

# The Modern State

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Modern political philosophy takes its principal object of study to be the state. How to understand it? How should it be organized? What is its justification? It is hard to teach a course in modern political philosophy that does not focus on the state – it is what preoccupies Hobbes, Locke, Rousseau, and Hegel – and a discussion of contemporary political theory cannot ignore it. While few political thinkers today go so far as to accept Hegel's conception of political science which would have us 'attempt to comprehend and portray the state as an inherently rational entity' (1821: 21), most take the state to be the central feature of the political landscape and the task of determining its justification to be central to political philosophy. A few thinkers question our acceptance of the state and take seriously the challenge of anarchism, but most think states in some form or another are justifiable.

It is hard to ignore the state or government – 'You may not be interested in the state, but the state is certainly interested in you', to adapt Trotsky's quip about war. Almost wherever we find ourselves today we find government. Some have urged that the state be kept out of our lives, or at least our bedrooms, but to little avail. The state is omnipresent.

States appear as much in our dreams and nightmares as in our lives. Movements of 'national liberation' typically aspire to a state of their own; secessionists seek independence in order to found a new state. Only states are accorded the privilege of a seat at the (misnamed) United Nations. The European Union is feared by some lest it become a superstate, just as the United Nations was opposed long ago by opponents of 'world government'. Those sceptical about the possibility of world government often conclude that international affairs must be anarchic in the absence of a world state, as if state and anarchy exhaust the possibilities [see further Chapter 22].

It may be hard to ignore the state, and as theorists of politics we cannot do so. But does it deserve the central place it has been given in our thought and action? Might anarchists be right in thinking that we can do without the state or that it is not justified? Is the only alternative to the current system of states world government or a single supracountry?

To answer questions like these we need to know more about what we are talking about in the first place. Casual reference to 'the state' may suggest that we are relatively clear about the object of our inquiry. But this may be an illusion as it turns out to be very difficult to determine what exactly it is that we are talking about when referring to 'the state'.

## WHAT IS THE STATE?

At an early stage in most discussions of the state a 'definition' is trotted out. Most often it is an abbreviated version of Max Weber's well-known characterization of the state as 'a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory' (1919: 78). Weber says 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.'

This oft-cited definition, however, is problematic for a number of reasons. In the section that follows I shall question the centrality it accords to force and coercion. The first thing to note about it now is its simplicity. A human community is a state if and only if it successfully claims to possess two things: a monopoly of force and the sole right to determine

who may legitimately use force. Could an organized criminal organization or one of Nozick's protective agencies be a state? One might have thought something more would be required. States are rather large and complex sorts of things, with legal systems, administrative agencies, and a number of other important features. In fact Weber himself, as one might expect, thought there was much more to the matter. Elsewhere he offered a much more complete 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. (1947: 156)

A number of additional features or attributes are singled out by Weber in this passage: the existence of an administrative and legal order subject to change by legislation, maintained by a substantial administrative staff, itself regulated by legislation, a claim to '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 ... a compulsory association with a territorial basis'.

Simple definitions like the one customarily attributed to Weber are inadequate; at the very least they require supplementation. I shall argue later that these definitions make force or coercion too central and draw our attention away from other important features. What are some of the other features of states?

A theme of this chapter is that political theorists take states too much for granted. The world was not always organized as a system of states, and it is helpful to recall the ways the world was before the development of states. We can appreciate better the nature of states by contrasting them with the orders they replaced. As states originate in early modern Europe, the contrast that is most revealing is the world of late medieval Europe [see further Chapter 25].

Philosophers raised on a diet of classical Greek and modern philosophy, without much attention to

the long period of thought that lies between the two, often assume that the discussions and concerns of Hobbes and other early modern political theorists are continuous with the work of Greek and Roman thinkers. There is some continuity, of course, and the works of the latter were certainly used by late medieval and early modern theorists, as well as developers, of the state. But it is a mistake to identify the Greek *polis* and the Roman *civitas* with our modern state as if nothing had changed. There are some structural resemblances, but significant differences. Although certain features of the *polis* and of Roman law were adapted to late medieval and early modern governance, the Greek *poleis* and the Empire had disappeared by the time modern states were emerging. The historical context for the emergence of the modern European state has only traces of the classical world of Greece and Rome. The distinctiveness of the modern state is most noticeable when contrasted with the complex forms of political organization of medieval Europe.

'Europe' from the end of the Roman Empire to the end of the feudal period or the thirteenth century was a complicated social order in which political power is decentralized and highly fragmented.<sup>1</sup> Political relations between people were multifaceted, allegiances varied and overlapping, and the resulting political orders complex. Social order was not secured by centralized, hierarchical institutions, as in our societies; power and authority were decentralized. Broadly speaking, medieval Europe consisted of complex, crosscutting jurisdictions of towns, lords, kings, emperors, popes and bishops. While all were unified as part of Christendom, power was fragmented and shared by many different parties, allegiances were multiple, and there was no clearly defined hierarchy of authority. Allegiances could, and frequently did, overlap. Different lords, monarchs, and emperors could each have some claim over someone, and bishops and popes as well. Governance was typically mediated. No single agency controlled, or could possibly control, political life in the ways now routine for modern states. Given the largely customary nature of law, there is no single legal system, with an unambiguous hierarchy of juridical authorities. Several features are important to note. Not only was power fragmented and control of territory denied any one group or institution, but relations of authority overlapped and were not exclusive, and no clear hierarchy was discernible. In addition, feudal rule was essentially personal. Rule was based on particular (voluntary or involuntary) relations between individuals, governance was essentially over people rather than land, and power was treated as a private possession: 'It can be divided among heirs, given as a marriage portion, mortgaged, bought and sold. Private contracts and the rules of family law determine the

possessors of judicial and administrative authority' (Strayer, 1965: 12). Relations between particular persons, many essentially promissory, laid the basis for the complex obligations between lords and vassals. Governance was not territorial. It is not so much that control of particular geographical areas was incomplete or insecure (though this was the case), it is that allegiances were not territorially determined: '[...]nclusion in the feudal structure was not defined by physical location ... One's specific obligations or rights depended on one's place in the matrix of personal ties, not on one's location in a particular area' (Spruyt, 1994: 35, 40). In these important ways, certain characteristic features of modern governance were not to be found.

Christendom was a unifying force and as such could be thought to be analogous in some ways to our polities. But, as noted, the Church's authority was (and still is) over believers and not territorial, and there were no geographical limits to its jurisdiction. The importance of customary law, and the local nature of important political allegiances, limit its power. It is not that the Church's power was contested by 'secular' rulers (though it was); rather, it is that its control was never intended to be as complete as with modern polities. The instruments of power did not, of course, permit this. But the different elements of medieval governance coexisted, in principle, with Christendom and its agents. Pope, bishops, monks, monarchs, lords, vassals, serfs, all were part of a single order, or better, an order of orders. Further, though we speak about political authority and organization in the Middle Ages, there is no clear distinction between the political and the rest of life. It is said that 'the very term "political" did not enter the vocabulary of governments and writers before the thirteenth century' (Ullmann, 1965: 17). There was only one normative world, so to speak, and all – Christians at least – were part of it. Not only does this mean that the various realms of Christendom were not separate, self-sufficient juridical domains. It means that all, including monarchs and 'sovereigns', were subject to law, both customary and natural.

'Political' organization in medieval Europe, in summary, was complex, and 'political' power highly fragmented and decentralized. Allegiances were multiple and largely personal, and no clear hierarchy of political authority was discernible. Governance was not territorial; it was largely rule over persons, *qua* individuals or *qua* Christians. The complexity of relations of authority meant that rule was mediated and not, for the most part, 'direct' and institutions did not 'penetrate' society in the ways characteristic of our states. There were no 'self-sufficient' polities and consequently no 'international relations'. The modern state did not yet exist.

In the modern world, governance is territorial. Modern polities for the most part have definite and

distinct territories. The colours and lines on modern maps have a particular and familiar sense: within the boundaries of a state, there is a single system of governance, distinct from others, operating 'outside' or 'externally'. Today, virtually all inhabitable parts of the globe are the territory of some state. Governance is territorial in another sense, namely, that law applies to (virtually) all who find themselves within these boundaries. Geography acquires a new significance, the territorialization of political obligation. By virtue of being in a place, circumscribed by lines or markers, people acquire obligations, independently of personal relations, vows, faith, or origin.

The territorialization of governance is not compatible with the personal nature of political relations. And it is not compatible with power being understood as the personal possession of rulers. One of the features distinguishing modern polities from earlier kingships is the distinction between the persons of the rulers and the office and institutions they occupy. But it is not just that there emerges a distinction between a person and roles and institutions. It is that the polity, that is, the state, comes to be understood as an order distinct from its agents and institutions, something reflected in the linguistic 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: vol. 2, 352ff; 1989: 90–131; Dyson, 1980: 25ff; Vincent, 1987: 16–19). 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'. 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 which is separate from ruler and ruled (or citizen), separate from other polities like it, and operating in a distinct territory.

The territoriality of modern rule means that all who find themselves within the polity's boundaries are, by that fact, governed. Territory becomes a

jurisdictional domain. Rule also becomes direct in a particular sense. In empires rule is typically indirect: considerable power is left to local governors and administrators, and governance is largely through intermediaries. In medieval Christendom, popes for the most part governed believers indirectly through clergy and kings. In the modern world rule comes to be direct; each and every subject is governed by the sovereign or the state, without mediation (see especially Tilly, 1990). The development of direct rule in this sense is a late development, and it is related to the 'penetration' of society by the state stressed by Michael Mann and others: 'the modern state added routine, formalised, rationalised institutions of wider scope over citizens and territories. It penetrates its territories with both law and administration ... as earlier states did not' (1986: vol. II, 56–7).

Direct rule and 'penetration' presuppose not only territoriality of the state but also its extensive authority. The boundaries of the state – its borders – create an 'inside' and an 'outside'. What happens 'inside' is the concern of the state; no 'external' authority has jurisdiction here, at least without the state's acquiescence. Not only is the state's authority exclusive within its realm, it is increasingly far-reaching. States – initially, sovereigns – come to claim to be the ultimate sources of political power within their realms. That is, they come to claim sovereignty. And this becomes a significant and distinguishing feature of modern states.

It is always important to have established means of resolving conflict and disagreement. In medieval societies, as in most, there were many such means, some more formal and institutional than others. But, as I noted, allegiances were multiple, jurisdictions frequently overlapped, and there often were significant disagreements and conflicts among the governing bodies and persons. In the absence of an unambiguous and widely acknowledged hierarchy of authorities, resolutions might be ineffective. Without a single, ultimate source of political power within a domain, many have thought, disagreements could not be 'decided', except by force. This possibility may be looked upon with alarm, especially given the ferocity of much human conflict. The more serious the conflicts between people, the more pressing the question 'who decides?' is likely to be. 'To decide' a matter, in this sense, is frequently understood to mean to be 'the final arbiter'. In Christendom this could only be God and, in the event that His word would require frequent interpretation, the Church. Indeed, the very notion of a final arbiter seemed to presuppose a cosmological hierarchy like that provided by Christian monotheism. The state's answer to the question 'who decides?' is to put itself in the Church's place, or

rather, God's place – 'le prince est image de Dieu' (Bodin, 1583: Book I, ch. VIII, 137).<sup>2</sup> It, and only it, is the final arbiter, at least locally, on matters that pertain to it. To assert this, states had to contest the Church's authority. They had, as well, to contest the power of 'internal' rivals, namely, feudal lords. Emerging from these contests is the modern notion of sovereignty: the state is the ultimate source of political power within its realm.

It is a mistake to think that modern sovereignty is merely a restatement of old ideas about power and authority. The elements may be present in different forms, especially in Roman law and in certain theological accounts of God's power. But the conception of political power that is thereby attached to a new type of political order is novel: 'at the beginning, the idea of sovereignty was the idea that there is a final and absolute political authority in the political community ... and no final and absolute authority exists elsewhere' (Hinsley, 1986: 25–6). The concept of the modern state in fact develops along with that of sovereignty. This is evident in the work of the master theorist of the modern state, where sovereignty is the 'Artificial Soul' of 'that great LEVIATHAN called a COMMON-WEALTH, or STATE, (in latine CIVITAS)' (Hobbes, 1651: introduction, 9).

States not only claim ultimate power within their realms ('internal sovereignty'), they also claim independence of one another ('external sovereignty'). In rejecting the authority of popes and emperors, sovereigns asserted the state's autonomy of other states. Not only is the state the author of its own laws – the etymological meaning of *autonomos* – but the laws of others have no claim on it. With the advent of the sovereign state, relations between states or 'international relations' become possible. Prior to this, there were no 'foreign affairs' or distinction between 'internal' and 'external', and the modern conception of the nature of world politics as 'anarchical' or unregulated was not yet possible. Once the sovereignty of states is admitted, their relations are thought to constitute a 'state of nature', one which, for most early modern theorists, was beyond law. For some, to such a condition, 'this also is consequent; that nothing can be Unjust. The notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice' (Hobbes, 1651: ch. 13, 90).<sup>3</sup>

States claim sovereignty. In the early modern quarrels between monarchs and lords on the one side, and popes on the other, the kings won. The core idea of sovereignty is the notion of the ultimate source of political authority within a realm. We distinguish between 'internal' and 'external' sovereignty, the first pertaining to the structure or constitution of a state, the second to the relations

between states. Internal sovereignty thus conceived has to do with the state's authority over its subjects, while the second notion refers to the independence or autonomy of states. The two conceptions are closely linked in early modern conceptions of sovereignty. In the writings of Bodin, Hobbes, and Rousseau, internal and external sovereignty are tightly connected. These thinkers thought sovereignty to be absolute (legally unconstrained or unlimited), indivisible (unique and undivided), and inalienable (cannot be delegated or 'represented'). If absolute sovereignty is attributed to states, then their authority cannot be constrained by international law or possibly even by the rights of individuals. Conceiving of sovereignty as absolute thus requires granting states a certain autonomy or liberty in their 'international relations'.

The core idea of sovereignty is that of the ultimate source of political authority within a realm. This is the power that monarchs claimed in their battles against lords and princes on the one hand and popes on the other. Their realm (or kingdom) was theirs, and their authority over it was to be shared with no one. The core notion of sovereignty – the ultimate source of political authority within a realm – requires unpacking. Sovereignty is associated with modern kingdoms and states; the 'realms' in question are the well-defined territories of such states. The relevant notion of political authority is more controversial. Something is an authority, in the sense relevant here, only if its directives are (and are intended to be) action-guiding. For instance, consider the law. It forbids us from doing certain things, and it intends these prohibitions to guide our behaviour; specifically, these prohibitions are reason-providing. Authorities, then, mean to guide behaviour by providing reasons for action to their subjects. On this view, political authority is not to be understood simply as justified force; something is a genuine authority only in so far as its directives are reasons for action. Sanctions or force may frequently be necessary as a means to make effective this authority, but the two are not to be conflated.

The key to the notion of sovereignty lies in the idea of ultimate authority. What is it for a source of authority to be ultimate? An authority may be ultimate if it is the highest in a hierarchy of authorities. Such an authority may also be final: there is no further appeal after it has spoken (it has 'the last word'). Lastly, an ultimate authority may be one which is supreme in a particular sense: it has authority over all other authorities in its realm. The state's authority is sovereign in this sense; it takes precedence over competing authorities (e.g. corporate, syndicate, church, conscience). Summarizing, then, sovereignty is the highest, final, and supreme political authority within a modern territorial realm.

States claim sovereignty and demand considerable loyalty from their subjects and citizens. Their power is considerable, and they frequently appear to resort to the use of force in securing their will. Presumably this is the source for the common characterization of states in terms of their concentrated power and their control over the use of force, and specifically, the source of the appeal of Weberian characterizations.

The social order – or orders – from which the modern state emerged were ones in which governance was decentralized, fragmented, varied, overlapping and non-exclusive, mediated, and personal. These social orders were also part of Christendom, and its practical unity was less than claimed. Governance in the modern state is, by contrast, relatively centralized, unified, uniform, hierarchical and exclusive, non-mediated or direct, penetrating, impersonal and territorial. The concept of the modern state, then, as it emerges in medieval and early modern history, is that of a new and complex form of political organization. To summarize, we may think of the state in terms of a number of interrelated features (Morris, 1998: ch. 2):

- 1 *Continuity in time and space.* (a) The modern state is a form of political organization whose institutions endure over time; in particular, they survive changes in leadership or government. (b) It is the form of political organization of a definite and distinct territory.
- 2 *Transcendence.* The modern state is 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 modern states – in particular, the government, the judiciary, the bureaucracy, standing armies – do not themselves constitute the state; they are its agents.
- 3 *Political organization.* The institutions through which the state acts – in particular, the government, the judiciary, the bureaucracy, the police – are differentiated from other political organizations and associations; they are formally co-ordinated one with another, and they are relatively centralized. Relations of authority are hierarchical. Rule is direct and territorial; it is relatively pervasive and penetrates society legally and administratively.
- 4 *Authority.* The state is sovereign, that is, the ultimate source of political authority in its territory, and it claims a monopoly on the use of legitimate force within its territory. The jurisdiction of its institutions extends directly to all residents or members of that territory. In its relations to other public orders, the state is autonomous.

- 5 *Allegiance*. 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.

Modern states, then, are distinctive territorial forms of political organization that claim sovereignty over their realms and independence from other states. A state system can be thought of simply as a group of states interacting in ways, often hostile, that significantly affect the fate of each.

This general characterization of the state may not be suitable for all purposes, and I do not wish to say that all other characterizations of the state are straightforwardly mistaken. Some are, but many others are not. Different characteristics of related forms of political organization may be emphasized, depending on one's explanatory or evaluative purposes. For some purposes it may be useful to distinguish less sharply between modern and premodern forms of political organization. (For instance, differences between state, empire, principality, or *polis* may not be important for many anthropological research projects.) By contrast, my characterization is helpful for raising certain normative questions about distinctively modern forms of political organization and considering alternative ways of arranging our world. The world of states appears to be changing – the effects of the demise of the Soviet Union, various trends clustered under the label of 'globalization', the threats of Islamist terrorism or insurgency – and evaluating these changes requires understanding the modern state.

### COERCION AND AUTHORITY

State power is closely associated with force, as we see from the popularity of the Weberian definition. Many theorists think states are necessarily or essentially coercive. 'States are "grounded" in force in the sense that, by definition, they are coercive: they coordinate behavior through the use or threat of force' (Levine, 1987: 176); 'State-power is in the last analysis coercive power' (Geuss, 2001: 12); 'political power is always coercive power backed up by the government's use of sanctions, for government alone has the authority to use force in upholding its laws' (Rawls, 1996: 136). The view that governments must wield force or that their power is necessarily coercive is widespread in contemporary political thought.

The incompleteness of Weberian definitions of the state is only part of my objection to them. The

second concern is about understanding coercion or force to be part of the concept of the state. One might have thought, to the contrary, that states without coercion or force are conceivable; if so, state and coercion and force cannot be conceptually connected. Consider a 'state' without law, or one whose jurisdiction was not territorial. We would not consider it to be a genuine state. Law and territoriality are essential properties of states, part of the concept of a state. Contrast these properties with coercion or force. We can conceive of a state which does not employ coercion or force. Imagine a state that is legitimate; its basic structure and its laws are just, and those subject to its laws are obligated to obey them. Suppose that the latter are always motivated to comply with just laws; they do not, for instance, suffer from any weakness of the will or any other problem which might lead them to fail to do what they ought to do. Then, coercion and force would not be needed to enforce the law. This possibility, admittedly fantastic and utopian, seems perfectly coherent. There is nothing in the nature of a law which requires that compliance be assured coercively. It does not seem to be, then, a conceptual truth that states are coercive.

Why might we think, with Rawls, that 'political power is always coercive power backed up by the government's use of sanctions'? Perhaps because of the conjunction of law and sanction. But that connection is not necessary. Some laws are not enforced by sanctions (for instance, laws governing the obligations of officials, laws establishing powers, constitutional laws). Attempts to understand the law in terms of the coercive commands of a sovereign are implausible (see Austin, 1885, for the classic formulation of this position; and Hart, 1994, for the classic refutation). There does not seem to be a conceptual connection between states and coercion.

It is hard to imagine a state in our world which did not coerce. Even if sanctions are not always in place or necessary, we should ask why most laws are in fact backed by sanctions and why coercion often is needed. Why must compliance sometimes be assured by coercion? At least on occasion, most of us will not do as we are required to do unless prodded. Presumably virtually all of us will always refrain from intentional homicide, but we do not always put coins in parking meters or adhere to speeding limits or pay all of our taxes in the absence of the threat of sanctions. Legal systems provide for sanctions in order to offer special incentives when people are not otherwise motivated to comply. Why exactly might people fail to comply? There are a number of circumstances which contribute to disobedience. Sometimes we violate laws because of ignorance or stupidity. Other times we may fail to obey out of weakness of the will or some other form of irrationality. We may sometimes simply wish to

defy authority. Or we may be fanatics, in the grip of beliefs recommending disobedience. Of course, if our state is illegitimate there may be additional reasons not to obey its laws.<sup>4</sup>

What is crucial to note about these rationales is that they implicitly understand sanctions to be secondary. Coercion and force are thus rationalized but only as supplementary measures. And this is as it should be: the law's primary appeal is to its authority. Hart notes this early in his discussion of command theories of law: 'To command is characteristically to exercise authority over men, not power to inflict harm, and though it may be combined with threats of harm a command is primarily an appeal not to fear but to respect for authority' (1994: 20). Authorities guide behaviour by providing reasons for action to their subjects. Something is an authority in this sense only if its directives are meant to be reasons for action (see: Raz, 1979; 1986; Green, 1988). One does not understand law and, more generally, states if one does not see coercion and force as supplementary to authority. Coercion and force are needed when the state's authority is unappreciated, defective, or absent.

We should, of course, expect that laws will be backed by the threat of sanctions and that force may be needed. One of the reasons, after all, for wanting to have a legal system is to ensure compliance on the part of those otherwise inclined or tempted to behave in the ways required by social order. But recourse to sanctions and force, it must be stressed, does not mean that laws cannot provide reasons or motivate without such sanctions or that they must presuppose them. The law claims authority, and that claim may often be valid. Unless one assumes that norms *per se* cannot be reasons, then there should be no reason to insist that legal rules must necessarily be backed up with sanctions. But given human nature we should expect them to be an important part of virtually all legal and political orders.

Most governmental activities of liberal states do not require the deployment of force, many that involve the threatening of sanctions do not customarily involve force, and much compliance with law is secured by other means. It may still be claimed that the state's influence is 'ultimately based on' force. In the end, 'in the final instance', we may say, its power is based on force. 'State-power is in the last analysis coercive power' (Geuss, 2001: 14). This is not an uncommon view.

What does it mean to say that law is ultimately backed by sanctions or ultimately a matter of force? The term 'ultimate' is one of the most opaque in philosophy and social theory and should be used with care. In some contexts the term has a clear sense. An authority, for instance, may be ultimate if it is the highest authority. This idea presupposes that authorities constitute an ordering (often a strict ordering),

and that the highest authority is the last one in a certain chain or continuum of authorities. Legal systems are usually thought to have such a hierarchical structure, so that we can talk of the highest or ultimate authority for any such legal order – the notion of sovereignty presupposes such a hierarchy. Even if we were able to find in every legal system a hierarchical ordering of authorities, it is very unlikely that powers generally will be so ordered. That is, it is very unlikely that we can order power relations in this way, so that for any pair of powers one is greater than the other and the set of all powers is an ordering (i.e. transitive). If this is right, it means that the concept of an ultimate power will be ill-defined. This means that it is unclear and likely misleading to talk of 'ultimate' powers, for there may never be one power that is so placed that it is 'ultimate' or 'final' (see Morris, 1998: ch. 8).

One may argue that force is fundamental to maintaining social order. That is, it may be thought to be more important than any other factor in maintaining the state. The proof is that no state can do without it. Remove force (and sanctions), and the legal order collapses. But this argument, common as it is, is too swift. Why do we obey the law or, for that matter, do almost anything? Usually our reasons are multiple, and very often our actions are overdetermined. Consider the case of overdetermined actions. Removing one consideration favouring the action in question may not change the balance of reasons. (I am supposing that we act, and should act, in most circumstances on the balance of reasons.) The metaphor here is that of weights and measures. The rationality of an act is determined by the relative 'weight' of reasons favouring it over alternatives. If an act is overdetermined by reasons, then removing one reason (e.g. the threat of sanctions) may not affect our rational choice. Consider next acts that are not overdetermined. Suppose, for instance, that I decide to put money in a parking meter or not to hide some of my income from the tax authorities, and that I would not have taken these decisions had there been no credible threat of sanctions. Does this show that coercion is decisive in determining my action? We could say that it does but only in the sense that any number of things are equally decisive. After all, if the act is not overdetermined and is favoured by the balance of reasons, virtually any change will alter the balance; anything that 'tips the balance' will, on this account, be decisive.

Coercion and force may be important and even indispensable, but that does not mean they are more important than anything else. A political order which may not hold together without force may also collapse if numerous other factors are not present – for instance, if subjects cease to be patriotic, if they become less prudent, if they become literate, if they act together, if they sober up. Even tyrannical

regimes require something more than force to remain in place; they cannot maintain themselves only with force.

An overemphasis on the role of coercion and force in contemporary discussions of the state contributes as well to the neglect in contemporary political theory – but not in legal theory – of the importance and centrality of the state's authority. Theorists put the state's coercive powers at centre stage, but these are less puzzling or problematic than their claims to authority. Indeed, what's puzzling about the state's coercive powers is not its justification for its use of sanctions or force; rather it is the justification for its claim to monopolize legitimate force. The authority claimed by states – typically, sovereignty – is extraordinary. In a certain respect, states are both easier and harder to justify. In my view their use of force may be much less problematic than is usually assumed. It is not hard to justify the use of force against killers and bullies. What is hard to justify are the extraordinarily sweeping normative powers claimed by states.

### LEGITIMACY

Modern states claim sweeping normative powers. On my analysis they claim sovereignty. Citizens and other subjects of states are held to be obligated to obey the law and to have no greater loyalty to any other country or cause. We may think that states can and often do serve important interests and that life in their absence would very often be very bad. Suppose that some states – those that serve our interests, that behave justly, and so on – are such that they are justified and that they are thereby legitimated. Do they then possess all of the normative powers they claim? We need to investigate legitimacy. When are states legitimate? What is the basis of their legitimacy? And what exactly does legitimacy entail?

'Legitimacy' is derived from *lex* and has the same root as 'legislation'. One sense of 'legitimate' is being in accordance with law or lawful (legality). Any lawful or 'legal' state is legitimate in this sense. Closely related would be the more general notion of being in accordance with the established rules or procedures relevant to the matter at issue (e.g. a legitimate move in chess, the legitimate heir to the throne). These senses of 'legitimate', largely procedural and similar to the primary sense of 'legal' (being in accordance with the law), are not very useful for our normative inquiry.

Often in politics and especially international affairs a state is thought to be legitimate if it is recognized or accepted by others. There is considerable unclarity as to what this means. Sometimes the suggestion seems to be merely that a legitimate state is a genuine state. Legitimacy in this sense is

uninteresting. Sometimes the idea of acceptance or recognition suggests that being a legitimate state requires being so recognized by other states, as if legitimacy were a kind of membership in an organization or club. Even if the members of this club are not all corrupt, this notion also seems uninteresting. The question is what conditions ought to be imposed for membership.

In the social sciences, accounts derived from Weber would have us understand the state's legitimacy in terms of the attitudes of subjects. The crudest would say that a state is legitimate in so far as it is so regarded by its subjects, which is not very illuminating until we understand what it is for someone so to regard a state. People may regard their state as legitimate when they believe it to be lawful or justified. But given that it is possible that they may be mistaken, the interesting question would concern the conditions of lawfulness or justification. Legitimacy may depend on people's attitudes, but the first question is what attitudes ought we to have.

What is it then for a state to be legitimate in a more substantive sense? If a state is legitimate it has a certain status. At the least, its existence is permissible. It may also have a (claim-)right to exist. A state exists to the extent that a territory and its inhabitants are organized politically (as we described above) and when many of the state's powers related to governance are acknowledged by significant bodies of people. States are forms of governance, and they also claim certain powers, liberties, and rights related to governance. Legitimacy may also confer these. A legitimate state, we shall say, is minimally one which has a liberty, presumably a (claim-)right, to exist. It would presumably also possess the liberty or the right to establish laws and to adjudicate and enforce these as necessary for the maintenance of order and other ends. Legitimacy in this minimal sense would be the right to exist and to rule.

The right to rule is often thought of as entailing obligations to obedience. Trivially we have an obligation to obey any valid (obligation-creating) law.<sup>3</sup> If an obligation-creating law is valid and applies to us, then we are obligated. Often it is said that this obligation is merely 'legal' and not necessarily 'moral'. A more than minimal conception of legitimacy would construe the right to rule as entailing a moral obligation to obey the law. If a state is legitimate in this stronger sense then it would be wrong or unjust for a citizen to violate a valid law (except in special circumstances).

It is useful at this point to distinguish weaker and stronger conceptions of legitimacy. A legitimate state possesses a (claim-)right to exist and to rule. The right to exist entails obligations on the part of others not to threaten its existence in certain ways (e.g. not to attack or to conquer it). A state is

minimally legitimate, I shall say, if its right to rule entails that others are obligated not to undermine it but are not necessarily obligated to obey it. By contrast, a state is fully legitimate if its right to rule entails an obligation of subjects, or at least citizens, to obey (each valid law). This obligation may be thought of as a general obligation to obey the law, one which requires compliance with every law that applies to one except in circumstances indicated by the law (e.g. justified or excused disobedience). The second, stronger understanding of legitimacy may be the most common one in contemporary discussions.<sup>6</sup> But I think it illuminating to invoke the weaker conception too.

What establishes minimal legitimacy? Suppose a state to be just.<sup>7</sup> That is, suppose that it respects the constraints of justice and does not act unjustly. In addition, suppose that it provides justice to those subject to its rule; it makes and enforces laws, adjudicates disputes, and provides mechanisms for collective decisions (e.g. contracts, corporate law, local governments, parliaments). Some of the laws as well as a number of social programmes seek to effect distributive justice [see further Chapters 16 and 17]. Government in general is responsive to the just interests or wishes of the governed. A state like this would be just. Suppose in addition that it is relatively efficient in its activities. Elsewhere I have argued that a relatively just and efficient state is one that is justified, and that justification confers minimal legitimacy (Morris, 1998: chs 4 and 6).

It may, however, be thought that there is too much disagreement about justice to make justice the basis of legitimacy. Some have thought that one of the main reasons for states is the absence of agreement about justice or right. And positions like this are popular today both in North America and in Europe. Sovereign states, on this view, may be needed for social order in large part because people have incompatible views about justice. The thought is that where there is little agreement about justice and other moral values, these standards cannot be the basis for legitimation. 'Realist' accounts of legitimacy may be understood thus (see, for instance, Morgenthau, 1978). This sort of position may be most plausible if it is seen as derived from some kind of scepticism about morality or 'right reason'. Hobbes can be read as one of the originators of this idea. His Sovereign can be understood to be an arbitrator made necessary by disagreement and conflict:

as when there is controversy in an account, the parties must by their own accord, set up for right Reason, the Reason of some Arbitrator, or Judge, to whose sentence they will both stand, or their controversie must either come to blowes, or be undecided, for want of a right Reason constituted by Nature. (Hobbes, 1651: ch. 5, 32–3)

If moral disagreement renders justice an inappropriate standard for legitimacy, then the question is what alternative to use. Elsewhere I have considered what I called 'rational justification' (Morris, 1998: 114–15, 122–7, 134–6, 160–1). A rational justification of a state, we may say, is provided when the relevant people have reasons to respect its laws and to support it in various ways. More broadly, they may have reasons to do their part in supporting and maintaining the state. Such a state might be thought to be minimally legitimate. Now it is very unlikely that many states are such as to provide (virtually) all subjects with reasons to obey (virtually) all laws, even if we take sanctions to provide reasons of the relevant sort. It may also be that many states that do offer most subjects reasons are tyrannical or capable of committing various evils. It is doubtful, therefore, that rational justification is the sort we should seek. It would seem that some species of moral justification is what is needed.<sup>8</sup>

There certainly is considerable disagreement about justice, as well as about many other things. But surely to say that there is no agreement about justice is hyperbolic. While there is considerable disagreement about distributive justice, the rights of property, the death penalty, and the like, there is striking consensus today about a number of matters – for instance, that slavery is (very) wrong and that persons have certain basic rights not to be killed or not to be restricted in their liberties without cause, that torture is rarely, if ever, to be used, that it is wrong to threaten or to harm the innocent. Often disagreement about justice concerns the specification of widely accepted principles. For instance, all parties to the contemporary controversies about abortion, assisted suicide, and the death penalty presuppose that killing generally is wrong. There is considerable disagreement at the margins, but a significant core agreement seems to exist. Even if many norms require determination or specification – for instance, norms prohibiting theft or trespass will always require application to new and puzzling cases – there are some norms of justice which seem to be widely acceptable and applicable prior to the establishment of familiar legislative and judicial institutions. It seems that we might very well be able to evaluate our states by many of the norms of justice.

What must a state do to be just? A just state presumably is first of all one that respects the constraints of justice. Justice imposes constraints on the behaviour (and intentions) of persons and, presumably, institutions. We may suppose that many of these constraints take the form of (moral) rights and duties. States, then, must respect the (moral) rights of individuals and fulfil duties owed to individuals. We may suppose that we each have moral rights to our lives, liberty, and possessions,

though, as I said, the difficult questions concern their nature and scope. It is not particularly controversial to say of the regimes of Nazi Germany, the former Soviet Union, China, Iraq, etc. that they violated the rights to life, liberty, and possessions of many.

States typically claim sovereignty and exclusive rights to use force. Individuals are not supposed to use force without the state's permission. It is often argued that states have the particular task of ensuring that we do not individually need to use force (e.g. to protect ourselves). If this is true then states may consequently have the provision of justice as one of their main tasks. Restrictions on one's capacity to use force might not be advantageous or justified except as part of a package that offered one better protection. Justice may then require of states not only that they respect the constraints of justice but also that they provide justice. What might be involved in a state's provision of justice? Typically states create and enforce laws, adjudicate disputes, and provide mechanisms for collective decisions; they also seek to effect distributive justice.

We may then require of states that they respect and provide justice. Suppose that we say that a state is justified in so far as it is just (and efficient). Now it may be that no state is, or could be, thereby justified. 'Individuals have rights ... So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do. How much room do individual rights leave for the states?' (Nozick, 1974: ix). It may be that the constraints of justice are such as to fill up all of moral space or at least leave no room for the state's exercise of its functions or even for its existence. For instance, should we possess indefeasible (or 'virtually indefeasible') natural rights to (our) life, (our) liberty, and (our) possessions, then it is doubtful that the state may do very much, if anything, without violating our (moral) rights.

Natural rights – rights which are held by virtue of the possessor's nature – seem to constrain states by requiring them to secure the consent of the governed. This is, in effect, to assume that rights protect choices. It is now common in the literature on rights to distinguish between choice (or will) accounts and interest (or benefit) accounts. The latter understand rights to be protected interests or benefits, where the former conceive of them as protecting choices. In one case, the correlative duties protect interests or guarantee benefits, in the other the duties (and accompanying powers) protect choices. Consent would effect (limited) alienation or suspension of our rights and thus be a condition of justified state interference. However, it may be that our fundamental rights are best construed as protecting interests or benefits. On this interpretation they would not block states, at least as easily as choice-protecting

rights. We could then argue that 'to secure these rights, governments are instituted amongst men' and that (the) people may alter or abolish governments that become 'destructive of these rights', without endorsing Jefferson's principle that governments derive 'their just powers from the consent of the governed'.

Consent can be a necessary condition for legitimacy or merely a sufficient one (or both). Assuming that consent could suffice to legitimate only (reasonably) just governments or states, we should think of consent theory as affirming both the necessity and the sufficiency of consent to legitimacy. The claim that consent is sufficient is the less controversial of the two (see Simmons, 1979: 57; 1993: 197–8; Green, 1988: 161–2; Beran, 1987). It is the claim of its necessity that is of greater concern, and I take it to constitute the core of consent theory or political consensualism. Many partisans of consent have as well affirmed the consensual legitimacy of some states or types of states (e.g. republics or democracies), but this need not be part of the theory. Consent theory is a normative account, and it is possible that all actual states fail to satisfy its conditions for legitimacy. This is what many contemporary consent theorists in fact claim.

Consent is to be distinguished from consensus or general agreement. Most forms of political organization depend to some degree on consensus or agreement. But the latter have to do largely with shared beliefs (or values). Sometimes terms like these are used to suggest more, but they essentially refer to agreement in belief or thought (or value).<sup>9</sup> Consent, by contrast, involves the engagement of the will or commitment. Something counts as consent only if it is a deliberate undertaking. Ideally, an act is one of consent if it is the deliberate and effective communication of an intention to bring about a change in one's normative situation (i.e. one's rights or obligations). It must be voluntary and, to some degree, informed. Consent can be express (direct), or it can be tacit or implied (indirect). Both are forms of actual consent. By contrast, (non-actual) 'hypothetical consent' is not consent.

Consent theory should be seen as a distinctive philosophical position, one standing in opposition to other traditions which find the polity or political rule to be natural or would see government and law as justified by their benefits. The mutual advantage, Paretian tradition and different types of consequentialism seek to base full legitimacy in what the polity does for its subjects and others (for the former see J. Buchanan, 1975; Gauthier, 1986). Other, more 'participatory' traditions might require active involvement by citizenry for legitimacy. Political consensualism should not be conflated with these other traditions, however closely associated they may be historically, and it should certainly not be

confused with other allegedly 'consensual' theories that base legitimacy on consensus or agreement.

The conclusion of contemporary consent theorists seems to be that virtually no states satisfy the account's conditions for full legitimacy. It is simply that few people, 'naturalized' citizens and officials aside, have explicitly or tacitly consented to their state. It is implausible to interpret voting in democratic elections as expressing the requisite consent, and mere residence and the like do not seem to be the sort of engagements of the will required by consent theorists for obligation. Consequently, most people may not have the general obligation to obey the laws of their states that they are commonly thought to have.

The adjudication of the challenge posed to state legitimacy by consensualism is a complicated matter and cannot be taken up here. For now let me summarize some of the implications of our discussion. Supposing reasonably just and efficient states to be justified and thus to be minimally legitimate, something more seems required for full legitimacy and obligations to obey the law. The literature on this question is substantial (see Edmundson, 1999), and the debates cannot be adequately explored here. Many have argued that the conditions for what I have called full legitimacy are hard to realize even in states that are justified or minimally legitimate. This position is one defended by me (in Morris, 1998) and, in different terms, by John Simmons (1979; 1993). If a state is minimally but not fully legitimate, then the obligations of citizens and other subjects are similar to those of foreigners. The latter, even when not in the territory of a legitimate state, are obligated not to undermine its institutions and possibly to support or assist it in certain circumstances. Non-citizens have no general obligation to obey the laws of legitimate states to which they do not belong or in whose territories they do not find themselves. Citizens of a merely minimally legitimate state have the same kinds of obligations: obligations not to undermine its institutions, and to support or assist it in certain circumstances, but no general obligation to obey every law (in the absence of a special relation, for instance, of taking an oath to obey).

Full legitimacy is required for a general obligation to obey the law. But we can ask what follows from such an obligation. As I have said, a general obligation to obey the law requires compliance with every law that applies to one except in circumstances indicated by the law (e.g. justified or excused disobedience). It is commonly assumed that someone so obligated always has a reason (of a stringent or pre-emptive kind) to comply. But it is possible to deny this and to assume that obligations do not always entail reasons to comply. The first position is often labelled a kind of 'internalism' in moral theory and the latter 'externalism'. So the

questions about legitimacy, obligation, and action are more complicated than we may have thought. It is possible to think that states can be fully legitimate but that citizens lack reasons to comply, in which case they would not necessarily have more reasons to comply with the law than they would if the state in question were merely minimally legitimate. Without the assumption that obligations always provide stringent or pre-emptive reasons, full legitimacy is not much more demanding than minimal legitimacy.

## NATIONS AND NATION-STATES

What I have called states are often spoken of as 'nations'. This is confusing but understandable. In everyday settings we don't make distinctions unless necessary, and often 'nation' doesn't mean anything more than 'country'. In addition, the term 'state' in American English is already reserved for the sub-units of the US federal system and is also sometimes used to refer to government. (The United Nations could not have been called the 'United States of the World'.) States in the sense we have been discussing are also referred to as 'nation-states', perhaps to distinguish them from Greek *poleis* or Renaissance city-republics. If we think of states and nations as different things, an interesting question is whether states must be nation-states. To raise this question we need to distinguish states and nations.

In the sense that interests us here, a nation is a society whose members are linked by sentiments of solidarity and self-conscious identity based on a number of other bonds (e.g. history, territory, culture, race, 'ethnicity', language, religion, customs) [see further Chapter 19]. A group of humans will constitute a nation in this sense in so far as the members share certain properties and in so far as they are conscious of this shared condition and recognize one another by virtue of these common properties. Nations, then, will be collections of individuals with common histories, cultures, languages, and the like, and whose members recognize other members by virtue of their possession of these attributes (see Morris, 1998: ch. 8). This characterization may be incomplete; for instance, many nationalities seem based on 'ethnic' attributes (e.g. Japan), and the common history may be thought to involve common ancestry (see below). But this way of characterizing nations will help in explaining and evaluating certain significant ways humans have of understanding themselves.

Once states and nations are distinguished, a number of possible relations become obvious. Since the entire land mass of the globe is now the territory of some state, we do not find any nation that does not

overlap with a state. We can then eliminate the possible 'one nation, no state' relation. The main remaining possibilities are:

- one nation + one state (e.g. Japan, Germany)
- one nation + several states (e.g. the Basques, the Kurds)
- several nations + one state (e.g. Canada, Switzerland, Belgium).

The first possibility is the salient one as it is that adopted by nationalists and defenders of the view that national peoples are entitled to their own state. Some have claimed that nationalism, the principle 'which holds that the political and the national unit should be congruent', 'determines the norm for the legitimacy of political units in the modern world' (Gellner, 1983: 1, 49). A related thesis is that nationality is a basis for the legitimacy of states: 'Nationalism ... holds that the only legitimate type of government is national self-determination' (Kedourie, 1993: 1).

It is a mistake, albeit an understandable one, to characterize nationalism as Gellner does; some nationalists do not seek statehood for their people, and characterizing nationalism in terms of statehood begs the question against 'liberal' or anarchist nationalism and other moderate positions. We might expect that most contemporary nationalist movements would claim a state for their nation, but one can be a nationalist without being a statist.

The best cases for the claim that nations are entitled to become states are heavily qualified and will not accord a right to statehood to every nation.<sup>19</sup> Defences of the national principle based on self-rule have to answer the questions why self-rule must take the form of statehood (as opposed to democratic federalism) and why nations are the appropriate unit of self-rule.

We may think of nation-states as the combination 'a single nation + a single state'. If it is not the case that every nation is entitled to become or ought to become a distinct state, and if consequently not every state will be the state of a single nation, what then are nation-states? Most states today and throughout the last two centuries have been multinational states – in this respect multiculturalism is not a new invention. Consider France: the existence of Basques, Bretons and Catalans seems to make it a multinational country. Similarly the United States is multinational, and many Americans explicitly identify themselves in multinational 'hyphenated' ways (e.g. Italian-American). These two countries are interesting as they are comparatively old states. In addition, both share an Enlightenment tradition which is hostile to nationalism; each was born of an eighteenth-century revolution fought in the name of universal principles. Even if they are multinational as well as somewhat hostile to nationalism, they both seem in

certain senses to be nation-states of a kind. Each is a state which has developed a 'national' culture, easily recognizable to outsiders, whose members are readily moved by sentiments of patriotic allegiance. In terms of the characterization of nation that I have invoked, there is a way in which we can say that France and the US have become in their distinct ways multinational nations and thus nation-states.

An interesting question is then whether there are tendencies for states to become, over time, nation-states of sorts, at least to the extent of coming to have a common culture and of their members developing sentiments of patriotic allegiance. Perhaps states, that is, modern societies organized politically as states, even if multinational, tend to become nation-states. Even if nations need not and may not always be entitled to become states, states nevertheless tend to become nation-states.

## ALTERNATIVES

There is a tendency in political philosophy to think of the state in opposition to 'the state of nature' or to anarchy. It is important not to think of these concepts as exhausting the possible forms of political organization. Hobbes, of course, understood these alternatives to be exhaustive: either asocial anarchy or a sovereign state. It is important, especially at this time, to consider more carefully the variety of forms of political organization that may be available to us. The tendency of many philosophers and of some social scientists, in particular anthropologists, to think of 'state' expansively to include all forms of political organization is an error, one which hides the diversity of ways of arranging our lives.

The state, as the fundamental form of political organization, has swept the world. Today virtually all of the land masses of the globe are territorial states. The state system, once European, now includes China and Japan, as well as the former colonies of all the modern empires. But the global spread of the state system does not convey the full extent of the state's victory over alternative forms of political organization. The state has conquered our imaginations as well. It is not just that we tend to dismiss anarchism. It is that we do not easily imagine many alternatives to states. We have trouble, for instance, understanding the status of various 'international' bodies and often instinctively categorize institutional attempts to regulate states as themselves proto-states; for instance, the United Nations was once thought of as a step towards 'World Government' (more threatening if capitalized), and now the European Union is feared as a potential federal state, a 'United States of Europe'. Consider as well our understanding of the

remnants of pre-statist European polities, such as Luxembourg (a grand duchy), Liechtenstein and Monaco (principalities), San Marino (a republic), or Andorra (under the joint suzerainty of the President of France and the Bishop of Urgel, Spain). We commonly take these to be states. It is not thought an absurdity to consider the Vatican a state, though it has no citizenry (see Shaw, 1991: 167–8). It is as if our minds, as well as the categories of our systems of law, had room only for one sort of entity or unit.

Normatively, the state's victory is equally complete. It is common in political philosophy to assume that our societies are and must be states, the difficult questions revolving over what shape they should take, what policies governments should implement, what ideals they should serve, if any, and the like. I referred in my opening remarks to the common tendency to take the state to be the subject matter of modern political philosophy.

Consider the case of Rawls, who understands 'the primary subject of justice [to be] the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation'. These major institutions are 'the political constitution and the principal economic and social arrangements' (1971: 7). In *Political Liberalism* Rawls specifies the basic structure as 'a society's main political, social, and economic institutions, and how they fit together into one unified system of social co-operation from one generation to the next' (1996: 11). And he indicates that he takes the basic structure to be 'a modern constitutional democracy'. It is certainly possible to think of non-statist political, social, and economic institutions that might be thought to be a basic structure, but it is not clear that they would necessarily constitute a single, unitary system. Rawls seems simply to assume that modern states are the setting for his account of justice.<sup>11</sup>

We considered earlier how modern states emerged from the political orders of late medieval Europe. The world replaced by the modern state system had many alternative arrangements. Charles Tilly reminds us of the possibilities offered by these alternatives when he argues that the victory of the modern state was not inevitable:

In the thirteenth century, then, five outcomes may still have been open: (1) the form of national state which actually emerged; (2) a political federation or empire controlled, if only loosely, from a single centre; (3) a theocratic federation – a commonwealth – held together by the structure of the Catholic Church; (4) an intensive trading network without large-scale, central political organization; (5) the persistence of the 'feudal' structure which prevailed in the thirteenth century. (1975: 25–6)

Tilly notes that the Roman Empire was followed by the Holy Roman Empire and reminds us not to forget about the Habsburgs' Empire or federation. The city-republics of northern Italy and the cities of northern Europe were also, for some time, viable alternatives to states.

Even if the various political orders of late medieval Europe are not viable models for our world, certain features of these older forms of political organization represent alternatives. Hedley Bull 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' (1997: 254). It is hard to say, however, what forms a viable alternative to the state system may take. Presumably the growth and development of international law will figure prominently in a new world order. But it is too soon to tell what alterations the state system may undergo. In the last decade of the twentieth century there was considerable enthusiasm about globalization and a new world order, one which limited the sovereign powers of states. But the security fears caused by international terrorism at the start of the new century may serve only to reinforce the old state system. It may be too early for Minerva's owl to take flight.

## NOTES

1 For accessible accounts of the development of the modern state, see van Crevelde (1999), Tilly (1990), Spruyt (1994), Pogge (1978), Mann (1986), and Dyson (1980). See also Hall and Ikenberry (1989), Hinsley (1966) and Strayer (1970). Less historical and more theoretical accounts are provided by Oakshott (1975), Mairé (1997), Beaud (1994). See also Morris (2001).

2 'All significant concepts of the modern theory of the state are secularized theological concepts' (Schmitt, 1985: ch. 3, 36).

3 Hegel's view is similar: 'since the sovereignty of states is the principle governing their mutual relations, they exist to that extent in a state of nature in relation to one another' (1821: para. 333). Varying accounts of this state of nature are the hallmark of the 'realist' tradition of international relations.

4 If there are circumstances in which others will not, in the absence of sanctions, be adequately motivated to comply with laws, then an important additional reason for sanctions is *assurance*. To threaten to impose sanctions for disobedience will assure those who are otherwise disposed to comply that they will not be taken advantage of by the violators. In situations where compliance with certain laws is thought to be conditional on the like compliance

of others, enforcement may have as its main purpose the provision of assurance [see further Chapter 9].

5 My cumbersome formulation is due to the fact that many laws do not create or recognize obligations (e.g. power-creating laws).

6 'A state's legitimacy ... is its exclusive right to impose new duties on subjects by initiating legally binding directives, to have those directives obeyed, and to coerce noncompliers' (Simmons, 1999: 137). "'Justifying the state'" is normally thought to mean showing that there are universal obligations to obey the law ... [T]he goal of justification of the state is to show that, in principle, everyone within its territories is morally bound to follow its laws and edicts' (Wolff, 1996: 42).

7 'Without justice, what are kingdoms but great robber bands?' (Augustine, 1984: 30). 'Justice is the first virtue of social institutions, as truth is of systems of thought' (Rawls, 1971: 3).

8 A number of contemporary theorists have defended democracy as a procedurally fair way to make decisions in the face of serious disagreement about justice. These thinkers argue that democratic institutions are essential to the legitimation of states (see Christiano, 1996). See also A. Buchanan (2002) for a similar claim about democratic legitimacy and for a conception of legitimacy similar to Morris (1998).

9 Consent in this sense should also be distinguished from 'endorsement consent' in Hampton (1997: 94–7).

10 One of the very best cases is that offered by Margalit and Raz (1990).

11 Consider also the influential characterization of equality expressed by Will Kymlicka: 'A theory is egalitarian in this sense if it accepts that the interests of each member of the community matter, and matter equally. Put another way, egalitarian theories require that the government treat its citizens with equal consideration' (1990: 4–5). In much of contemporary political philosophy, the state is taken for granted to such an extent that it is no longer visible.

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