The Subjectivity of State Legitimacy

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Abstract:

Political philosophers that have attempted to legitimize the state as an objectively just entity have traditionally drawn upon three distinct bases: consent of the ruled, the objectively just nature of the state's laws, and the state's unique potential to reduce societal harms. This paper attempts to demonstrate the shortcomings of each strategy, specifically with respect to their shared reliance upon practical necessity as a rationalization for the alleged legitimacy of the state. This paper does not attempt to establish a criterion according to which the merit of a given state may be judged, but rather only to demonstrate that the state is, in every case, the mechanism by which the politically powerful impose their will upon society at large.
The State and Its Subjects

The state is that institution which has a monopoly on the legitimate sanction of violence within a given territory. Assuming the state has an executive branch, it is also an employer of force, but this is not a power exclusive to the state. A given state may allow private actors to employ physical force as well, though this right is possessed "only to the extent to which the state permits it" (Weber, 2007, p. 155). The state imposes a framework of sanctioned violence upon its subjects through the power of legislation; the law determines at what point, to what extent, and by whose hands a subject of the state can legally be subjected to coercion.

The power to legislate is the primary, defining power of the state, to which the powers of execution and interpretation are necessarily subsidiary. It is in this power that "all the Obedience... ultimately terminates," since "any Oaths to... any Domestick [sic] Subordinate Power" cannot "discharge any Member of the Society from his Obedience to the Legislative" (Locke, 1988, p. 356). Furthermore, the law must ultimately determine what methods of execution may legally be pursued and whose interpretation of the law is legally binding in a given context.

A law is effective to the extent that the behavior it elicits differs from the behavior that would be exhibited in its absence. Thus, laws are only necessary when the state expects that at least some of its subjects would act differently in their absence. Legislative power, therefore, grants its holder the distinct privilege of creating the legal incentive structure that will influence the behavior of the subjects of the state.

An individual is a member of the legislative branch of the state to the extent that he exerts a political influence over the wielder of ultimate legislative power. In an autocratic state, for example, the ruler alone wields ultimate legislative power. However, assuming that the ruler has
a trusted body of advisers, it would clearly be inaccurate to say that the ruler alone forms the legislative branch of the state. The advisers, to varying degrees, are also a party to legislative power, depending on the level of influence each exerts over the ruler.

In a legislative body consisting of numerous members, each member is a part of the state to the extent that they influence the law as it finally appears. The member of a legislative body whose arguments consistently fall on antagonistic ears plays no greater role in his state than does the adviser to a king whose words are never heeded. Likewise, an ordinary citizen of a majoritarian democratic society who invariably casts losing votes plays no greater role in his state than does an ordinary man living under the uncompromising rule of a dictator.

The executive branch of the state consists of every individual who enforces the law and is employed by the state to do so. Thus, every man who shoots a trespasser, though perhaps executing the law, does not form a part of the executive branch, whereas the man who receives public funding to keep some area free of trespassers does.

An individual is a member of the judicial branch of the state to the extent that his interpretation of the law is legally binding. A judge whose rulings are consistently overruled by a higher court exerts little judicial influence and, thus, cannot be said to be part of the judicial branch of the state to the same extent that a more successful judge is.

States are denominated by the composition of their legislative branch: autocracy is the legislature of one, oligarchy of the few, and democracy of the many, or at least a body that represents the many.

States are further differentiable, however, by political mobility, or the potential of an individual of a given social status to achieve legislative power. Even if freedom of political expression is held to be equal, political mobility will generally be greater in a democracy than an
autocracy, since it is easier to gain influence in a representative body than to convince a single ruler to change his mind. Proportional voting districts represent a further increase in political mobility over single-member districts, which require representatives in the legislative body to win local majorities.

The state and its subjects taken together form a political society. Societies can be analyzed and differentiated based on the composition of both of these parties. If the laws of the state are reflexively applicable, meaning that the state is restrained by its own laws, there is a universal application of law. In this case, the state is contained entirely within that group that is subject to law. If, on the other hand, the laws of the state are imposed upon a separate and distinct group of subjects, and the state is not bound by its own laws, there is a discriminate application of law. In this case, the state forms a distinct entity, entirely separate from that group that is subject to law. Both cases are illustrated in Figure 1.

Although a universally applied law is equally binding upon each member of the population, it imposes unequal costs upon those who are members of the state and those who are not. For example, consider a direct democratic society in which a portion of the population believes the production, exchange, and consumption of alcohol should be prohibited, while another portion of the population believes these things are better left unregulated. Assuming that those of the former opinion comprise the majority, a prohibitionary law will be passed. If the law is binding upon members of the majority as well as members of the minority, the law is being applied universally. However, the prohibition of alcohol, in this case, does not impose an equal cost upon those who supported and those who opposed the measure. Indeed, the state, in this case made up of every individual that voted to prohibit alcohol, has imposed its own preference upon a separate and distinct group — those who, if given power, would choose not to prohibit
alcohol. Thus, the state that practices universal application of law begins to resemble the one that practices discriminate application of law, in that a distinct party is forced to live under a law with which they do not agree.

The state, due to its special privilege of dictating the lives of its subjects, is necessarily a coercive entity. Every law, no matter how minor the punishment for its breaching, represents a threat of violence by the state. The question that necessarily follows is from where this privilege, the state’s monopoly on the legitimate sanction of violence, is derived.

The Social Contract

In a unanimous direct democracy, the state and its subjects are one, identical body. In such a society, no law is binding that does not enjoy the explicit endorsement of every individual within the jurisdiction of the state. There may still exist a discriminate application of some particular law, if there is unanimous agreement that it should be applied discriminate. For example, there may be unanimous agreement that those individuals that fall within a certain income bracket be taxed more heavily than others. However, no single group, distinct in any way from the society as a whole, has a monopoly on the legitimate sanction of violence. In other words, the state is composed of everyone. Such a society must be relegated to the realm of hypothesis, since a collection of people so utterly identical in thought and occupying the same physical space has yet to exist.

However, there need not be unanimous agreement upon every decision for the state to enjoy the unanimous sanction of its subjects. Alternatively, the people of a given territory may unanimously decide to vest political authority in a state of their own creation, which then has the authority to rule in accordance with the agreement (Locke, 1988). The resulting state would hold a monopoly on the legitimate sanction of violence, but the origin of that right is, in this case,
clear — the unanimous sanction of its subjects.

This is the rationale behind the social contract: there need not be unanimous agreement on every decision in order for the state to be legitimate, rather, only on the initial decision “to joyn [sic] and unite into a Community, for… comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of… Properties, and a greater Security against any that are not of it” (Locke, 1988, p. 351).

The hypothetical state justified by the social contract is not restricted to any particular form. However unlikely it may be that a group of free individuals would agree “that all of them but one, should be under the restraint of Laws, but that he should still retain all the Liberty of the State of Nature, increased with Power, and made licentious by Impunity” (Locke, 1988, p. 328), such a society would have as much legitimacy as one in which the majority is the recognized authority. As long as there is unanimous agreement upon a certain arrangement, it matters not the particular arrangement.

If, within a given territory, there exist irreconcilable differences of opinion regarding the formation of the state, social contract theory cannot be used as a justification for a state that rules over that territory. If people are left free to choose to endorse or refuse the terms of the contract, the resulting political authority could not be said to have a monopoly on the legitimate sanction of violence, and thus is not a state. If those who refuse to endorse the social contract are forcibly brought under its authority or expelled from the territory, then, indeed, a state has been established, but without universal sanction. The source of the state’s monopoly on the legitimate sanction of violence would, in that case, remain unknown. Thus, if even one man, within a territory of thousands, voices opposition to the formation of a state, its creation would not be in accordance with social contract theory. Rather, were the state formed, it would be a democratic
decision, in which the opinion of the overwhelming majority prevailed and the dissent of one was silenced.

Aside from disagreements over what form the state should take, it is, furthermore, entirely reasonable to suppose that some individuals will refuse to consent to any political rule, choosing not to “devest [sic] [themselves] of [their] Natural Liberty, and [put] on the bonds of Civil Society” (Locke, 1988, p. 330-331).

Assuming that there is anything but perfect similarity of opinion among the people of a given territory, the formation of a state, which, by definition, has a monopoly on the legitimate sanction of violence within a definite geographic area, is a process which cannot be undertaken without injury to those who do not consent to be ruled by the particular state formed. Thus, the necessary result of social contract theory, which justifies the creation of a state only if it enjoys the unanimous sanction of its subjects, is the creation of several coexisting contractual communities in place of a state, each ruled by an authority commonly recognized in that community, and having authority only over its constituent members. The political bodies in charge of these communities would not be states, because there would still reside, within their borders, some individuals over which they would have no authority.

Requiring that “the consent of every individual” (Locke, 1988, p. 331) precede the establishment of political authority places a debilitating limit on the extent of political jurisdiction. It is, therefore, questionable to what extent the communities resulting from strict adherence to social contract theory would be cohesive and lasting. However, even overlooking the problem of infinite reduction by assuming the existence of indivisible and enduring political units, such a model of shared jurisdiction does not solve the crisis of legitimacy caused by differences of opinion regarding the establishment of a state.
For example, let us consider a hypothetical territory, occupied by one hundred adults. Fifty of them wish to create a state based on socially conservative values, while the other fifty wish to create a state based on socially liberal values. Within each faction, there is unanimous agreement as to what type of political authority they would see implemented. It is entirely possible that the two groups, despite their differences, will reach a compromise, perceiving the benefit of having a common law as outweighing the cost of personal disagreement with that law, in which case universal sanction may be achieved.

Two other options also exist: war, waged by both sides with the aim of forcibly establishing the state of their choosing, and a separation into two contractual communities, each occupying the same physical space, but subject only to their own laws. If the latter option were chosen, the resulting dual political authorities would derive legitimacy from the unanimous sanction of their respective constituent groups.

Although the resulting contractual communities, having each chosen to vest authority in a political body, would be free from illegitimate imposition from within, they would be vulnerable to imposition from without, or externality. As soon as the consequences of the actions of any member of one contractual community are borne, to any degree, by anyone outside that community, there exists an externality.

This can be illustrated by postulating a penal code for either community. The political authority of the conservative community enforces a penal code among its constituents, so that all thieves and murderers are put to death. In contrast, the liberal political authority does not practice the death penalty, and instead, favors rehabilitation of criminals.

The existence of externality is, in this case, clear. If the penal code of the conservative community is meant to protect its subjects by providing strong disincentives for potential
criminals, then it has been rendered ineffectual by the coexistence of the liberal community. If
the penal code of the liberal community is meant to encourage brotherhood and foster a spirit of
community, then it has been rendered ineffectual by the coexistence of the conservative
community.

Externality is the inevitable result of shared jurisdiction among political authorities with
divergent values. It is precisely this discord that both encourages and impedes the formation of
the state; the former because only an institution with a monopoly on the legitimate sanction of
violence can unify such a society under a single political authority and effectively impose a
single set of laws, and the latter because the resistance to the establishment of such a state would
be especially vigorous.

Were the two communities physically, rather than just politically, separated, both would
be able to establish a state on the basis of a social contract, since there exists perfect agreement
regarding political authority within both groups. Assuming that members of both groups feel at
home in the same area, there would clearly be disagreement as to which would suffer the plight
of leaving and which would enjoy the right to remain. However, overlooking this problem of
expropriation, there is no further cause for conflict when these communities are separated.

However, the slightest relaxation of the assumptions that constrain this model elucidates
the fact that simple physical separation fails to adequately resolve any but the most contrived
hypothetical conflicts. The prospect of a unanimously agreed-upon social contract is dependent
on the existence of a society comprised solely of those who have reached the age of majority and
are otherwise mentally capable of consenting to be ruled. Indeed, children and the mentally
handicapped are the ever-present externality, since they are not capable of freely choosing to
endorse or refuse the terms of a social contract. To be precise, the capability to choose entrance
into a political society is not a binary variable. As mental faculty increases, so, too, increases the ability to freely consent to be ruled. Thus, only those capable of reasoning to the highest degree can consent in the truest sense. The assumption of tacit agreement to the terms of a social contract on behalf of minors and the mentally handicapped sacrifices theoretical stringency for convenience and overlooks the fact that all states with these groups within their borders are effectively ruling over individuals who were incapable, at the time of the state’s inception, of giving consent, in addition to those who were capable of doing so. This is not to say that children and the mentally handicapped should be excluded from the protection of law, but simply that a state that rules over them cannot rightfully claim unanimous sanction.

Allowing for the existence of children in the above hypothetical model of the conservative and liberal communities demonstrates that physical separation would be insufficient to allow either community to rightfully claim legitimacy. The conservative state would be admonished by the liberal state for implementing excessively severe punishments and raising children into a society that does so, while the liberal state would be admonished by the conservative state for tolerating crime and raising children into a society that does so. Individuals need not feel that they are the direct victims of externality in order to desire its removal.

Therefore, the right to claim legitimacy based on unanimous sanction must be restricted to that hypothetical state that is the result of a unanimous, free decision by philosophical adults to recognize its authority and which, furthermore, has no discernible effect upon anyone outside of its membership, including the mentally incapable. In other words, a state that fully meets the criteria of the social contract is one in which externality has been reduced to zero.

The actual distribution of political authority in our world, the system of national governments with defined borders, bears no resemblance to the model postulated above. People
are born within the jurisdictions of preexisting states, raised into these political societies, and often lack the means to find a state that better matches their values, if they are unwilling to assimilate. Although “a Child is born a Subject of no Country or Government” (Locke, 1988, p. 347), upon reaching the legal age of majority, as defined by the state in which he resides at that moment, the young adult must decide to accept the rule of the state or leave its jurisdiction.

The extent to which a state can rightfully claim absolute sovereignty, the right to be free from control by an external agent, is entirely dependent on the level of externality represented by its policies. Only a state in which externality is reduced to zero is entitled to absolute sovereignty. As long as the consequences of a state’s policies are borne, to any extent, by someone, within or without its borders, who did not consent to be ruled, a case for intervention can justifiably be made.

However, imperialist intervention does not solve the crisis of legitimacy caused by a lack of unanimous sanction, since the imperial state presumably lacks unanimous sanction with respect to its own subjects, and since there is no reason to believe that subjects of the imperialized state will freely and unanimously consent to be ruled by the imperial state.

Without some criteria by which states may be differentiated, there is no reason to prefer the rule of one state to that of another. Since the social contract represents an ideal unfulfilled by any state, any remaining basis upon which to distinguish one state from another must be concerned with some criteria other than its origin.

The Libertarian State

With regards to the consent of the ruled, the state will inevitably face a crisis of legitimacy because its rule is necessarily imposed, in part, upon those who did not consent to it. However, if the policies of the state are justified in themselves, if there exists “some recognized
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principle by which the propriety or impropriety of government interference is customarily tested” (Mill, 1978, p. 8), then the state need not be based on a social contract in order to rightfully claim legitimacy. In such a case, legitimacy would be derived from the just rule of the state.

If there exists an objectively definable point at which an individual’s actions begin to impose a cost upon others, a state that enforces this distinction through its legislation, by protecting the liberties of its subjects, would derive legitimacy from its rule, and thus, would not require a social contract. The subjects of such a state would be free to act as they wish, provided that they do not infringe upon the liberties of others.

The viability of this axiom as the legitimate basis of a state is dependent upon the existence of an objective standard of harm, a scientifically verifiable point at which coercion begins to take place, and at which liberty gives way to license. This hypothetical point, which marks the initial edge of coercive activity, need not be commonly recognized, if it indeed has a scientific basis. Thus, the libertarian state, with respect to legitimacy, need not be concerned with the popularity of its laws.

It is worth noting that Hobbes (1994) denies the possibility of ever achieving metaphysical certainty to the extent that such issues can be settled. Indeed, the ability of science to provide an objective resolution to the dispute regarding the qualification of harms is limited due to the practical limits of scientific experimentation, on the one hand, and its inapplicability to personal values, on the other.

For example, there is a faction that believes pornography represents a distinct harm to society at large, especially to women, while another views it as a purely personal matter without spillover effects. If the former is true, then the libertarian state has a duty to forbid pornography, as it imposes a cost upon all women. However, if the latter is true, the state must not only
recognize, but also protect the right of those who produce and consume pornographic material.

Psychological tests could be performed to verify the claim by its opponents that pornography affects the minds of its viewers and to determine if women are indeed objectified to an extent that they would not otherwise be. In order for these tests to be valid, the affect of pornography on the human mind would somehow have to be isolated from all other variables and subsequently measured. The practical limits of scientific experimentation are, in this case, clear.

However, even assuming that scientists are able to prove beyond any doubt that pornography debases its viewers’ opinion of women, it must furthermore be determined at what point the liberties of women have been violated. If women have the right to be free from objectification in the minds of others, then pornography, by increasing the existence of such attitudes, imposes a cost on them and must be prohibited. Or, if the liberties of women are not violated until active discrimination or physical violence takes place, then the rights of producers and consumers of pornography must be protected, despite its hypothetically demonstrated effect on the mind.

The determination of the extent of liberty cannot be provided by science, nor any other objective method. Thus, even assuming the existence of valid scientific data, there is no objective basis for any decision the state makes regarding the legality of pornography.

A principle often associated with libertarianism is that of self-ownership, which dictates that “over himself, over his own body and mind, the individual is sovereign” (Mill, 1978, p. 9), and that, furthermore, no legislation may be based upon the contents of an individual’s mind, even if the mind is not the immediate target of the legislation. In this case, although the objectification of women in the minds of viewers of pornography is the cause of restrictive legislation, it is the production and consumption of pornography that is the immediate target of
the legislation. The state that enacts such legislation is therefore not attempting to punish its subjects for the contents of their mind, only to encourage their alteration by censoring that which the individual consumes. Still, the principle of self-ownership demands opposition to this type of restriction, since, according to it, every individual is free to think whatever he wants.

However, to allow pornography on the basis of self-ownership, despite the cost it imposes upon all women, is to make a judgment based upon subjective values, specifically that the right to self-ownership of the mind overrides the right of women to be free from objectification. Once again, there is no objective basis for either decision.

If any harmful variable, such as the objectification of women, can be reduced through coercive state action, such as censorship, then there cannot possibly exist an objective policy decision. This is true even if the harmful variable is something that is more universally recognized as such. This is illustrated in Figure 2 using a hypothetical example of blood-alcohol content restrictions aimed at reducing fatalities resulting from alcohol-related car accidents. All other variables are held constant, including related legislation, the competence of enforcement, and the punishment for violation.

Blood-alcohol content restrictions are coercive, since disobedient individuals are threatened with force by the state, whether that be in the form of a fine, imprisonment, or any other punishment. Thus, the graph represents a hypothetical relationship between a coercive state policy and a harmful variable targeted by that policy. If, in this particular society, the state allows individuals with .12 % blood-alcohol content to drive without fear of legal repercussions, 10,000 people are killed in alcohol-related car accidents. As the state becomes less tolerant of intoxication levels, the number of fatalities sees a gradual reduction, until no one is allowed to drive with any alcohol in their system, and alcohol-related car accidents are reduced to a
minimum. Certainly, there is a limit to the effectiveness of any one policy, and it cannot reasonably be expected that an absolute intolerance for blood-alcohol content would reduce fatalities resulting from alcohol-related car accidents to zero. For this reason, the policy curve on the graph in Figure 2 is asymptotic to the x-axis. However, as long as even the slightest reduction can be secured through state intervention, there exists a trade-off between either factor.

Personal preference regarding the relationship between coercive state policy and the targeted harm can be represented through the addition of an indifference curve, representing the subjective marginal disutility of either factor. The point at which the indifference curve is tangent to the policy line is the optimal point and represents the individual's policy preference. Since indifference curves are entirely based upon a particular individual's comparative aversion to either variable, policy preferences will vary from person to person. Figure 3 illustrates an individual whose policy preference lies at a rough midpoint, tolerating a blood-alcohol content restriction of approximately .072 % and 5,000 fatalities.

To restrict state intervention entirely on the grounds that it is coercive is to allow drunk driving fatalities to settle at their maximum and, therefore, impose a standardized indifference preference and its associated cost upon every individual within society. More generally speaking, the libertarian paradigm, by disallowing any coercion by the state, allows all harms that could be reduced through such coercion to run rampant through society. Indeed, whether the allowance of personal freedom or the implementation of a prohibitive law is more of an imposition is a judgement that can only be made at the individual level. Figure 4 is an illustration of a generic subjective marginal disutility graph.

This graph is applicable to any harmful variable that can be reduced through coercive state policy, even those that are not easily quantified. Vulnerability to terrorism may be reduced
at the expense of privacy, inequality may be reduced at the expense of property rights; in any such situation, there is no objective basis for the imposition of the most liberal preference upon everyone. Thus, the libertarian state is no different from any other state; it is the mechanism by which one group imposes its own preferences upon all. Thus, although the libertarian state may not actively coerce its subjects, by enabling harmful acts, it nevertheless imposes a value judgment upon them regarding the weight of competing harms.

This is not to say that, with regards to any particular issue, either liberalism or conservatism are correct, but simply that to aim to reduce imposition by effectively imposing social conditions favorable to liberals is a self-defeating and futile endeavor.

The Utilitarian State

A political society in which the majority rules necessarily has a smaller number of subjects than a society of the same size in which political power is restricted to a smaller portion of the population. However, to conclude that such a society minimizes harm would be to confuse simple enumeration with total quantity. Imposing upon fewer people is not the same as imposing less in total.

To use an easily quantifiable example, consider a democratic society of one hundred people. Were a majority of sixty people to unanimously decide to levy a tax of one thousand dollars upon everyone within the society, the total amount of the imposition would be forty thousand dollars. A tax to which one agrees without duress cannot be considered an imposition, so only taxes paid by those in the minority are counted. Alternatively, in an autocratic society of the same size, were one man to levy a tax of four hundred dollars upon everyone, including himself, the total amount of imposition would be four hundred dollars less than in the democracy.
If the taxes were accepted only in the form of some commodity and immediately destroyed after collection, the decision of the autocrat objectively represents a smaller total cost than would the decision of the majority. However, this objective comparison of costs between the two tax plans is only possible because no consideration is made for a competing harm. The assumption that the taxes will be put to some use (e.g., as redistribution for the poor) makes it clear that there is a trade-off between competing harms – in this case, taxation and inequality. When this is the case, neither policy objectively represents a smaller total cost, since there is no objectively justifiable preference point. The autocrat taxes less and redistributes less, while the majority taxes more and redistributes more. Which point is preferable is dependent upon an individual's subjective level of aversion to either harm.

Thus, in terms of absolute harm, it is entirely possible that the decisions of a majority prove more costly than those of an autocrat. In terms of relative harm, there is no objective reason to prefer the decision of either in all cases. Therefore, there is no form of state that necessarily represents a minimization of costs. Any remaining utilitarian premise for the state must focus instead on its policies.

If a personal indifference curve regarding a particular policy issue exists for each individual within a political society, a single mean preference curve must also exist for the society as a whole. Consider again a society of one hundred people, this time attempting to reach a consensus regarding the appropriate level of economic redistribution. Fifty of them share an indifference curve that favors a policy of relatively low redistribution and relatively high inequality, while the other fifty share an indifference curve that favors a policy of relatively high redistribution and relatively low inequality. This is illustrated in Figure 5.

Overlooking the various practical impediments to reaching perfect mathematical
consensus, there nevertheless exists a mean indifference curve that takes all individual preferences into account. In this case, the mean policy choice would represent a levying of a moderate amount of redistribution and the toleration of a moderate amount of inequality, as illustrated in Figure 5.

The mean policy preference illustrated in Figure 6 is the single policy that takes equally into account the policy preferences of all individuals within the society. However, it is not necessarily the single point at which total happiness in the society is maximized. As the policy implemented by the state moves along the policy curve towards policy preference A, the happiness of those who exhibit preference A increases while the happiness of those who exhibit preference B decreases. If the state implements policy preference A, those who exhibit preference A will be made perfectly happy, while those who exhibit preference B will be thoroughly unhappy. Therefore, assuming the impossibility of measuring cardinal utility, it is likewise impossible to choose between any policy that falls between preferences A and B based on the maximization of societal happiness. Thus, the mean policy preference is distinguishable from other preference points between A and B only in that it is the only point that takes all individual preferences into equal account.

The state that imposes the mean policy preference upon its subjects is, like any other state, still imposing a single preference point upon society as a whole. However, while the libertarian paradigm attempts to label the most liberal preference point as universally just, the state that implements the mean policy preference only presumes to minimize costs with respect to a certain community. While the libertarian paradigm, had it proved more cogent, would have formed the basis for a state that could legitimately expand its borders indefinitely, a state based on mean policy preferences has no legitimate basis upon which to force individuals to recognize
its authority because the utilitarian state does not presume to uphold any criteria of right and wrong apart from the preferences of its constituents. Any individual who does not wish to live in a society in which appeasing the greatest number is the primary goal of the state cannot legitimately be forced to accept the mean policy preference, nor can he legitimately be expelled from the territory for this refusal. The state that chooses to always implement the mean policy preference has made a subjective value judgment that the appeasement of the greatest number should take priority over any alternative parameter of justice.

Conclusion

The state, as that institution which has a monopoly on the legitimate sanction of violence within a given territory, is necessarily a coercive entity. It is, furthermore, an inevitable product of a world in which separation into perfectly self-contained communities is a practical impossibility. It is the means by which one faction imposes their values upon society at large. By refusing to act, the state still imposes a particular policy preference upon its subjects and forces them to live under the resulting conditions. The state may choose to broadly appease its subjects, but, in doing so, makes a subjective value judgment that the need for such appeasement outweighs the need for any alternative parameter of justice.

The state cannot be legitimized as an objectively just entity, and therefore, is differentiable from every other exercise of power only in the minds of those that recognize it as legitimate. An individual may view the state as legitimate for any number of reasons, including its origin, or the extent to which it is liberal or representative. However, the only valid basis for an individual recognition of state legitimacy is a congruence of personal values with the values represented by its laws.

Whatever form the state takes and whatever policies it imposes, it is, in all cases,
reflective of the subjective values of the most powerful faction. The virtue of a state cannot be judged by the degree to which it imposes upon its subjects, but rather the nature of that which it imposes, and this is necessarily a subjective evaluation.

Tyrants have certainly left their mark upon history and upon the minds of men, to an extent sufficient to cause great hesitation on man’s behalf to recognize that rulers can also do evil by refusing to act. Liberty may be the opposite of tyranny, but without a coexisting parameter of justice, there is no reason to prefer one to the other.
References


Figure 1. Illustration of universal application of law versus discriminate application of law
Figure 2. A hypothetical example of blood-alcohol content restrictions aimed at reducing fatalities from alcohol-related car accidents.
Figure 3. Illustration of an indifference curve
Figure 4. An illustration of a generic subjective marginal disutility graph
Figure 5. Illustration of an example where two indifference curves co-exist in society
Figure 6. An illustration of a mean policy preference for a society