,”[3] in Hobbes’ phrase, to mutually surrender their power of self-defense to a central authority, is not entirely satisfactory. Of course Hobbes and Locke didn’t believe that people literally made an explicit mutual agreement to transfer their rights of self-preservation to one or a few among them to exercise on the whole group’s behalf, at some specific point in history that marked a transition between the state of nature and civilization. But that concept was used to explain how the power of the state could be justified. And if states only exercised its power to preserve individuals’ rights against being harmed by others, the argument might work. It would be a consistent ethical judgement. But of course states do much more than simply protect each of us from harm by others, and all their actions are based on violence as a means, as argued by Max Weber.

In fact states appear to have been created through initial acts of violence that are themselves not justified by individual self-preservation. The Marxist political theorist Leon Trotsky suggested that “Every state is founded on force,” and Max Weber, not a Marxist, agreed.[4] Economist Mancur Olson suggested that states may have first appeared as a means of banditry. Assuming an anarchic state of nature, just like Hobbes and Locke, he argued that roving bandits would practice a sort of smash and grab banditry, taking what they could get in one place today, then attacking another place tomorrow. But Olson argues, just as Locke did, that the effect of this method would be to discourage populations from making investments that could make their society more productive, leaving them poorer and limiting how much was available for bandits to take. But if the bandits settled down they could promote productivity in their society by investing in public goods, preventing violence among the population, and protecting them from any other bandits. With these protections the society could become more productive and wealthier, and the now stationary bandits could take more from the population than they could have gotten from their old hit and run methods.[5] This approach sees states as having developed as, in Political Scientist Charles Tilley’s words, “quintessential protection rackets with the advantage of legitimacy.”[6]

Biologist and anthropologist Jared Diamond makes a similar argument. As governments seem to have developed only after agriculture, he suggests the origins of government may have been in the control of food surpluses, which would allow the controllers to exert their authority over others. Those who submitted would be fed, and the defiant would be denied food. A

standing military would be created to guard the grain storehouses, judges would be appointed to determine who was worthy or unworthy to receive food, and a priesthood would create a mystical justification for such authority. As with Olson's argument, Diamond sees benefits being provided to the people as well. The military protects them from invasion by hostile outsiders (and roving bandits), and the judges resolve disputes among the subjects. In both Olson's and Diamond's perspective the state is a tradeoff – the benefits we get from it are what the state pays us for our acquiescence to its claim of authority. As Diamond suggests, the benefits we get from the state and the benefits the state gets from us are inseparable.

> At best [governments] do good by providing expensive services impossible to contract for on an individual basis. At worst, they function unabashedly as kleptocracies, transferring wealth from commoners to upper classes. These noble and selfish functions are inextricably linked, although some governments emphasize much more of one function than the other.[7]

Or as put by American political scientist Vincent Ostrom, the state is "a Faustian bargain in which human beings have recourse to instruments of evil to do good."[8] Remember Yeroen's sharing of leaves. He provided a public benefit to the chimpanzee community by minimizing conflict over the bounty. But it was also a way for him to assert his dominance and control over the group, and carried an implied threat that non-submission to his authority might mean not getting any leaves.

Jared Diamond is wrong about one thing, though. At their worst states are far worse than kleptocracies; they are killing machines. The violence that make the state effective is also what makes it dangerous. Violence is power, and most people have heard the words of the English historian Lord Acton that, "Power tends to corrupt, and absolute power corrupts absolutely." American political scientist Rudolph Rummel has an even gloomier claim: "Power kills; absolute power kills absolutely."[9]

The historical record is filled with examples. The Mongols "possibly slaughtered around 30 million Persian, Arab, Hindu, Russian, Chinese, European, and other men, women and children,"[10] and in 1099, when European Crusaders took Jerusalem, "40,000 to possibly even over 70,000 men, women, and children were butchered.[11] The modern world has been no better than the ancient world, because technology amplifies the

capabilities of force. In addition to the 34 million people who died in battle in the 20th century, over 150 million civilians were killed by the governments that controlled their territory.[12] The Nazi regime in Germany murdered an estimated 21 million people,[13] the Soviet Union killed almost 58 million of its citizens,[14] and Chiang Kai-shek's Nationalists in China killed 10 million people between 1927 and 1949[15] before losing the civil war to Mao Zhedong's Communists, who proceeded to kill as many as 76 million more people.[16] And in the 1970s the Khmer Rouge government of Cambodia killed nearly 2.5 million people out of a population of only about 7 million — over one-third of the population — in just three years.[17]

The very act of defining something as the interest of the state may encourage people to commit violence they would otherwise never consider doing for their own interests. Historian Thomas Babington Macaulay explains how one of the advisers to British King William III could recommend that the king slaughter Scottish highlanders who opposed his rule.

> The most probable conjecture is that he was actuated by [a] zeal for what seemed to him to be the interest of the state. . . . . At a temptation directly addressed to our private cupidity or to our private animosity, whatever virtue we have takes the alarm. But virtue itself may contribute to the fall of him who imagines that it is in his power, by violating some general rule of morality, to confer an important benefit on . . . a commonwealth, on mankind.[18]

In summary, from a philosophical perspective state legitimacy may be hard to justify. At the least, we must recognize that states' capacity for violence is not easily constrained to only violence that can reasonably be called legitimate, and the very nature of the state tends towards illegitimate uses of violence. This is an important consideration as we consider the purpose and structure of the U.S. Constitution.

2. PRACTICAL LEGITIMACY

Whether we can philosophically justify it or not, the state is an institution of violence, and yet most often people do not revolt. As a practical matter, it is this acquiescence that political scientists call legitimacy. Indeed this acquiescence is the primary reason people obey laws, not out of fear of punishment. This "habit of compliance," as political scientists call it, stems

from people viewing the laws as legitimate enactments of the state. And their view of state legitimacy may itself be primarily a habit, or it may be based on their perceptions of whether they are getting sufficient benefits in exchange for the price the state extracts from them. In any case, it is rarely a considered philosophical conclusion. To distinguish this from the philosophical question of legitimacy of state violence we can call this *practical* legitimacy: the state is legitimate to the extent people perceive it as legitimate.

But sometimes people don't revolt simply because they are afraid, not because they actually view the state as legitimate. So how many people need to share the perception of their state as legitimate for it to properly be considered legitimate? This is something we simply do not know. Political scientists have not developed a reliable way to determine when states are legitimate and when they are not. We are much in the position of the Supreme Court Justice who said of obscenity that he could not define it, but he knew it when he saw it.[19] That is, of course, no meaningful or reliable standard at all.

Another element of practical legitimacy is whether other states view a state as legitimate. In practice this is done by extending diplomatic relations with the group claiming to be a state. For example in 1948 a group of people in the British controlled area of Palestine declared a new independent state they called Israel. The United States and other influential countries immediately established diplomatic relations with them, and so they became recognized internationally as the legitimate government of a new state. In contrast, when Catalan (in Spain) and Kurdistan (in Iraq) both declared independence in 2017, no other states established diplomatic relations with them, and so neither gained legitimacy as states. A more humorous example is that of the Principality of Sealand. Sealand is a former British military structure off the coast of Britain that was abandoned after World War II. Former British Army major Paddy Roy Bates occupied it and proclaimed it an independent country. It is sometimes described as a micro-nation, but as no other country has established diplomatic relations with it, Sealand has no status as a legitimate state in international law.

These two elements of practical legitimacy can come into conflict and create confusion. Subjects of a state may revolt, declaring their government illegitimate, while other states may support the existing government against the rebellion, insisting upon its legitimacy and arguing that its violence against rebels is legitimate.

3. CONTROLLING THE STATE THROUGH LIBERAL DEMOCRACY

Whether or not we accept the legitimacy of states as at least a theoretical possibility, we all are concerned with controlling the violence of the state. Edmund Burke was pessimistic about the possibility, given that all states intended to control the violence of humans must be run by members of that same violent species. The state itself, he argued, was the problem.

> "In vain you tell me that Artificial Government is good, but that I fall out only with the Abuse. The Thing! the Thing itself is the Abuse!" . . . It was observed, that Men had ungovernable Passions, which made it necessary to guard against the Violence they might offer to each other. They appointed Governors over them for this Reason; but a worse and more perplexing Difficulty arises, how to be defended against the Governors? *Quis custodiet ipsos custodes?* [Who will guard against the guardians?][20]

In the modern era we try to guard against the guardians through liberal democracy. The most fundamental conceptual foundation of liberal democracy is that the people are the ultimate source of power, the sovereign authority over the government, instead of the government being sovereign over the people. This is expressed not only through elections but through constitutions that specify not only what powers the government does have but just as importantly what powers the government cannot legitimately exercise. A pure democracy is not always protective of the rights of minorities. A study of direct democracy in California found that while voters only approved of one-third of all policy issues put to a vote of the people, they approved more than three-quarters of the ones that restricted civil rights.[21] Constitutionally-based liberal democracy sets limits on the authority of the voters and their representatives in an effort to ensure continued political and civil equality of all citizens.

These political and civil rights include the right to participate in politics by voting, running for office, and speaking up about issues without having to worry about retaliation. No one group of citizens has special legal or political privileges not available to other groups. Liberal democracy does not guarantee economic or social equality, but generally favors an open society where people have the right to make their own economic and social choices and connections. By protecting our rights to participate in our society's political life, our rights to criticize our representatives in

government, try to change their minds about particular policies, and vote or even run against them, liberal democracy tries to keep government under control to prevent the abuses and mass violence that so often are carried out by people with access to power.

The Constitution of the U.S. was designed to create a government that had legitimate power to provide certain benefits to the people, but that would be controllable enough that its violence would not break the bounds of what is legitimate. The Framers of the Constitution (the men who drafted it at the Federal, or Constitutional, Convention), were reacting in part to the experience of the Revolution. The British government had lost legitimacy in the eyes of many (though not all) colonists, as the balance of costs extracted and benefits provided became too low. The Framers were trying to balance two conflicting concerns: how to give a government enough capacity for violence that it could govern effectively while limiting it so that it could not use that capacity for violence to abuse its citizens. They were trying to create a government that would be granted legitimacy by its citizens.

In the next chapter we will look at the structure of the government they created, and specifically identify the elements that were designed to keep it from becoming too powerful.

Factual Questions

1. What does Michael Huemer say is the problem of political authority?
2. What is the foundation of the state?
3. According to Mancur Olson and Jared Diamond, what is the tradeoff we get from having states?
4. How did political scientist Charles Tilley describe states?
5. How did political scientist Vincent Ostrom describe states?
6. Why did political scientist Rudolf Rummel say about the power of states?
7. In the 20th century, did more people die in battle or were more people killed by their own governments?
8. What did Edmund Burke say is the problem with the state?
9. What is the “habit of compliance”?
10. As a practical matter, how do we determine if a state is legitimate?
11. Does pure democracy protect the rights of the people?
12. What are the bases of liberal democracy?

Conceptual Questions

A. Consider Michael Huemer's "problem of political authority." Do you agree that this is a problem, or do you think there is a justification for giving government authority to do things the we would condemn an individual for doing?

B. What do you think about the critical perspectives on the state given by Olson, Tilley, Diamond, Ostrom, and Rummel?

C. Consider Macaulay's explanation for state violence. Does this seem plausible to you? Could state violence really be made legitimate that way?

D. Can the power/violence of the state be justified?

References

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[10] *Id*, p.51.

[11] *Id* p.47.

[12] *Id*. p.4

[13] *Id* p.111.

[14] *Id*. p.79.

[15] *Id*. p. 123

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