

Phil 290: Recent Work on Political Coercion
September 4, 2012, Simmons, “Justification and Legitimacy”

“The state” is *justified* iff “some [possible instance of a?] realizable type of state is

- on balance morally permissible [to bring about? to function?]. . . and
- rationally [=prudentially?] preferable [for each person? for the People collectively?] to all feasible nonstate alternatives”
 - Does justification require showing that the state is in the rational self-interest of each person (à la Gauthier)?

“In the course of such a justification we will typically argue that certain virtues that states may possess or goods that they may supply—such as justice or the rule of law—make it a good thing to have such states in the world.”

However, Simmons stresses, there is another dimension of evaluation: namely, *legitimacy*. I find what Simmons says, in general terms, to characterize the distinction between justification and legitimacy (and between “generic” and “transactional” evaluation) somewhat elusive. For example, he at times suggests:

1. Justification is an evaluation of *hypothetical* states, or of *types* of states, whereas legitimacy is an evaluation of an *actual, particular* state?—But, presumably, we can ask whether an actual, particular state is justified: whether *it actually* is on balance permissible and rationally preferable. . .
2. Justification concerns *collectivities*—humanity, the People—whereas legitimacy concerns *individuals*? But we can ask whether this state is the legitimate ruler of the People, and we can ask whether what it does to and for this individual is morally permissible and in his best interests. . .
3. Legitimacy concerns the *history* of the state’s relation to its subjects. . . whereas, maybe, justification concerns how the state relates to them *now* and *henceforth*?—But Simmons’s specific conception of legitimacy concerns what it does now and henceforth. . .

I think I see what Simmons (and Pettit, who, as we will see, adopts this terminology) is getting at when he appeals to a general “justification vs. legitimacy” distinction. But it seems to me better (although still not perfectly) characterized as:

4. Justification concerns the *goods* that the state tries to realize for individuals—peace, justice, the American way of life—whereas legitimacy concerns *how the state relates* to individuals in trying to realize these goods—via democratic procedures, with the consent of individuals, with coercion, with authority over, etc.? J: What do we think of *the X* it brings about? vs. L: What do we think of *how it is related to its subjects* in bringing about that X?
 - On this view, *it may* be that the acceptability or existence of some of these relations—the permissibility of coercion, the existence of authority—depends on some *historical transaction*—e.g., a moment of free consent—but that is a *further, substantive* claim.
 - This seems to fit the complaint that at least the early Rawls is more concerned with justification than legitimacy. For Rawls, social institutions enjoy their “first virtue,” justice, just insofar as they tend to realize a certain aim: the right sort of distribution of social primary goods.

- This also seems to fit Simmons’s passing example of “benevolent dictatorship” as a condition of justification without legitimacy. The aims are right, but not how the aims are pursued. (Note, by the way, how uneasily this sits with Simmons’s insistence on consent as a necessary condition for legitimacy. Dictatorships may be consented to, and democracies may not be.)
- Granted, though, this way of drawing the distinction does not suit everything Simmons says. State “persecution,” he suggests at one point, is a more obviously a matter of justification, than of legitimacy.

Viewed in this light, Simmons can be seen as offering one specific conception, possibly among others, of legitimacy when he writes that:

A *particular* state is legitimate *with respect to certain subjects* iff that state is *both*:

- “authority legitimate”: has the power to impose binding duties on those subjects
 - I assume that the power is to impose duties *simply by issuing a command*. Just about anyone can impose duties on others by changing their circumstances. If Eddie sits on Colette, then he imposes a duty, perhaps deliberately, on Jessica to remove him.

and:

- “force legitimate”: has the permission to use coercion to enforce those duties.

Simmons also speaks of a “right” and moreover an “exclusive” right. This *suggests* that:

- the duties are *owed to* the state
- no one else* has the power
- no one else* has the permission
 - Note that without e, “force legitimacy” doesn’t seem to be distinguished from the “third dimension” of evaluation, which even the Third Reich passed when it prohibited rape and punished rapists, “simply because anyone would be justified in so acting.”
- the state has a *claim-right against interference* with exercises of the power or permission.

Our interest in this course is in, roughly, force legitimacy: the permission to use force in the service of state aims. This need not (at least without further argument):

- be restricted to the *enforcement of duties* (e.g., involuntary vaccinations, seizure of property)
- be *uniquely* held by the state
- require *authority*: a power to impose duties, let alone duties owed to the state, etc.
 - However, as we noted last time, one might argue that:
 - A state is permitted to use force only to “enforce” a moral requirement.
 - The only moral requirements the state could be enforcing would have to arise from its authority; no other moral requirements are available.
 - Why not natural duties? See the “particularity” and “additional duties” problems below.

Simmons packs a lot into his definition of legitimacy. We need to ask ourselves:

- Do we care about *all* of the elements? Authority? *Exclusive* permission to coerce?
- If *some* of those elements can’t be achieved (or at least not without consent), does that mean that *none* can be?

Simmons's/Locke's view is roughly:

Consent is Necessary: a state is legitimate with respect to its subjects only if those subjects have freely consented to its having the relevant power and permission.

This implies:

Justification is Not Sufficient: The mere fact that a state is justified—"a good thing"—does not suffice for its having the power and permission.

And there seems to be some tacit commitment to the idea that consent + some other stuff is sufficient for legitimacy.

Arguments:

1. Analogy to businesses:

"in the same way that the right of some business to provide services to you and to bill you for them is independent of that business's efficiency or generosity or usefulness."

2. Analogy to unsolicited benefits in ordinary life:

"After all, when some individual treats others well or provides them with unsolicited benefits, we don't generally suppose that this gives her a right to direct or coerce them."

Danger here of a confusion of:

- I have the power and permission over you because I've done good things *for you*—as a kind of exchange, or receipt for services rendered.

with:

- I may have the power and permission over you because I'm doing *good things for you... and others*—i.e., achieving morally important ends—which justify what I am doing.

3. A violation of natural freedom:

- "neither one, no matter how virtuous or useful to its willing clients, can acquire, simply by its virtue or usefulness, the right to insist on participation in its enterprises by unwilling free persons. To deny this the natural freedom of persons, a basic and plausible Lockean premise."
- "If the virtues/justifiability of institutions made by others gave those institutions authority over me, they would 'injure' my natural freedom and so be impermissible."

What exactly violates my natural freedom?

1. Others' *uses of force* against me?

- a. But are *all* uses of force impermissible? Does anarchism rest on pacifism? On the contrary, Simmons and/or Locke seem to endorse: self-defense, punishment, even—in the life-raft case—apparently killing someone who, through no fault of his own, endangers you. But if so, then why not explore what grounds these exceptions, and whether that ground might similarly support an exception for what states do?
- b. Granted, apart from such exceptions, others may not invade, destroy, use, etc. my body without my consent, even to give me great benefits. But can this sort of concern really be what underlies *Consent is Necessary*? (Recall Kirsten's point from last time.) In these cases, my *present* refusal to consent is decisive, overruling any past consent. But Locke at least imagines a kind of once-off,

irrevocable consent (at least to the community, or what Simmons is here calling the “state,” if not to the “government”). Offhand, this sort of consent seems to makes more sense as an explanation of how an *obligation is undertaken* than as an explanation of how a *license to coerce is granted*.

2. Others *imposing obligations on me, by changing my circumstances*? But, again, people do it all the time. (Eddie on Colette.) States may do this by proposing solutions to coordination problems, for example. Is this an objectionable form of bondage?
3. Others *having authority over me*, in the sense that *at their bare command*, they can *make me duty-bound to obey them*. This seems to be a more recognizable form of “bondage.”
 - But before even getting to the issue of one’s *complaint* against it on the grounds of natural freedom, one might simply ask whether there is any positive argument *for* it. What value does it serve for anyone to have such a power?
 - Perhaps the role of consent here is not really to *overcome an objection* on the grounds of natural freedom *against* such a power. Perhaps it is simply that it is hard to see what else, apart from a *promise* (which involves consent), could speak in *favor of* such a power.

Why not say that since we are morally required to pursue the ends that the state pursues, the state has the power and the permission?

One might deny that we are morally required to pursue ends that require any institutional arrangements (e.g., we have only negative duties not to harm).

But Simmons does not take this strict, “negative” view. How “positive” he is willing to go isn’t entirely clear. But he seems, at times, to go so far as to accept, at least for the sake of argument, that we are morally required to promote justice and the happiness of others, that this requires the state, and so that we are required to support states.

Still, this would not imply:

- There is a “*particularized*” reason to support your own state rather than some other state.
 - But can the root anarchist-libertarian worry really be about “particularity” as such? (Readers of Simmons’s other work will recall that the “particularity” problem often seems to be the sticking point.) Is the rallying cry really: “Yes, we have no objection to some state ruling us, but how dare it be the US, rather than the winner of a coin toss between the US and Canada”?
- Any state has a right to impose *additional* duties, which might not effectively serve the morally required ends.
- I have any duty to participate if *my participation is not necessary* to its success.
 - Mightn’t we be required to do our fair share of this collective obligation, even if it will succeed even if we don’t?
- I need to “join” or become a “member.”
 - Why does “membership” or “joining” matter? Perhaps the idea is that, if we were morally required to *join* some state, then that might directly solve the “particularity” and “additional duties” problems? A duty to join would imply the normative consequences of actually joining? Simmons appears to allow this: states are legitimate only if “either (a)... or (b) accepting a membership in a state

is the only way we can fulfill one of our other moral obligations or duties.” But, then, in the case of Kant, he seems to deny that an obligation to consent to obey implies obligations to obey (n. 37)...

In any event, note that this doesn't really say anything, one way or the other, about the state's permission to use *force*.

- Is there a “particularization” worry about the state's claim to have an exclusive permission to use force? Why should the U.S. state alone, but not the Canadian state, be permitted to coerce me? It seems odd for the anarchist-libertarian to complain about *insufficient* exposure to force.

Rawlsian alternative:

Simmons argues that Rawls obscures the question of legitimacy in two ways:

- First, Rawls does not try to justify the state against anarchists. Assumes that some state is necessary. The only question taken up is what kind of state.
- Second, he argues that justification must be “acceptable” to—cohere with the deepest moral, religious, philosophical beliefs of—the actual subjects of the state. Like legitimacy, focused on *actual* subjects, although requiring only their *hypothetical* acceptance.

Simmons complains that this “acceptability requirement,” as we might call it, makes “institutional evaluation watered-down and one-sided,” does not respect the difference between two dimensions of assessment.

Is this right? Rawls's acceptability requirement might be read as a particular view about the conditions for “force legitimacy.” He wouldn't then be avoiding the topic of legitimacy, just proposing something about it with which Simmons disagrees.

- Simmons says: no legitimacy with consent.
- Rawls says: no force legitimacy without acceptability, but consent isn't required.

Simmons alternately suggests that Rawls's “acceptability requirement” tries to do justice to voluntarism (i.e., the impulse that finds expression in Consent is Necessary), in light of conflicting considerations, and that it simply hijacks, without entitlement, its appeal.

Here is one way of presenting the “acceptability requirement” as a “way of doing justice to” voluntarism:

- On the one hand, you have reasons to want that force not be used against you unless you somehow “endorse” it.
- On the other hand, others have reason to want that they not be deprived of what the state can realize only by using force against you.
- Perhaps consent is somehow a “better” form of endorsement than “acceptability”; consent better answers to the reasons you have to want no force without endorsement...
 - Simmons seems to argue this, on the grounds that consent is more “personal” and “direct,” less “external.” But what does this mean and why care?
 - Note that a person can consent to something that violates his deepest values. Is this consent what really “speaks” for him?

- Granted, we often do object to certain forms of treatment without our actual consent, even if it is acceptable to us: e.g., nonconsensual medical interventions on non-Christian-Scientists. But, as we saw, it isn't clear that the kind of consent that Simmons and Locke require is really motivated by the same concerns.
- ...but acceptability is still something.
- And others have decisive reasons against your having the power to hold their interests hostage by refusing to consent.
- So, balancing the competing claims, we arrive at the acceptability requirement.

Simmons makes a good point: that if one really does think that actual consent is important, and that acceptability is simply a second best, then there are ways to approximate the ideal, short of giving everyone a veto: e.g., different classes of citizenship, support for emigration, etc.

The Kantian alternative:

1. Rights cannot be respected except in a civil society. This is supposed to be a claim about justification: that the state is necessary for freedom and justice.
2. We are obligated to respect rights.
3. Therefore, we are obligated to enter civil society. Something in the vicinity of authority legitimacy: an obligation to give consent, such that, if we did give it, we would be bound to obey?
4. We may be forced to respect rights.
5. Therefore, we may be forced to enter civil society. Roughly, force legitimacy?

Simmons's objections:

1. Why can't I respect rights without entering civil society?
 - As we will see in Ripstein, the Kantian has answers:
 - indeterminacy of rights to external property
 - if it is "up to my unilateral will" whether I respect your rights, then your freedom is *already* compromised
2. Why should "particularized" permissions and powers follow?
 - How important is the particularity problem to a Kantian?