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CHAPTER

31 The State

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Abstract

It is often said that the subject matter of political philosophy is the nature and justification of the state. Georg Wilhelm Friedrich Hegel thinks that political science is “nothing other than an attempt to comprehend and portray the state as an inherently rational entity.” John Rawls famously understands “the primary subject of justice [to be] the basic structure of society,” restricting his attentions to a society “conceived for the time being as a closed system isolated from other societies,” and assuming that “the boundaries of these schemes are given by the notion of a self-contained national community.” Contemporary political philosophers often follow suit, disagreeing about what states should do, and simply assuming that they are the proper agents of justice or reform. The history of philosophy and the development of political concepts seem to be central to understanding the state. The influence of Roman law and republican government, and the rediscovery of Aristotle in the twelfth and thirteenth centuries, are obvious important influences. The modern state emerged first in Western Europe in early modern times.

Keywords: Aristotle, state, political philosophy, political science, Roman law, government, Europe

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IT is often said that the subject matter of political philosophy is the nature and justification of the state. Given the presence of the state in our lives, this is not surprising. For many political thinkers the state assumes center stage. Hegel thinks that political science is “nothing other than an attempt to comprehend and portray the state as an inherently rational entity” (Hegel 1991: 21; emphasis omitted). In our time philosophers often take the state for granted. John Rawls famously understands “the primary subject of justice [to be] the basic structure of society,” restricting his attentions to a society “conceived for the time being as a closed system isolated from other societies,” and assuming that “the boundaries of these schemes are given by the notion of a self-contained national community” (Rawls 1971: 7, 8, 457). Contemporary political philosophers often follow suit, disagreeing about what states should do, and simply assuming that they are the proper agents of justice or reform.

Our concept of the state seems to be largely modern. The very term “the state” does not seem to pre-date modern times (Skinner 1989: 90–131). The history of philosophy and the development of political concepts seem to be central to understanding the state.

States

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We should start by getting clear about the phenomena. What are we talking about when we refer to the state? Let us first note some facts about our world. Today virtually the entire land mass of the globe is the territory of one state or another. The exceptions to this generalization are surprisingly few (for example, Antarctica). Some territories are contested still today (for example, Kashmir, much or all of the land occupied by Israel), but they are also surprisingly few in number. Compare a political geographer's map of the world today, the kind that represents countries with different colors, with globes of the world three or four centuries ago, and next with maps of medieval Europe. By contrast to earlier times, it is immediately evident that states now control virtually every piece of land. There are virtually no stateless people today. There are still nomadic peoples, but they all now find themselves on the territory of a state (for example, Mongolia).

Today, the principal political entity or form of political organization is the state. Politically, the globe is a system of states, governed by a complex variety of forces and institutions (large states, the remnants of empires and spheres of influence, international law, international institutions). It was not always thus. The state that we now take for granted is in large part a modern creation—or, to put the point less controversially, there are significant differences between modern states and earlier forms of political organization.

How then to understand our states? There is considerable lack of clarity about the concept, and it is important to start by disambiguating the term. In American English, “state” is often used interchangeably with “government.” In many contexts, of course, “state” is used by Americans to designate the sub-units of the US Federal systems, the founding thirteen colonies having been states or “commonwealths” (see the Articles of Confederation of 1781). In the USA, “the state” is often used to refer to the central or federal government. By contrast, in Europe the distinction between state and government is much clearer. In parliamentary systems, the heads of state and of government are clearly distinct; governments may fall or even be overthrown without imperiling the state. Government and state cannot be identified for a number of reasons. States consist of much more than central governments; the institutions that comprise the state include, in addition, the judiciary, state bureaucracies, standing armies and militia, the police, and often the schools and universities, and agencies charged with controlling information and mass media.

The state is a cluster of institutions, in addition to those we label as “the government.” But it is more than this too. The state is also a particular *form of political organization*. This is how Karl Marx put it:

Through the emancipation of private property from the community, the State has become a separate entity, beside and outside civil society; but it is nothing more than the form of organization which the bourgeois necessarily adopts both for internal and external purposes, for the mutual guarantee of their property and interests. (Marx and Engels 1978b: 187)

Joseph Raz also thinks of states as forms of political organization and usefully distinguishes between states, governments, and the law: “the state, which is the political organization of a society, its government, the agent through which it acts, and the law, the vehicle through which much of its power is exercised” (Raz 1986: 70). The idea of the state as a distinctive form of political organization of a society will help to sharpen the contrasts between our modern political societies and earlier forms of political

organization. The state in this particular sense is often referred to by the term “nation state,” but it may be best to save this one for another concept (see below).

p. 546 Contemporary Anglo-American philosophers tend to think of the state quite broadly. Compelled to offer a definition, they invariably cite Max Weber's oft-quoted characterization: “a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory.” In the same address, Weber goes on to note that “the right to use physical force is ascribed to other institutions or to individuals only to the extent to which the state permits it. The state is considered the sole source of the ‘right’ to use violence” (Weber 1946: 78). This characterization overemphasizes the state's coercive powers while underplaying its claim to authority (see the discussion of sovereignty below), and it is incomplete in a number of ways. But it is worth noting that it too simple for a thinker as astute as Weber; elsewhere he gives a much more complete and helpful characterization:

Since the concept of the state has only in modern times reached its full development, it is best to define it in terms appropriate to the modern type of state, but at the same time, in terms which abstract from the values of the present day, since these are particularly subject to change. The primary formal characteristics of the modern state are as follows: It possesses an administrative and legal order subject to change by legislation, to which the organized corporate activity of the administrative staff, which is also regulated by legislation, is oriented. This system of order claims binding authority, not only over the members of the state, the citizens...but also to a very large extent, over all actions taking place in the area of its jurisdiction. It is thus a compulsory association with a territorial basis. Furthermore, today, the use of force is regarded as legitimate only so far as it is either permitted by the state or prescribed by it. (Weber 1947: 156)

The original, oft-quoted characterization from Weber's address, “Politics as a Vocation,” is a good example of what we might call a broad definition of the state. Most broadly still, we may think of the state as a particular form of political organization of a society, one where power is highly concentrated and where government is intolerant of rivals to its rule. This conception of states is useful to anthropologists who study the emergence of chiefdoms, with rulers who possess a right to command and to tribute, and is distinguished from earlier, decentralized anarchic communities (for example, tribes without rulers). But to appreciate both the kinds of political societies we live in and the contributions made by modern political philosophy, a narrower characterization is needed, something like that expressed in the second citation from Weber above or one that I develop elsewhere.

Modern states are distinctive territorial forms of political organization, ones that claim sovereignty over their realms and independence from other states. These states are a particular form of political organization that constitutes a unitary public order distinct from and superior to both ruled and rulers, one capable of agency. The institutions that are associated with them—in particular, the government, the judiciary, the bureaucracy, standing armies—do not themselves constitute the state; they are its agents. The institutions through which the state acts are differentiated from other political organizations and associations; they are formally coordinated one with another and relatively centralized. Relations of authority are hierarchical.

p. 547 Rule is direct and territorial; it is relatively pervasive and penetrates society legally and administratively. The state claims sovereignty; that is, it claims to be the ultimate source of political authority in its territory. And it claims a monopoly on the use of legitimate force within its territory—or, more exactly, it claims the sole right to determine who may coerce others. The jurisdiction of its institutions extends directly to all persons present on the territory, be they members or mere residents or visitors. The state expects and receives the loyalty of its members and of the permanent inhabitants of its territory. The loyalty that it typically expects and receives assumes precedence over that loyalty formerly owed to family, clan, commune, lord, bishop, pope, or emperor. Members of a state are the primary subjects of its laws and have a

general obligation to obey by virtue of their membership. In its relations to other public orders, the state is autonomous (see Morris 1998: 45–6).

States in this narrow, modern sense are often called “nation states.” This term is misleading for it collapses the distinction between two importantly different kinds of states—namely, multinational states (for example, Belgium, Switzerland, the United Kingdom, Canada, the United States) and states with a single nation or states that privilege one national people (for example, Japan, Germany, Israel). The term “nation state” might usefully be restricted to the latter. Sometimes “nation” is used to refer to countries (see, for example, the United Nations...*The Wealth of Nations*). But the term also has an established use to refer to national groups, especially to those the members of which are moved by nationalist sentiments. Nations in this sense are large social groups, the members of which share certain properties (for example, language, history, customs, ethnicity, religion) and are relatively conscious of this shared condition. Many national groups or peoples aspire to have a nation state of their own, and many states aspire or pretend to be “nation states”—that is, the state of a single national group. Interestingly, states that emerge from earlier empires—for example, China, Russia, the United States (in the nineteenth century)—are multinational, many of the residing nationalities the result of former imperial expansions and conquests.

The distinction between nations and states is of contemporary importance for many reasons. One is the existence of multiple projects of “nation building,” popular during the early post-colonial periods of the twentieth century and more recently (Iraq, Afghanistan). These projects might be better understood as “state building” endeavors or attempts. The existence of such projects reminds us that, although virtually all of the land mass of the globe is the territory of a state, some of these are “failed” or “quasi-states” (Jackson 1993).

Modern States and Modern Political Philosophy

Clearer about the subject of our chapter, we look now to some of the contributions of political philosophers. Given our suggestion that a narrow and modern ↴ characterization of states helps put the phenomena in perspective, our history will not be chronological. We shall start with modern philosophy and then only later turn to medieval and Graeco-Roman contributions. The standard potted histories of the theory of the state start with classical Athens, say a few words about Rome and a bit less about medieval Europe, and then leap to early modern philosophy, as if Hobbes and others just picked up the discussion where it had left off.

We noted above that the term “state” and its cognates are modern. The concept emerges in early modern times with the distinction between the persons of the rulers, and the office and institutions they occupy. But this is not all. There also emerges the concept of the polity, that is, the state, as an order distinct from its agents and institutions, something reflected in the distinctions discussed earlier between “state” and “government.” The modern use of “state” to refer to a public order distinct from both ruled and ruler, with highly centralized institutions wielding power over inhabitants of a defined territory, seems to date back no earlier than the sixteenth century (see Skinner 1978: 352 ff.; 1989; for additional references, see Morris 1998: ch. 2). The word derives from the Latin *stare*, to stand, and *status*, standing or position. *Status* also connotes stability or permanence, which is carried over into “estate,” the immediate ancestor of “state.” (The English “state” is derived from “estate”; the French *l'État* was originally *l'estat*. The Spanish for state, *el estado*, preserves the etymology.) But the modern use of the word is new:

Before the sixteenth century, the term *status* was only used by political writers to refer to one of two things: either the state or condition in which a ruler finds himself (the *status principis*); or else the general “state of the nation” or condition of the realm as a whole (the *status regni*). What was lacking in these usages was the distinctively modern idea of the State as a form of public power

separate from both the ruler and the ruled, and constituting the supreme political authority within a certain defined territory. (Skinner 1978: 353)

The development of a new vocabulary signals a new conception of the polity, that of an order that is separate from ruler and ruled (or citizen), separate from other polities like it, and operating in a distinct territory. The term originates with a description of the status of the monarch or the estates of the realm and develops into the term for a kind of political order.

The (modern) state develops gradually. Boundaries become well-defined borders. The state's territory ceases to be conceived as the ruler's property. Jurisdiction becomes largely territorial. Politics and the economy are increasingly centralized and "nationalized" (that is, extensive with the domain of the state). Standing armies and "police" become commonplace; armies eventually become very large by historical standards. And state appropriation of resources, facilitated by the growth of different bureaucracies and of "statistics" (originally data about the state), grew enormously. In early modern Europe these changes were not easily discernible. By the nineteenth century they were. Today they are taken for granted and treated as unremarkable.

p. 549 Thomas Hobbes (1588–1679) is perhaps the greatest philosophical theorist of the state. We treat him today as one of the founders of modern political thought and appreciate his individualism and modernism better than his contemporaries. But we may not always recognize his extraordinary prescience regarding the emerging form of the state. As is well known, Hobbes was concerned about civil strife and the ways in which significant divisions in British society and elsewhere in Europe led to war. He took very seriously the threat posed by religion disagreement. Much of his thinking is a response to this. But he was also a brilliant and insightful thinker, and developed a general analysis of the modern state that is useful to this day.

The state for most moderns is an artificial entity, *contra* classical conceptions of the *polis*. For Aristotle, not only is a human being "by nature a political animal," so the *polis* "is among the things that exist by nature" (Aristotle, *Pol.* 1253^a2–4). Hobbes's view of political society is different. "For by Art is created that great LEVIATHAN called a COMMON-WEALTH, OR STATE, (in latine *CIVITAS*) which is but an Artificiall Man..." (Hobbes 1991: introduction). At the center of his account lies the Sovereign: "the *Sovereignty* is an Artificiall Soul, as giving life and motion to the whole body." Like Jean Bodin (1529/30–96) before him (Bodin 1992), Hobbes makes the sovereign and, more importantly, the concept of sovereignty central to the new emerging political order. This order is created by agreement ("the *Pacts and Covenants*, by which the parts of this Body Politique were at first made, set together, and united"). Its sovereign is the creator of laws. These laws are the only genuine ones, unless we consider the so-called laws of nature to issue from the Deity. He accords primary importance to law, understood as "the word of him, that by right hath command over others" (Hobbes 1991: ch. 15).

Hobbes's account of law bears some resemblance to influential nineteenth-century positivist accounts of law, especially those of Jeremy Bentham (1748–1832) and John Austin (1790–1859). But it is importantly different from theirs. The first thing to note in the citation above are the words "*by right* hath command" (emphasis added). Hobbes's is a command theory, but for him mere might does not make right or even law; the sovereign commands by right. Equally important is his understanding of the relation between law and reason. He notes in the introduction that "*Equity and Lawes* [are] an artificiall *Reason* and *Will*..." Contemporary readers will recognize here an early statement of what we now call conceptions of "public reason." He distinguishes command and counsel: "Law in generall, is not Counsell, but Command; nor a Command of any man to any man; but only of him, whose Command is addressed to one formerly obliged to obey him" (Hobbes 1991: ch. 26). The commands of the sovereign are those of someone with normative power over its subjects—political authority, we would say. Command, on Hobbes's view, is importantly different from counsel or any other hypothetical imperative: "Command is where a man saith, *Doe this*, or *Doe not this*, without expecting other reason than the Will of him that sayes it." A command of the sovereign

is a reason for action. In particular, it is a reason for action that is meant to settle the question of what subjects are to do. This aspect of Hobbes's account is often insufficiently appreciated (but see Hart 1982: 244, 253).

p. 550 Part of the importance of Hobbes's account of the sovereign, both for our understanding of the state and for the development of influential conceptions of it, lie in the details of his understanding of sovereignty. States claim sovereignty; if legitimate, they presumably have this power. (This inference is controversial, and I challenge it in a number of places; see Morris 1998 and 2008.) The power they claim is that to create law over people who find themselves in their territory, law that obligates them to act as required and that is supposed to be a reason for action for them, one that takes precedence over other considerations. The authority of the sovereign allows no rival. In Hobbes's time the competing authorities of religious officials and sources were important rivals to the authority of the Crown or the emerging state; in our time the claims of clan and nation may be added to the list. The sovereign possesses sovereignty and is thus the ultimate source of authority in the realm; he brooks no rivals.

Hobbes's account famously understands sovereignty to be absolute; it is unconstrained normatively. There is no other source of authority for subjects of the realm, except the Deity and His law. (It is not clear that it makes that much difference if we interpret Hobbes's theory theistically. He gives the sovereign the power to determine the "Attributes...in the Worship of God, for Signs of Honour..." (Hobbes 1991: ch. 31). Neither the Deity nor His servants have much of a role to play in political affairs when Hobbes is through with them.) The sovereign is not itself subject to civil law, the law it creates. Hobbes's account and ones similar to his make constitutional constraint seemingly impossible. In addition, the sovereign's power is indivisible. Hobbes thought that divided powers lead to strife and the destruction of the polity. We can call this the classical conception of sovereignty. (In addition, classical sovereignty is inalienable. It cannot be represented or transferred without being destroyed.) Hobbes's defense of it was too populist and individualist for many of his fellow royalists. For us, partisans of limited constitutional government, it is implausible or unacceptable. Hobbes, of course, had many arguments in support of his view, and they are not all easy to defeat. But the most important claims for us may be two. The first is that modern states claim, at least initially, something like classical sovereignty. The second is that, even if this is wrong and we can give an account that understands the state's authority to be limited, it remains the case that the state is the ultimate determinant of what the law is and how it is to be understood. The state ascertains the limits to its power (see Raz 1979, 1986; Green 1988). It is hard to have states, of the kind we have, without their claiming something like this power.

Hobbes thought, as was customary, that there were only three possible kinds of commonwealths or states: monarchy; aristocracy; and democracy. The difference turns on "the difference of the Sovereign, or the Person representative of all and every one of the Multitude": the representative can be one man (monarchy); an assembly of all (democracy or popular commonwealth); or of some (aristocracy). His favorite was clearly monarchy; multitudes, he thought, always suffer from problems of division and conflict. It was for Jean-Jacques Rousseau (1712–78) to adapt the classical account of sovereignty to the modern republican state. His concerns were not Hobbes's, worrying less about the disorder and strife affecting the stateless natural condition of humankind and more about human freedom and men's self-estrangement. He adapted Bodin's and Hobbes's notion of sovereignty to republican states. His is an account of popular sovereignty: the sovereign is and can only be the people ("We the People").

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Rousseau also thinks of sovereign power as indivisible, inalienable, and absolute. But the fact that it is popular and that its will must be the general will means that the sovereign state cannot act against the members will. The general will is the will of all members, or, rather, includes the will of every member of society. Its formal defining conditions are generality of source (all interests are included) and generality of object (the absence of partiality) (Rousseau 1964: bk II, sects 1–2). These features of the general will mitigate many of the worrisome aspects of the unconstrained nature of classical sovereignty. Like the

rational will of Immanuel Kant's ethics, Rousseau's general will is intrinsically self-constraining. But it is not clear that the general will of the people could not decide to exploit another group who happen not to be citizens of their state. The internal constraints of sovereignty, unlike those of Kantian ethics, do not rule that out. The general will is always in the public interest, and it is always right (Rousseau 1964: bk II, sect. 3). But that is compatible with its acting against the interests of outsiders. Rousseau can invoke an account of natural law, as he sometimes does in other writings. But this risks undermining the conception of sovereignty. We need not resolve these questions about Rousseau's theory. Our purpose is only to highlight the ways in which he adapted classical sovereignty to popular republican states.

The natural-law tradition is generally antagonistic to classical sovereignty. There are ways of trying to reconcile the two. Bodin, after all, thought that sovereigns were constrained by (genuine) natural laws. But the thought that the ultimate source of authority in a realm resides with the sovereign does not easily coexist with that of the existence of genuine laws that are prior to and independent of the state, and accessible to private individuals. The Church was hostile to the developing doctrine of state sovereignty in early modern Europe, and the concept plays little role in Catholic political thought (see Maritain 1951). On the classical view, if the state requires me to do something, I must do it, even if the act in question is wrong by standards of justice that bind me as well as the state.

It is interesting to note that John Locke's (1632–1704) political thought makes no use of the classical concept of sovereignty for his analysis of political society (Locke 1988). His endorsement of natural-law theory make it impossible for him to accept Hobbes's analysis of the state. Given that humans are free by right in a state of nature, prior to the establishment of political society, the latter could not be legitimate unless founded on consent. Locke—correctly, for a natural-rights theorist—requires consent to be actual rather than hypothetical, and as such states are both difficult to legitimate and certain to be limited in their powers (As there is so much confusion on the point, we should note that explicit and implicit [or tacit] consent are species of actual consent. Hypothetical consent, by contrast, is not a dated event or an act of someone's will; it cannot bind for Locke. Explicit consent is required for full citizenship; implicit or tacit consent yields fewer civil rights and obligations; see Simmons 1993.) This feature of his account makes it difficult for large states to achieve the legitimacy they claim; few people in our states have accorded them the kind of broad, free, informed consent that Locke's account seems to require. (This conclusion is controversial; its most able defender is John Simmons 1992, 1993; see also Nozick 1974: pt I.)

Locke has more followers than Hobbes today, given that he favored constrained or limited government. His work contributed toward the development of the theory of limited government, as well as to the constitutions of particular states (for example, the United Kingdom, the United States). His account is more appealing to us. Hobbes's claim that divided government is self-destructive does not seem to be true in light of the longevity of many constitutional regimes. Still, there are reasons to worry about the capacity of constitutional means to constrain our leviathans; most states today exercise more powers than envisaged at the time of their establishment.

State power can obviously be an instrument of exploitation. Locke and many other theorists appreciated how the powers claimed by states could be oppressive. Karl Marx's class analysis of the state in “bourgeois” society is interesting in this regard. He thought of state power as an instrument of the dominant class. In the *Communist Manifesto* he and Friedrich Engels say that “the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie” (Marx and Engels 1978a: 337). (See Elster 1985: ch. 7 for a discussion of Marx's other, more subtle characterizations of states.) On one reading the movement to communism is anarchist. As Engels famously argued in *Anti-Dühring*:

The state was the official representative of society as a whole, its concentration in a visible corporation. But it was this only insofar as it was the state of that class which itself represented, for its own time, society as a whole: in ancient times, the state of slave-owning citizens; in the

Middle Ages, of the feudal nobility; in our own time, of the bourgeoisie. When at last it becomes the real representative of the whole of society, it renders itself unnecessary. As soon as there is no longer any social class to be held in subjection, as soon as class rule, and the individual struggle for existence based upon the present anarchy in production, with the collisions and excesses arising from this struggle, are removed, nothing more remains to be held in subjection—nothing necessitating a special coercive force, a state. The first act by which the state really comes forward as the representative of the whole of society—the taking possession of the means of production in the name of society—is also its last independent act as a state. State interference in social relations becomes, in one domain after another, superfluous, and then dies down of itself. The government of persons is replaced by the administration of things, and by the conduct of processes of production. The state is not “abolished.” It withers away. (Engels 1969: 333)

This view of states emphasizes, as do many, the coercive nature of states. Without this coercion, the state ceases to be, becoming a means of “administering things.” Insofar as states are more than instruments of coercion, the expression of anarchist hope is premature.

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Pre-Modern Europe

There is not space adequately to review all of the major contributions of classical and medieval philosophy and jurisprudence to the modern state, and other chapters in this volume touch on these topics. The influence of Roman law and republican government, and the rediscovery of Aristotle in the twelfth and thirteenth centuries, are obvious important influences. It is most of all important to understand the context for the emergence of the modern state.

The modern state emerged first in Western Europe in early modern times. There the victory of kings and other political actors over their rivals—the Church and the Holy Roman Empire on the one side, the nobility and the independent towns on the other—led to the development of institutions and practices that give us our states. The political organization of medieval Europe was quite different from that of our world. Simplifying a thousand years of European history, medieval Europe consisted of complex, cross-cutting jurisdictions of towns, lords, kings, emperors, popes, and bishops, without clear hierarchies of political authority or unitary systems of law. Governance tended to be indirect or mediated. No single person or agency had power to control most persons outside of a small area. In fact, no agency even knew how many people there were in a realm, much less where exactly the borders were. Without reliable maps, “statistics,” and large competent bureaucracies, rulers could not do very much. Equally important, political rule was characteristically personal, consisting in relations between individual kings, princes, lords, vassals, and others. There was no clear distinction between a ruler's realm and his property. Rule over subjects and land could be acquired by purchase, conquest, marriage, or inheritance. People's rights and obligations depended on their place in complex relations with others, and not on their location in a particular territory.

Medieval Europe, of course, bore traces of the political institutions of classical Greece and of Rome. But it is primarily the contrasting features of political life in the Middle Ages that need to be recalled; I note five general features that highlight the contrasts with the modern state. First, most people were governed by rulers whose practices and institutions were not likely to survive their deaths or those of their sons. The realms governed by these rulers would not have precise boundaries, and the lands in their possession often would not be contiguous. The general contours of their realms would change quite frequently, often with marriage or death. Second, their rule was largely personal; the allegiance of their subjects was owed to their person, not to them qua holder of an office. Thus, with their demise, some of their subjects might have to take new oaths to a new ruler. Some of these rulers might have attendants who assisted them in the little activity of governance that they performed, but their departure would leave behind no officials or

p. 554 institutions to speak of. The Church and some of the self-governing towns were exceptions here. Third, in addition to being personal, rule was largely indirect or mediated. A lord might have specific obligations of allegiance to a king—for instance, to provide a specific number of knights in the event of a conflict with a neighboring monarch or prince—which might be fulfilled by parties unknown to the king. And a king's rule over peasants would be mediated by several classes of individuals. Rule for the most part would be light, compared to our time, even if the burdens of the peasantry were usually heavy.

Fourth, people might find themselves the subject of several different rulers or systems of rule. The authority of kings competed with that of lords and princes, independent towns, popes and bishops, and emperor. And one could not easily make the distinction familiar in our world between the “internal” and “external affairs” of a realm or rule. Lastly, a person's allegiance or loyalty to a ruler would not exclude similar allegiance to others. And there might be no settled view as to whose word would take precedence in a conflict. These are some of the most important distinguishing features of the world from which the modern state emerged. By contrast, as we have seen, governance in the modern state is relatively centralized, unified, uniform, hierarchical, direct, impersonal, and territorial. The state is distinct from the government, and the former becomes a corporate agent, distinct from the rulers, with a legally recognized personality. The modern state, it must be emphasized, is a relatively new and complex form of political organization.

The classical Greek *poleis* were either cities or cities with empires, and Rome was an empire. For such polities the unity of political society is something inherently problematic. Similarly, for much of medieval history, the unity of political society that we typically take for granted is unknown. With the weakening of the political powers of Christendom and the rise in the power of secular rulers, especially powerful monarchs, late medieval and early modern Europe was more hospitable to the emergence of the forms of political organization we have been studying. I have mentioned in passing the influences of Roman law. *Quod principi placuit legis habet vigorem* (“What pleases the ruler has the force of law”), and *Princeps legibus solutus est* (“The ruler is not bound by the laws”), well-known principles from Ulpian (c.170–228), are obvious influences on the early modern state.

The rediscovery of Aristotle, mentioned above, was an important event in the theoretical development of the early modern state. Aristotle's notion of *autarkeia* (self-sufficiency) is especially important for the conceptualization of the state. Walter Ullmann exaggerates perhaps when he argues that our concept of the state, “understood as an independent, self-sufficient, autonomous body of citizens which lived, so to speak, on its own substance and on its own laws...came about in the thirteenth century as a result of the influence of the Greek philosopher Aristotle” (Ullmann 1965: 17; see also Aristotle, *Pol.* I.2.1252^b27–30). But this notion of a self-sufficient political community played an important role in the development of the modern state.

The State System

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As we noted earlier, the global political order is a system of states, one governed by a complex variety of forces and institutions. These are large states, the remnants of empires and spheres of influence, international law, and a variety of increasingly important international institutions (for example, UN, WTO). The state system has evolved considerably over the last several centuries, and it is hard to characterize it in ways that are not controversial. What interests us here is principally the relation between the character of states and external constraints such as international law or juridical bodies.

The classical conception of sovereignty characterized earlier, especially as understood by Hobbes (and Rousseau), would imply that sovereign states were unconstrained. Specifically, there could be no “international” law that was genuine law. For Hobbes this was a simple implication of his account, given that there is no international sovereign or lawgiver. This implication is developed in the nineteenth century

by legal philosophers influenced by Hobbes, especially John Austin. His account is developed in his published law lectures of 1832, *The Province of Jurisprudence Determined* (Austin 1995). He strips Hobbes's account of all normative elements, identifying laws with commands backed by force. A law is essentially a command, with a threatened penalty for disobedience, made by "a sovereign person." The latter is understood to be the superior to which "the bulk of the given society are in a habit of obedience or submission..." and this superior is not in a habit of obeying anyone else. Austin is well known as one of the first "legal positivists" ("The existence of law is one thing; its merit or demerit is another"). His interest for us is the role he played in developing the view that there can be no genuine international law (Austin 1995: lectures I, V–VI).

The influential legal philosopher H. L. A. Hart (1907–92) challenged Austin's account of law, in ways that left room for the possibility of international law (Hart 1994: ch. x). Noting the many differences between municipal and international law, Hart argues that the rules of the latter bear many similarities to those of the former: they are spoken of as obligatory, there is general pressure for conformity, and violations are grounds for legal consequences (Hart 1994: 220). Since Hart penned these words half a century ago, there has been tremendous growth of international law. Just as it seems obvious that states can be constitutionally limited—that is, *constituted* as limited—so it seems obvious that they can be normatively constrained by international law. So the classical conception of sovereignty seems mistaken, and it is rejected by most theorists today.

This argument may, however, be too quick. Even if these classical theorists of the state are wrong about the illimitable nature of sovereign authority, they were on to something about the state. States are not illimitable; there are too many limited states for this claim to be credible. But it is important to appreciate, as was noted above, that limited states claim to be limited only by constraints they recognize. When they are limited by external norms, it is because they acknowledge or incorporate these. There are limits to the authority of states but only those recognized by the state (Rousseau 1964: II, ch. 4, p. 373). That states are limited only by constraints they *recognize* or *acknowledge* does not necessarily mean that these constraints are *created* by them. The claim that states determine, recognize, or judge their own limits, interpreted to allow for an independent fact of the matter and for error, is not at all implausible. There is something about a state or the legal system of a state that makes it hard to see how states could not make this claim. (For further discussion, see Morris 1998: 195–8, 204–13.) There is more to be said here, and the questions raised are of the utmost importance for understanding the ways in which the state system may be transformed.

We should consider, if only briefly, some of the pressures on states and the state system. Many observers have thought that the state or the "nation state" is being transformed, and we ought to note how this is said to be taking place. Many of the features of the changing world order are often thought to threaten the dominance of states as we have characterized them. Many features of modern states are striking: their great power; their territoriality; and the large number of tasks and functions they take on. But increasingly these are under significant pressure. The tasks and functions of states are in many ways being scaled down. Since the end of the Second World War, states everywhere have shed public corporations, nowhere so strikingly as in the formerly communist world. Many of the welfare state services provided by government, especially after the Second World War, have been scaled back, in no small part because of expense and shrinking budgets. In many states the military and police are supplemented by private services, paid for by the state or by private parties. A variety of non-state judicial services are increasingly used by businesses. Especially in countries like the USA, private educational institutions are important, and an increasing part of the budget of American institutions of higher education is coming from non-state sources. Compared with a century or two ago, our states are very active; compared to the post-war period, they have cut back to a considerable extent, even if their budgets are still very large.

In the middle of the previous century most mid-size or large states could set their own economic policies, regulate their currencies, and impose a good many controls on trade with other countries. Those powers

have largely been diminished, even for the strongest states. A variety of organizations, many non-governmental, now besiege all states, pressuring them to reduce some activity or increase others (for example, imprisonment or execution of political dissidents, environmental protection, restructuring of institutions, free trade). Some private organizations or individuals, wealthier than many countries, can initiate development or aid programs that few governments would think of undertaking. A variety of new players, neither states nor agents of states, are increasingly challenging the traditional competencies of governments. They are also threatening the state's dominance.

p. 557 In one respect these non-state entities are like states: they are corporate beings, with lives that extend beyond those of their members or employees. In other respects they ↵ are quite different: unlike territorial states, these agencies are not linked to territories and usually have no jurisdiction and make no law. They pressure and facilitate, and they sustain larger movements of individual people. They are often more nimble and effective than state agents. Especially noteworthy here are those organizations that are able to support and organize guerrilla wars and terrorist attacks on major states.

Add to these developments increasing bodies of international law, still in its infancy, and myriad treaties and multinational and international organizations such as the EU, NATO, the World Bank, the IMF, and the world of states is undergoing important transformations. Economic interdependence and, in some respects, integration are causes of surprising kinds of political cooperation and integration (the EU is one obvious kind of example; for others see Slaughter 2004). But it is hard for philosophers and political theorists to predict the shape of things to come—“the Owl of Minerva begins its flight with the onset of dusk” (Hegel 1991: 23). It does seem that the state system is being transformed. War has built the state (“War is the health of the state,” Randolph Bourne), and the conflicts of the beginning of the twenty-first century may reinforce the state, especially the large ones. But, in the long term, it seems that the dominant form of political organization of our time, created in early modern Europe, may be transformed quite radically. What may replace it? In light of our emphasis on the multiple forms of political organization that preceded the modern state, it is appropriate to quote Hedley Bull. He speculates that it is “conceivable that sovereign states might disappear and be replaced not by world government but by a modern and secular equivalent of the kind of universal political organization that existed in Western Christendom in the Middle Ages” (Bull 1977: 254).

The Functions of Government

I have focused on abstract questions about the nature of the state, on the ways in which the modern state differs from other forms of political organization. Something needs to be said about what we want states for, or, more specifically, governments.

Many classical thinkers thought that the principal end of political society was the good of its members. (“Anyone who intends to investigate the best constitution in the proper way must first determine which life is most choiceworthy...” (Aristotle, *Pol.* VII.1.1323^b 14–15).) And, unlike many modern theories, these classical views do not understand someone's good “subjectively,” as consisting in the satisfaction of his or her desires or something of the kind. Many important modern thinkers by contrast understand the state as an instrument serving the needs and wants of its subjects or citizens. Hobbes has a view of this kind. One thing that is notable about it is his minimal account of the tasks of the sovereign. The Artificial Man described in the Introduction to the *Leviathan* finds its strength in “The *Wealth* and *Riches* of all of the particular members” and “its *Business*” the “*Salus Populi* (the *peoples safety*)”. If one looks carefully at the tasks he expects sovereigns to take on, they are by our standards ↵ remarkably minimal. Even if the Sovereign may do whatever it thinks is necessary for the “protection and defence” of Natural Men, its

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principal task is maintaining order and defending the realm, and for this it need not do all that much (see Morris 1986, 1988).

One might expect to find a similar view in the work of that great Scottish philosopher who is one of the founders of political economy or what we now call economics. Adam Smith (1723–90) is often cited as a great defender of *laissez-faire* policies and the “minimal state.” This caricature is not entirely mistaken; he did think the “system of natural liberty” preferable to all others. Unlike Hobbes, Smith clearly appreciated the extraordinary productive activities made possible by the protections that states could offer the person and property of its members. By securing order, government would not only make life less brutish and short; it would make possible extraordinary wealth. If we think of Hobbes's minimal understanding of the important tasks of government as “protective,” then Smith also assigned governments a more “productive role,” that of encouraging the production of important “public goods” to use our technical term for non-rivalrous and non-excludable goods (for example, good roads, bridges, canals, harbors). In *The Wealth of Nations*, Smith explains what he thinks are the three central duties of sovereigns:

According to the system of natural liberty, the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understandings: first, the duty of protecting the society from violence and invasion of other independent societies; secondly, the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and, thirdly, the duty of erecting and maintaining certain public works and certain public 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 expence to any individual or small number of individuals, though it may frequently do much more than repay it to a great society. (Smith 1976: bk IV, ch. 9, para. 51)

Governments secure order (their protective function) and facilitate the production of important public goods (their productive function) (the labels “protective” and “productive” are borrowed from Buchanan 1975). There is now considerable agreement about these tasks of government. What many later thinkers would have us add to this list is a concern with the *distribution* of goods and assets. Government have for some time been called upon to alter the distribution of wealth by effecting transfers from some to others. Certainly, governments and other instruments of power have been used to take from the many and give to the few. But for the last century or so many important thinkers have thought that a major task of government is assistance to the poor and disadvantaged, and the transfer of resources from the well off to the less well off. We might think of this as a “redistributive” task of government. The Utilitarian tradition has played an important role in emphasizing this task of government. While many have argued since the beginning of political thought that the status quo ↴ distribution of wealth is *unjust*, utilitarians do not put much importance on the virtue of justice and instead focus on the aggregate well-being or welfare of all (indeed, all sentient beings). The early Utilitarians—the “Philosophical Radicals”—were partisans of what we now call *laissez-faire* or “pro-market” policies. But the greatest happiness principle easily licenses redistributive programs if these significantly increase aggregate well-being. Twentieth-century utilitarians and their economic siblings have long defended such policies. The redistributive functions of government remain more controversial, I suppose it is fair to say, than the protective and productive ones.

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