

Under what circumstances, if any, is the state justified?

By Andrew Peasgood

“When you look, most of the time (these) authority structures have no justification: they have no moral justification, they have no justification in the interests of other people, or the environment, or the future, or the society, or anything else – they’re just there in order to preserve certain structures of power and domination. ... (T)he person who claims the legitimacy of the authority always bears the burden of justifying it. And if they can’t justify it, it’s illegitimate and should be dismantled.”
Noam Chomsky, ‘On Anarchism’ (2013)

In laying down the challenge of the anarchist, Chomsky, demanding justification for those claiming dominance over others, raises issues of morality, power and preservation. But the key words he uses are ‘authority’ and ‘legitimacy’. Only with those two attributes can the state – the prime example of an ‘authority structure’ – claim not only the ability to rule but also the right to be obeyed.

Firstly, though, what is ‘the state’? Or, perhaps, *who* is the state? For people today living in democratic societies the state is everyone (at least all those who are allowed a vote): for King Louis XIV in 17th century France, it meant he alone (“L’état, c’est moi.”). In both situations it is those who govern a political society: those that hold the power. And this power is crucial. “Every state is founded on force” stated Trotsky: and - if force of law and tradition is insufficient - it is continuing physical force that maintains many states.

At a base level, the ruling group may feel justified in considering itself to be the state if those who form it are capable of exercising political power. They have the ability to compel. Others – outsiders - may concur by according that group their ruling status. The United Nations criteria for recognition of statehood (first formalised at the 1933 Montevideo Convention) require of a ‘state’ the following: “a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states”. (1) There is no mention here of the wishes of the populace. It is instead *realpolitik*, an acceptance of de facto reality: recognition of existence rather than a comment on worthiness. Stability – to ensure a safe trading environment for other states, with minimal threat to others – is, therefore, paramount. A government that is in effective control, that can unite, protect and direct its population is deemed the basis of a viable state. This is the political *authority* that is the first requirement for justification.

Is this ability to rule a right to rule, a right to be obeyed? Is the possession of power sufficient to warrant compliance by those subject to that rule? Here we enter the territory of *legitimacy*: the moral basis upon which those who rule do so. Justification of the state requires a good reason why subjects – those being commanded - should accept that rule, and obey. Justification requires there to be political obligation. What, though, generates such bonds of obligation – universal - that all citizens should comply and obey directions of the state that they may not always agree with, and be prepared to accept coercion against their fellows (or, as with Socrates accepting the right of the Athenian court to condemn him to death, even themselves) in situations of dissent ?

For Thomas Hobbes (*Leviathan*, 1651), “Command is where a man saith, *Do this* or *Do not do this*, without expecting any other reason than the will of him that says it”. Hobbes argued that we should be grateful for the existence of absolute authority over us as an alternative to the miseries of life in the free for all of the state of nature. Even if Hobbes was merely seeing a situation of subservience imposed upon all citizens his best chance of securing the personal safety he desired, he was willing to accept (as he thought all citizens ought, *en masse*) the political force imposed upon society by a supreme authority? If his acceptance was, however, placing a reciprocal duty upon the state to protect him, then Hobbes was setting out a ‘contract’ between state and subjects.

Entering a contract requires consent. Consent as the underpinning of obligation was more expressly articulated by John Locke (*Two Treatises of Civil Government*, 1690): “And thus every man, by consenting

with others to make one body politic under one government, puts himself under an obligation to everyone of that society". The state is justified – but only if every individual over whom it claims authority has consented.

The difficulty with consent theories is confirming that it has been given. Other than in the smallest of groups, it is impossible practically to adequately obtain express indications. And any express consent tends towards justification of the immediate and particular, rather than acceptance of the abstract notion of subjection within 'statehood'.

Consent has to be claimed on either an historical or a hypothetical basis. Locke's 'tacit' consent was specifically objected to by David Hume ('*Of the Original Contract*', 1748). Hume instead favoured obligation that followed reason. So too Jeremy Bentham: "So long as the probable mischiefs of obedience are less than the probable mischiefs of resistance ... it is their (*i.e. men's*) duty to obey" he wrote ('*A Fragment on Government*', 1776) outlining a utilitarian moral justification. Such a calculus does not, though, necessarily produce for individuals equal outcomes from particular state actions. If harm can potentially be incurred by some as expense for a wider benefit the moral legitimacy of the state is undermined. While Hobbes was prepared to sacrifice some of his own freedoms – and believed others would concur – Bentham is willing to sacrifice for others their freedoms, and accept harm to them. On that basis the consequentialist rationale is criticised.

Other theories have since been proposed. We are obliged through a sense of fairness, according to HLA Hart; or we are bound by 'natural duty', this approach represented by the likes of John Rawls and his theory of justice. There are also a number of 'association theories' that we owe a duty to the rest of society to follow norms of compliance with authority as a consequence of living together in societal groups. These theories can, perhaps, be seen as variants of the contract / consent approach to justifying as legitimate an obedience to authority that over-rides personal choice. If that is so, then the various proposals for establishing universal political obligation are all rejected as incomplete or unsound, with the corollary that there is no justification for the state.

This is the view of the anarchist, expressed in Chomsky's challenge. In the absence of a consensus on universal obligation the philosophical anarchist will argue that, therefore, no such obligation exists. RP Wolff (1970) argues that moral autonomy is of the greatest value, and that in acquiescing to authority and thereby surrendering freedom, we are ceding that autonomy. "We must demonstrate by an a priori argument that there can be forms of human community in which some men have a moral right to rule" he states (1970), arguing there are in fact no such circumstances that do so.

The failure to establish a universal political obligation, and thereby a justification of statehood, does not necessarily mean, however, that there is, conversely, a universal imperative to dissent. The 'illegitimacy' of a state does not determine all its actions and directives to be immoral. The subject may feel no obligation to follow the law simply because it is the law: but should feel obliged to follow moral commands. "Citizenship does not free a man from the burdens of moral reasoning" states Simmons (1979). That can mean that the citizen may dissent from carrying out an action directed by the state that is at odds with their moral (not selfish) reasoning; but it can also mean that the citizen can accept a direction to which they are not morally opposed. By adopting this approach a circumstance is found to justify the state if other routes have been rejected. If legitimacy is not *a priori* but is particular, accorded to the state that acts morally: then justification can be earned.

(1) Taken from **Cohen, Rosalyn**; '*The Concept of Statehood in United Nations Practice*' https://scholarship.law.upenn.edu/penn_law_review/vol109/iss8/4/

Bibliography

Chomsky, N. (2013); 'On Anarchy'; New York, Penguin

Christiano, T. (2012); 'Authority'; Stanford Encyclopedia of Philosophy (Spring 2013 edition)

Dagger, R. & Lefkowitz, D. (2007); 'Political Obligation'; Stanford Encyclopedia of Philosophy (Fall 2014)

Peter, F. (2017); 'Political Legitimacy'; Stanford Encyclopedia of Philosophy (Summer 2017 edition)

Simmons, J.A. (1979); 'Moral Principles and Political Obligations'; Princeton University Press, New Jersey

Wolff, J. (2016); 'An Introduction to Political Philosophy'; Oxford, OUP

Wolff, R.P. (1970); 'In Defence of Anarchy'; New York, Harper & Row

Rosen, M. & Wolff, J. (1999); 'Political Thought'; Oxford, OUP
containing extracts from the following sources

Bentham, J. (1776); 'A Fragment on Government'

Hobbes, T. (1651); 'Leviathan'

Hume, D. (1748); 'Of the Original Contract'

Locke, J. (1690); 'Two Treatises of Civil Government'