Chapter 1

Introduction

1.1 THE MODERN STATE

As a century of extraordinary turmoil and change comes to an end, it is sobering to take a long look back over the several centuries that have made up modern times. We live in a world of states. Virtually every landmass of the globe is now the territory of some state. The phenomenon is relatively recent, a feature of modern times, and it was initially European. During the last five hundred years, Charles Tilly writes, three striking things have occurred. First, almost all of Europe has formed into national states with well-defined boundaries and mutual relations. Second, the European system has spread to virtually the entire world. Third, other states, acting in concert, have exerted a growing influence over the organization and territory of new states. The three changes link closely, since Europe’s leading states actively spread the system by colonization, conquest, and penetration of non-European states. The creation first of a League of Nations, then of a United Nations, simply ratified and rationalized the organization of all the earth’s people into a single state system.¹

The modern state, considered as the fundamental form of political organization, has swept the world. It was not always so, and it may

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not always be so. This transformation of the globe is a remarkable event, especially as it is now rarely noticed and is taken for granted.

The explanation of the development of “the state system” is a matter of considerable interest and importance. A number of competing accounts are available. Most stress, in one way or another, the competitive advantage of this particular form of political organization in the circumstances that have characterized the last several centuries. Tilly’s account stresses the importance of military conflict:

Why national states? National states won out in the world as a whole because they first won out in Europe whose states then acted to reproduce themselves. They won out in Europe because the most powerful states – France and Spain before all others – adopted forms of warfare that temporarily crushed their neighbors, and [that] generated as by-products centralization, differentiation, and autonomy of the state apparatus. Those states took that step in the late fifteenth century both because they had recently completed the expulsion of rival powers from their territories and because they had access to capitalists who could help them finance wars fought by means of expensive fortifications, artillery and, above all, mercenary soldiers.2

Other accounts stress social, institutional, or economic transformations that made possible the impressive war-making capacities and other comparative advantages of modern states.3

Understanding these extraordinary changes of political organization is important. There is, as we might expect, considerable controversy about the best ways of characterizing and explaining these developments. My inquiry, however, unlike others, is primarily normative. It takes up where these explanatory accounts leave off. I seek to evaluate the state as a form of political organization – in particular, as the characteristic form of the modern polity. I should like to discover the justifications, if any, for these changes in our modes of organizing political life. What exactly is a state, in the sense that will concern us, is discussed in the next chapter. For now, I shall explain my general concerns and the ends of this inquiry.

2. Tilly, Coercion, Capital, and European States, p. 183.
3. See Hendrik Spruyt, The Sovereign State and Its Competitors (Princeton: Princeton University Press, 1994). Strayer argues that European states were able to combine some of the strengths of empires and city-states. The former “were large enough and powerful enough to have excellent chances for survival . . . At the same time they managed to get a large proportion of their people involved in, or at least concerned with the political process, and they succeeded in creating some sense of common identity among local communities.” On the Medieval Origins of the Modern State, p. 12.
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An appreciation of the history of the modern state is important for an evaluation of it. I shall suggest that lack of attention to this history, as well as fascination with certain individualistic models of explanation, has misdirected the attentions of many Anglo-American political philosophers interested in evaluating the state. Familiarity with the history of modern states will remind us of what we may have forgotten, that our state system has not always existed. Indeed, it is a fairly recent development, at least if one thinks of the four to six centuries of modernity as a relatively short time. In learning about the development of the state system, we learn about earlier forms of political organization – feudalism, empires, Christendom – as well as about the early modern alternatives the state displaced – city-republics and city leagues. We may see in some of these other forms of political organization parallels to alternatives that may in the future alter or displace the state system. At the very least, familiarity with this history may instill open-mindedness about nonstatist alternatives, as well as about the adaptability of states.4

Familiarity with history is also important for an appreciation of states. This century has made us painfully aware of the evils committed by, or, if one prefers, made possible by, states. In case memories of the horrors of World War II have receded, revelations about life in the former Soviet Union and in China remind us of the evils unchecked state power can commit. It may be argued that Auschwitz and the gulag would not have been possible in the absence of the concentrated power made possible by states. But even without the horrors of the Holocaust, the awesome destructiveness of the wars of this century may suffice to condemn the state system.

It may be that one of the lessons of these horrors of our century is not the failure of the state per se but the defect of unconstrained state power. The striking fact that democracies do not fight wars with one another may provide additional support for this condemnation of unlimited state power.5 But there are other sources, more recent perhaps, of the general dissatisfaction with state power. Governments

4. This open-mindedness often seems absent, for instance, in recent debates about the development of the European Union. It often seems as if the dominance of the category of the state forces political commentators to understand developing European “federalism” as statist (“the United States of Europe”). We shall see in later chapters how certain understandings of the state’s sovereignty may have constrained contemporary debates on transformations of state authority.

5. Immanuel Kant is credited with the conjecture that the establishment of republican government will tend to limit war. See his essay “Perpetual Peace,” originally published in 1795. See also Michael W. Doyle, “Kant, Liberal Legacies, and Foreign
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everywhere are now criticized for their inability to cope with difficulties facing our societies. It is often suggested that “markets” or the “private sector” offers solutions to these problems that are preferable to government programs or “regulation”. Even socialist or social democratic regimes today are reluctant to rely overly on government. Perhaps at no time in the last several centuries has the state been held in such low esteem.

Contemporary skepticism of, and hostility to, government is certainly one of the reasons for this inquiry. Familiarity with the history of states reminds us, I have said, of the evils states can do. But it may also serve to temper this skepticism. For in several respects the development of states has caused significant improvement in the conditions of human life. In many ways the exercise of concentrated power in some parts of the world is less brutal, arbitrary, and exploitative than before. The development of the “rule of law”, of democratic forms of government with broad franchises, of constitutional constraints on governments, of divisions of powers and forms of federalisms, and of the institution of norms of tolerance has brought extraordinary improvements in political life. While it is true that many of these improvements have their origins in classical Greece and Rome and the cities of Renaissance Italy, they are largely modern and are inseparable from the modern constitutional state.

To draw attention to the ways in which the development of the state system has improved life is not to deny that many of these changes are partial or fragile, or that many peoples in the world do not benefit from them. Nevertheless, we should not neglect these achievements in our assessment of states. An overall assessment is difficult. The obituary of the state system will be hard to write. On one side, we see the pacification of European civil life and the fashioning of more or less representative political institutions, both by-products of a state formation driven by the pursuit of military might. On the other side, we notice the rising destructiveness of war, the pervasive intervention of states in individual lives, the creation of incomparable instruments of class control. Destroy the state, and create Lebanon. Fortify it, and create Korea. Until other forms displace the national state, neither alternative will do. The only real answer is to turn the immense power of national

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states away from war and toward the creation of justice, personal security, and democracy.

What should we think, then, of the state? The purpose of this inquiry is to evaluate the state as a form of political organization. I shall seek to determine in what respects, if any, states can be justified. Although one cannot, without detailed study of the history and circumstances of particular states, make the informed and intelligent assessments of states that we should strive for, one can inquire into general questions about justification. States, or their spokespeople, make many claims, and their credibility can be assessed. Even if we cannot pronounce unambiguously for or against the state, we should be able to sort through many of the difficult normative issues raised by this form of political organization. At the very least, this may help us to determine how we might improve on the manner in which we now organize our polities.

1.2 MODERN POLITICAL PHILOSOPHY

It is characteristic of modern political philosophy to consider the state an artifice. While modern philosophers may quarrel about whether humans are by nature social creatures, virtually all agree that states are artificial. As Thomas Hobbes put it, “By Art is created that great Leviathan called a Common-wealth, or State, (in latine Civitas) which is but an Artificial Man.” Some moderns dissent – for instance, Hegel. And we may wonder how much of the thesis will survive a critical analysis of the distinction between nature and artifice. But we need not be detained by such a discussion. For it is the implication of the alleged artificiality of the state that is of interest: this Artificial Man (the state), Hobbes continues, “though of greater stature and strength than the Naturall, for whose protection and defence it was intended...” The state, conceived as artificial, is to be understood as created for our ends, our protection and defense. While modern social theorists may quarrel about the explanatory priority of individuals to states, they disagree hardly at all over the

normative priority of individuals to states. What we are, contra Hobbes and many others, may be significantly determined by our forms of social organization. However, the adequacy of these forms of organization – as well as of their corresponding forms of socialization – is to be determined by their success in satisfying our ends. In this sense, modern philosophers tend to have an instrumental conception of states.\(^8\)

Certainly this is the general tradition with which I identify in this inquiry. I do not accept many assumptions or doctrines associated with this tradition – much of the individualism, certain simplistic and mistaken accounts of motivation, an instrumentalism about value – but I shall retain this general evaluative perspective. States are to be thought well of to the extent that they satisfy human ends.

This is not yet to say very much. There are many different ways in which ends can be well served. Further, we may wish to give different weight to different ends, to discount others, and so on. We may be unsympathetic, say, to utilitarian evaluations of states in the tradition of Bentham and Mill, or as I mentioned earlier, we may be suspicious of the instrumentalism about value or practical reason that characterizes much of modern political philosophy and political economy. So endorsing a general instrumentalism regarding states does not commit us to very much. It merely signals, first of all, our rejection of classical views according to which then characteristic forms of political organization – the community, the polis – need, in themselves, no justification. It also expresses our rejection of pre-modern assumptions that some forms of subordination – between ruler and subject, noble and lowly born, men and women – are natural and need no further justification.\(^9\)

\(^8\) “It will follow that whatever activity it is desirable for the State to have, it will only be desirable as a means, and that the activity, and the State itself, can have no value but as a means. . . . Compared with worship of the State, zoolatry is rational and dignified. A bull or a crocodile may not have intrinsic value, but it has some, for it is a conscious being. The State has none. It would be as reasonable to worship a sewage pipe, which also possesses considerable value as a means.” John McTaggart Ellis McTaggart, “The Individualism of Value” [1908], in Philosophical Studies, ed. S. Keeling (London: Edward Arnold, 1934), p. 109, cited by Leslie Green, The Authority of the State (Oxford: Clarendon Press, 1988), pp. 164–165n.

\(^9\) Note that we might want to adopt this instrumentalism regarding the evaluation of states while rejecting it for other human institutions. It may also be that while classical theories, according to which humans are by nature political or social animals, imply that the community in itself requires no further justification, they do not have this implication for the modern state. In Chapter 2 I discuss the ways in which the state is a different, and modern, form of political organization.
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Hobbes, Locke, and Rousseau initiate a modern tradition that evaluates states by reference to the agreement of their members. A state is justified, we might say, insofar as it is agreeable to its members. We need to distinguish two different interpretations of this view. One, which may be associated with Locke, I label the “consensualist” view.\textsuperscript{10} It is the view that consent is necessary (and sufficient) for justification. The other view is that states, to be justified, need to be beneficial to all subjects, whether or not they consent. If one understands the “social contract” of Hobbes and Rousseau and other contractarian thinkers as hypothetical, then the two views may be conflated. But, as I argue later, hypothetical agreement is not a form of consent.\textsuperscript{11} So the two positions should be distinguished. The second position may be called the “mutual advantage view”, after John Rawls’s conception of a society as a “cooperative venture for mutual advantage”.\textsuperscript{12} Leaving aside for now misunderstandings that may be encouraged by the notion of advantage, Rawls’s phrase articulates well the view about states that I wish to distinguish from consensualism. States are to be justified in terms of how they benefit people; ideally, then, they are to be cooperative ventures for mutual advantage.\textsuperscript{13} States stand condemned to the extent that they satisfy the ends of some at the expense of others. The exploited as well as the persecuted thus are not bound to their states.

Elements of both views are to be found among the modern social contract theorists, and the two are commonly conflated. But it is important to distinguish them as I have. Some of the important questions I wish to raise about modern states may be resolved differently depending on which view is endorsed. And to the extent that I favor the mutual advantage account, I will need to address the concerns of consensualists. The latter tradition is well represented in contemporary political philosophy, especially in the United States, and it is often developed in forms that are hostile to states. If people have certain rights and “to secure these rights, governments are instituted

\textsuperscript{10} Sometimes such a view is called “voluntarist”, but I prefer to retain this label for the view in morals and law that the will is the source of normativity. The voluntarist elements in Hobbes’s notion of sovereignty are discussed in Chapter 7.
\textsuperscript{11} Hypothetical agreement requires no act or engagement of the will and so does not commit one in the way that consent, express or tacit, does.
\textsuperscript{13} Rawls’s characterization is of societies, not states. As I make clear in Chapter 2, I do not attribute to societies the unity characteristically implicit in our descriptions. The state may be one, but societies need not be.
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among men, deriving their just powers from the consent of the govern-ed”, then justifying states may be very difficult. The assertion of certain natural rights may, as Bentham thought, threaten the legitimacy of all government.

Consensualism is an implication of most natural rights theories. The reference to these theories brings to mind another influential pair of competing views. Natural rights are what I call “prior rights”; they are held to exist prior to, and independently of, states and their legal systems. Many have denied that there are such rights and have supposed that all rights are created or “posited” by states – a view sometimes labeled (misleadingly) “positivist”. The facts that natural rights theories tend to be committed to consensualism and that the instrumentalist political theories of Hobbes and Bentham denied the existence of prior claim rights suggest to some that the pairs of views overlap. But this is mistaken, as I argue later. Mutual advantage theorists can endorse the existence of some prior rights even if they reject the accounts of certain natural rights theorists. And in any case, whatever plausibility there was to the view that all rights are created by states is considerably diminished by an understanding of the modern state and its alternatives, or so I shall argue. It would be best, therefore, to keep separate these different pairs of views. The conflict between the first pair may be of some importance for an evaluation of the modern state. The conflict between the partisans of prior rights and their critics would be significant were only the position of the latter to have some plausibility.

The mutual advantage view is associated, as I said, with the “social contract” tradition, in particular the theories of Hobbes and Rousseau.14 This particular tradition has been revived in recent decades by Rawls, James Buchanan, David Gauthier, and others. But much of the tradition of political economy, starting with Adam Smith, up to welfare economics and “public choice” economics, also endorses this general view in the form of several “Paretian” principles of efficiency. The mutual advantage view I have sketched is more widely shared than its identification with contractarian political philosophy might suggest.


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These contractarian thinkers and political economists generally share more than a normative position. They also agree on a general account of the ways in which states might be suited to serve the ends of individuals. In the absence of certain cooperative arrangements, individuals acting on their own encounter “collective action problems”. The outcome of their individual acts is less good for each than it might otherwise be were they able to coordinate or cooperate in some way. In the absence of some system of cooperation – one capable of establishing mutually beneficial forms of cooperative interaction – individuals, left to their own devices, will be unable to achieve their ends well. Governments, in the view of these theorists, may be understood as providing solutions to many such collective action problems. Individuals, without government, may be unable to provide themselves efficiently with bridges, lighthouses, clean air, or defense (to use the standard examples) or even with social order.\(^{15}\)

Governments, on this view, have

the duty of erecting and maintaining certain publick works and certain publick institutions, which it can never be for the interest of any individual, or small number of individuals, to erect and maintain; because the profit could never repay the expense to any individual or small number of individuals, though it may frequently do much more than repay it to a great society.\(^{16}\)

While transportation, public health, and the like may pose collective action problems, the most important such problem may be that of social order: how to achieve basic security of person and possessions in the absence of a state. For social order, in this sense, is a good the provision of which poses a collective action problem. States are well suited to provide social order. One might say that it is their main purpose, but we should be cautious with such claims lest they be interpreted as explanatory; many states have provided basic security of person and possessions as a by-product of other, often less admirable activities. There is wide agreement that this is one of the proper functions of states. And there is wide agreement that social order is difficult, if not impractical, to achieve in the absence of states, at least in the conditions of modern life – a claim I critically examined in Chapter 3. The contractarian and political economy traditions

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15. Some of the difficulties with these standard examples, as well as a more careful explication of the problems, will be provided in Chapter 3.

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agree in their understanding of the general problem and the manner in which states may offer a solution.

The contractarian tradition to which I have appealed, as well as the modern natural rights tradition, understands humans to be, by nature, free and equal. Originally these terms merely implied the absence of any nonconventional bonds or forms of political subordination. By proclaiming original freedom and equality, one signaled one's rejection of certain classical views according to which we come into the world with different "stations and duties" assigned us by nature. This claim of original freedom and equality, so interpreted, is relatively uncontroversial today.

The premise that we are by nature free and equal, conjoined with the claim that the state is an artifice, creates a presumption against states. Hobbes and others have attempted to show that at least some states are improvements on the natural condition of freedom and equality and consequently are justified. Where states are not improvements over this condition of nature, they are to be rejected.

The tradition of political economy also maintains a presumption against states. Although the reasoning is similar, it is based on a distinct body of theory, namely, the theory of markets. Since Adam Smith, economists have increasingly distinguished themselves from other social theorists not merely by their approach to social phenomena but also by doctrine. In the absence of government "intervention" and "regulation", it is held, individuals do quite well by themselves in a wide variety of domains. Indeed, it is only with certain goods, those that pose collective action problems, that individual market interaction proves deficient – the case of so-called market failures. I discuss this general theory in greater detail later. For now I shall merely note that it is by reference to this body of theory that political economists join contractarians in accepting a general presumption against states.

The two traditions, then, agree on a criterion for the evaluation of states (mutual benefit), an account of the type of problem states might be better suited to resolve (collective action problems), and a presumption against states, in favor of free interaction among individuals. Although Hobbes valiantly defended absolute states, for the most part the conclusion of these traditions has been limited, rather "minimal" states.17 In the middle of the twentieth century it was

17. Hobbes's own prescriptions for government were rather minimalist. See my "Leviathan and the Minimal State: Hobbes' Theory of Government," in Early Mod-