Consent of the Governed and Other Fables

by

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Author's Declaration

I hereby declare that I am the sole author of this thesis. This is a true copy of the thesis, including any required final revisions, as accepted by my examiners.

I understand that my thesis may be made electronically available to the public.

Abstract

The consent of the governed plays a pivotal role in liberal philosophy. From Hobbes, Locke, and Rousseau, through to Kant and modern theorists such as John Rawls and Jeremy Waldron, consent has been the primary means by which the authority of the state gains legitimacy. We rarely think authoritative institutions need the ***actual*** consent of all those over whom they rule. Agents of the state cannot go around asking each individual person if they consent to each individual law, for example. For pragmatic reasons, the focus is on hypothetical consent – that is to say, ***if*** a reasonable person ***would*** consent to an authoritative institution, that institution is legitimate without needing to attain actual, direct consent.

However, what you imagine a reasonable person would hypothetically consent to rests on what you believe about a variety of empirical facts about human history and human psychology, i.e. on what you believe about "human nature". In this thesis I argue that most political philosophers do not seem particularly well-informed about these topics, often forming beliefs based on an outdated and/or false understanding of what human beings are like, or have historically been like, laying an epistemically unreliable foundation for political beliefs and leading liberal philosophers to regularly misunderstand the implications of the principles they advocate for. I further argue that there are good reasons to think that the kind of society which best instantiates liberal principles looks very different than what most people imagine.

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To Chris, I hadn't met you before you agreed to be my supervisor, so thank you for taking me on, and on rather short notice. Our conversations have been deeply inspiring, answering your questions helped me solidify the backbone of this thesis, and you steered me away from a few conceptual landmines I wasn't even aware were in my way.

To both of you, I literally could not have done this without you. More than anything else, your insightful questions fuelled the vast majority of my writing. I have learned so much from the two of you, and sadly only a fraction of knowledge can be represented here.

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Introduction

The consent of the governed plays a pivotal role in liberal philosophy. From Hobbes, Locke, and Rousseau, through to Kant and modern theorists such as John Rawls and Jeremy Waldron, consent has been the primary means by which authority gains legitimacy. Jeremy Waldron puts it as follows:

> The thesis that I want to say is fundamentally liberal is this: a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it; and the consent or agreement of these people is a condition of its being morally permissible to enforce that order against them. (Waldron, 1987, p. 140)

As liberals, we rarely think authoritative institutions need the ***actual*** consent of all those over whom they rule. Agents of the state cannot go around asking each individual person if they consent to each individual law, for example. For pragmatic reasons, the focus is on ***hypothetical*** consent – that is to say, ***if*** a reasonable person ***would*** consent to an authoritative institution, that institution is legitimate without needing to attain actual, direct consent[1].

There are further demands on authoritative institutions regarding justice in the deployment of authority, but that is a separate question. This thesis focuses on what Bernard Williams calls the "basic legitimation demand" (Williams, 2005, pp. 3–5), specifically in the context of political authority and consent.

Williams identifies the "first" political question as the securing of "order, protection, safety, trust, and the conditions of cooperation" (Williams, 2005, p. 3), because these things must be in place before any further political questions can be tackled. But any attempt at answering this "first question" through the use of power and political authority is subject to the basic legitimation demand, because authoritative political institutions are entirely capable of making these problems worse.

> [i]f the power of one lot of people over another is to represent a solution to the first political question, and not itself be part of the problem, something has to be said to explain […] what the difference is between the solution and the problem, and that

[1] Though some disagree. AJ Simmons thinks *hypothetical* consent reduces the concept of consent to a "quasi-voluntarist standard" and that philosophers "have illicitly appropriated the justificatory force of voluntarism while being [...] in no real way motivated by it" (Simmons, 1999, pp. 760–761). I agree in part – many philosophers write about justification and legitimation via hypothetical consent and social contracts with no apparent motivation to consider the concrete practical demands of these abstract ideals. What I hope to show, however, is that the ***theoretical*** demands, in addition to practical demands, of hypothetical consent ***properly understood*** are much stronger than is often supposed, leaving no room for half-hearted quasi-voluntarism.

> cannot simply be an account of successful domination. It has to be a mode of justifying explanation or legitimation. (Williams, 2005, p. 5).

Concepts of authority underpin and legitimize the exercise of power, and so that authority must be legitimized on the same basis of endorsement and consent by reasonable persons. This is why I focus on political authority, rather than political ***power***[2]. Power may be the more important concept in analyzing state action, but the authority to use that power, and the legitimacy of any claim to have that authority, comes first. Legitimate authority is theoretically prior to the legitimacy of any exercise of power, and that authority is legitimized by (in this case, hypothetical) consent.

Why should any person accept authority? Why consent to a state of affairs in which some people claim the right to be obeyed, and the attendant assertion that they are justified in enforcing that right with coercion – including violence, or credible threats of violence, if need be[3]?

Our response has generally been that some forms of authority (and their attendant harms) are legitimate, because we hypothetically ***would*** consent, because the imposition of that authority leaves us better off than we would otherwise be[4].

This brings me to the core thesis I aim to support: what laws and institutions you ***imagine*** a reasonable person ***would*** consent to rests on your intuitions about human nature, and those intuitions rest on beliefs about psychology and history. That is to say, many arguments in political philosophy rest on empirical facts about what human beings and human societies are, or have been, like. Unfortunately, this connection often goes unacknowledged when philosophers do theory, because as Karl Widerquist puts it:

> Political philosophers and theorists don't usually think it's their job to check facts. We check for logical validity and normative plausibility; we usually leave fact checking to the empirical disciplines. (Widerquist, 2010, p. 1)

Not everyone agrees that consent is the proper foundation for the legitimacy of political authority, however. John Horton, for example, holds that it is the other way around. According to

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[2] I will separate power and authority more cleanly in Chapter One.

[3] I take this definition of authority from G.E.M. Anscombe and Robert Paul Wolff, partly because it accurately captures the term as I understand it, and partly because Anscombe and Wolff are about as politically far apart as it is possible to be, yet they both share this definition of authority. It seems at least palatable to a wide range of political philosophers.

[4] In that there is less violence, greater safety, and greater material well-being.

Horton, political authority comes first, and reasonable people ***should*** consent to legitimate authority (Horton, 2012).

I do not meaningfully engage with such a view here. However, I take the conclusion of this work to apply just as well to a view like Horton's as it does to Waldron's. What you imagine a reasonable person ***should*** consent to is, to my mind, the same as what you imagine a reasonable person ***would*** consent to, and both are equally reliant on pre-existing intuitions and beliefs about human psychology and human history, so my conclusion will travel cleanly from one discussion to the other.

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The core argument of this thesis goes like this:

Any politically authoritative institution, most prominently the state, will cause some degree of harm in its attempt to provide benefits to those living under it.

Relying on hypothetical consent to justify that harm can be morally fraught even if that harm is necessary to provide an overall benefit.

Most, if not all, of these harms turn out to be entirely unnecessary, in that there are good reasons to think authoritative institutions cause more harm than we generally believe, and that there are many examples of human societies which do not display any meaningful degree of political authority while still providing roughly similar benefits without imposing similar harms.

Therefore, what we usually imagine a reasonable person would consent to is likely off-base, if not outright wrong, and this has some serious implications for liberal theory.

That said, I do not think of the argument as a step-by-step ordered formulation like this. Rather, I picture it as a network of interconnected ideas, a web of concepts and evidence large enough to ensnare a wide variety of related beliefs, and robust enough to change what we think an ideal liberal society might actually look like. The argument is not meant to challenge liberal theory, but to challenge liberal theorists' political imaginations, i.e. to challenge what liberal theorists think their own theories entail.

To build this argumentative web, Chapter One is dedicated to an analysis of harm, because it is the harms of authoritative action that are most in need of legitimation. Many, if not most, of the benefits of the state come with some degree of inescapable and inextricable attendant harm, so a clear understanding of what constitutes harm and benefit, how they function together, and how they

interact with political authority and state action is important. I take my conception of harm from Seana Shiffrin, especially a pair of articles: 1999's "Wrongful Life, Procreative Responsibility, and the Significance of Harm", and 2012's "Harm and its Moral Significance". In "Wrongful Life", Shiffrin lays out a variation of the counterfactual-comparative account of harm and draws a novel soft anti-natalist position out of that account. While I am not interested in exploring the anti-natalist aspects of that paper here, the analysis of harm and benefit she presents there is excellent, and has formed the basis for how I think of harm. More importantly, it has political implications that I don't think have been adequately explored, if they have been explored at all.

Chapter Two is spent refining some concepts. The discussion of harm and political authority continues, with a stronger emphasis on hypothetical consent and the core principles of liberty and equality that lie at the heart of (most?) liberal political thought.

Why would any reasonable person[5] consent to live under an authoritative political institution, with all its attendant harms, and thereby make such an institution (and the actions it performs) legitimate? A few answers are usually provided in liberal theory – that the harms are necessary to acquire those benefits; that, on balance, the benefits outweigh, often vastly outweigh, the harms; and that it is only through a political state imbued with some degree of political authority that we can acquire those benefits and minimize the harms that would occur without that state.

These are all empirical claims. It is a question of empirical fact, not theoretical conceptualization, what harms are necessary to secure the benefits of social living; what the harms and benefits of political authority actually are; and what level of authority, or what kinds of authoritative institutions, actually support human flourishing. Conceptual theorizing is indispensible to good political philosophy, but being a field of human action, empirical facts about human beings are equally indispensible, thus the need for a non-ideal approach to political theory. Motivating this position will close out Chapter Two.

And finally, Chapter Three is focused on incorporating information from fields such as psychology, history, and anthropology – about which political philosophers seem woefully ignorant –

[5] Throughout this thesis, I will be using the term "reasonable person" rather loosely, without a specific definition in mind. All I rely on here is that, when forming beliefs or opinions (or, critically to this thesis, when providing or withholding consent), reasonable persons are meaningfully responsive to evidence. This is a fairly generic conception of a reasonable person, but this thesis does not need a more particular one.

into liberal theory. Without changing the theories themselves, without altering the ideals presented, this information should radically alter what we think an ideal society looks like.

I conclude that, by bringing together the analysis of harm from Chapter One, the discussion of hypothetical consent from Chapter Two, and the evidence I will present in Chapter Three, an ideal society which best instantiates liberal theory – i.e. an ideal society for which we can actually assume hypothetical consent would hold – likely looks nothing like what most liberal philosophers imagine. Put another way, fulfilling the requirements of liberal theory requires a very different set of social and political institutions than most liberal philosophers seem to think their own theories require, because they are not very well informed about empirical facts which are directly relevant to those theories.

Chapter 1 – Harm and Consent

Exploring two unexamined implications of Seana Shiffrin's argument in Wrongful Life, as a basis for a further examination of consent and authority in liberal political philosophy.

In "Wrongful Life, Procreative Responsibility, and the Significance of Harm" (Shiffrin, 1999), Seana Shiffrin lays out an argument that suggests procreation is morally problematic on the grounds that procreation will place future people in a position that guarantees they will suffer unnecessary harm. There are, however, two additional implications to this argument that have nothing to do with procreation, which I want to explore.

First, external constraints can reduce some of the blame when they increase the moral risk one must incur in pursuit of morally praiseworthy acts[6], even in cases where the person performing those acts has caused excess or unnecessary harm. Second, Shiffrin's argument applies just as well to the political state as it does to parents, and I intend to extend her account of harm into a discussion of political theory.

Though the argument in "Wrongful Life" aims for a moderate anti-natalist position, I will use the paper primarily for its discussion of harm and benefit, and how hypothetical consent interacts with these concepts, ending with a brief exploration of authority and the state. As such, Shiffrin's discussion of procreation is left mostly by the wayside, except where it is directly relevant.

1.1 The Rescuer Case, and the Wealthy Case

Shiffrin states that harming someone is at least morally permissible if that harm is necessary to prevent greater harm to that person[7]. "[W]hen a person is unavailable for consent, it can be justified […] to inflict a lesser harm upon her to avert a greater harm", and that "[a]bsent evidence that the

[6] This phrase, "moral risk", is not related to the similar phrase "moral hazard". Moral risk is refers to the aspects of an action that, while not necessarily immoral itself, introduces risks that, if realized, would render the action at least morally problematic. Driving through a school zone is dangerous, but we generally only have lay blame when that risk is realized (in the form of an accident, in this case). But some risks can be so harmful if they were to be realized, and the likelihood of realization so high, that the act is considered immoral even if the risk is not actualized – speeding through a school zone without hitting anyone, for example. In this case, the driver is blamed not for the act itself, but for the risk contained within the act.

[7] There are a handful of further conditions regarding the person's actual consent (when you can get it), hypothetical consent (when you can't), and how necessary or unnecessary the harm is. These nuances will be explored shortly.

person's will is to the contrary, it is permissible, perhaps obligatory, [to cause harm in the prevention of greater harm]" (p. 126).

This rides on the common notion of *hypothetical consent*, deployed in cases where actual, explicit consent is unavailable. If there is no reasonable way to get a person's actual consent, you can fall back on a rule of thumb that says: ***if*** a reasonable person ***would*** consent to an act (in this case, causing harm to prevent greater harm), that is good enough as far as consent is concerned[8].

However, additional justification is needed when the harm is imposed in order to provide a benefit. Causing harm to confer benefit (rather than prevent greater harm), without getting actual consent beforehand, requires greater justification because harm is of "heightened moral importance" when compared to the conferral of benefits, and "[there is a] difference between the assessment of harm from the first- and third-person perspectives" such that "it is morally problematic to inflict (unsolicited) a significant level of it on another for the sake of conferring a benefit[9]" (p. 130)

> [H]arm brings about a cleavage between a person's life and her will[10]. When she actively decides to undergo a harmful condition, that cleavage is partially or perhaps entirely bridged by the operation of her will and control. The active engagement and operation of her will, in taking on and endorsing the imposition of harm, changes the significance of the harm into more of that associated with a mere cost[11]. Thus, it may be permissible and rational for a person to agree to undergo a harm to receive a benefit, yet it may not be permissible for another party to impose the harm. (Shiffrin, 1999, p. 130)

Shiffrin presents two thought experiments, the rescuer case and the Wealthy case, to draw out these distinctions between *causing harm to prevent greater harm* (the rescuer case), and *causing harm to provide benefit* (the Wealthy case).

In the rescuer case, a good Samaritan unfortunately has to break someone's arm in order to save them from drowning after their car crashed into a body of water. Thus, the rescuer is causing the harm of a broken limb to prevent the greater harm of death by drowning[12]. According to Shiffrin, the

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[8] Hypothetical consent will receive a more thorough exploration in the next chapter.
[9] How much harm counts as "significant" for the purposes of Shiffrin's argument is more thoroughly explored in (Shiffrin, 2012).
[10] Shiffrin refers to the suffering of harm as containing "special badness" (Shiffrin, 1999, p. 129) for precisely this reason. This plays a large part in establishing the "heightened moral importance" of harms. More on this shortly.
[11] Keep this idea of reducing harm to a "mere cost" in mind, as it will come up a few times going forward.
[12] Shiffrin takes this example from Joel Feinberg, "Wrongful Life and the Counterfactual Element in Harming" (Feinberg, 1986).

rescuer, despite causing harm to the person they rescue[13], is not to blame for this, because external constraints, over which they have no control, forced them into a position to cause harm in pursuit of morally praiseworthy action. The rescuer is not just morally blameless, but morally praiseworthy for their actions, *because of* external factors[14]. In fact, as previously mentioned, the rescuer might be morally *obligated* to cause some degree of (necessary) harm to prevent greater harm.

Shiffrin follows this with a novel thought experiment. In the Wealthy case (causing harm to provide benefit), a man named Wealthy, who lives in an isolated island nation, wishes to donate some portion of his vast wealth to people from another island nation. But the laws of the two countries prevent him from visiting in person, or communicating with other-islanders in any way – he cannot simply wire his fortune over, for example. So he hops in a plane, flies over the other island, and drops a hundred gold cubes, worth five million dollars each, onto the island. The people of the other island are already well-off, but still, five million dollars is a lot of money! Unfortunately, one such cube lands on a man named – in a stunning example of nominative determinism – Unlucky, whose arm is broken by the impact. He has received a benefit (he is five million dollars richer), but has also been harmed (his arm was broken).

There are a few general principles which render this situation relevantly distinct from the rescuer case. 1) The heightened and asymmetrical moral importance of harms vs benefits; 2) the difference in kind between the harm and the benefit; 3) the inability to assume consent (even if Unlucky *would have* taken the deal had he been asked); 4) the unnecessary nature of the harm; and 5) its inseparability from the benefit conferred. Because of these distinctions, Wealthy is morally responsible for the harms visited upon Unlucky in ways that the rescuer is not.

> The fact that Wealthy was involved in benefiting (though nonconsensual) activity when he risked people's safety and broke Unlucky's arm should not shield him from liability for his voluntary, harmful, and risky behavior. Nor should Wealthy be insulated from liability because he could argue truthfully that this benefit could not have been bestowed without imposing the risk of the burden that was subsequently realized. (Shiffrin, 1999, p. 128)

> The benefits and harms presented by human existence are themselves of mixed currency. This example also incorporates other special features analogous to wrongful life cases, including the inability to communicate in advance with the beneficiaries,

[13] "As long as it is clear that the rescuer is not to blame, I am not sure what is gained by denying that the rescuer inflicts a lesser harm" (Shiffrin, 1999, p. 125).
[14] This is what we call foreshadowing folks. It's going to come up later.

> the risk of greater harm, and an inseparable connection between the harmful and beneficial aspects of the bestowal. (p. 127)

It will be helpful to make these principles more explicit, so here they are:

1) Harm and benefit are asymmetrical, both psychologically and normatively, in that harms cleave a gap between one's life, and one's will. Put another way, in addition to its disutility, which is a mirror of the utility of benefits, harm also acts against self-determination. This is bad ***in addition to*** the disutility of harm in a way that is not mirrored by the receipt of benefits[15].

2) The harm the rescuer causes is of the same *kind* as the prevented harm – physical harm was caused to prevent greater physical harm. By reducing the amount of harm overall, the rescuer is absolved of blame for the harm they caused. But in the Wealthy case, the (monetary) benefit is of a different kind than the (physical) harm. They are of "mixed currency". Wealthy has caused one kind of benefit, *and also* caused there to be more harm of a different kind than would have otherwise been present.

3) Because in the rescuer case, the rescued person suffers less overall harm than they otherwise would have had the rescuer not broken their arm, hypothetical consent is sufficient to alleviate the rescuer's blameworthiness. The Wealthy case is different. Unlucky's overall level of harm is ***higher*** than it would have otherwise been, the cleavage between their will and life greater, because there was no danger of greater harm looming over him. Even though Unlucky might have given consent ***had they been asked*** (psychologically reducing the harm to a mere cost of receiving the benefit), Unlucky was not asked and did not actually consent, so there is no subjective bridging of the gap. There is no self-determination at play[16].

4) Hypothetical consent alleviates blameworthiness only to the degree that the harm being consented to is *necessary*. Shiffrin does not say it in this way, but the degree of blame alleviation in the rescuer case matches how necessary the harm was. A sadist rescuer could not take the opportunity

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[15] Benefits can certainly increase autonomy, but only indirectly, by reducing or removing autonomy-restricting harms.

[16] Of course, Unlucky could retroactively give their consent, i.e. they could be psychologically unbothered and say it was fine, thus preserving at least some degree of autonomy and alleviating at least some degree of blame placed on Wealthy. But it is dangerous to assume that, because Unlucky ***would have*** proactively consented and ***could*** retroactively consent, they ***will*** retroactively consent. Wealthy could not act on the presumption of hypothetical retroactive consent, because the very fact that Unlucky was not asked may present a psychological barrier preventing them from giving their retroactive consent.

to cause excess harm and escape all blame by coming in *just short* of the greater harm they prevent in the

rescue. They would be blameworthy to the degree that the harm they cause exceeds what is necessary[17], even if they can legitimately claim hypothetical (or even actual) consent for the harms they cause. Taken with point 3 (it is difficult to alleviate blameworthiness for added harm through hypothetical consent), this indicates that Wealthy cannot rely on hypothetical consent to escape the blame for their unnecessarily-imposed harm.

5) The act of causing the harm Wealthy imposes on Unlucky is inseparable from the act of conferring the benefit. The gold bricks are both the intended benefit, and the instrument of harm – there is no way for Wealthy to provide the benefit without at least risking some unnecessary harm. Taking a moral risk can, depending on the level of risk, be blameworthy, and in the Wealthy case, there is no way to separate the potential (and blameworthy) unintended realization of that risk from the potential (and praiseworthy) intended realization of the benefit.

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Shiffrin includes a further point about *pure* benefits. Wealthy is not alleviating Unlucky's poverty. Money can prevent a lot of life's harms, but Shiffrin stipulates that the beneficiaries of Wealthy's wealth are already quite wealthy themselves (just not as wealthy as Wealthy). Five million dollars is still a benefit, but because the recipients are already well-off, the extra money will not alleviate the harms of not having enough money. The benefit in the Wealthy case is a *pure* benefit.

Though important, the distinction of pure benefit is not important ***in itself***. It does not do any work on its own, it simply supplements points 3 and 4 by placing the provision of pure benefit at one end of a sliding scale. If the act is one of *pure* benefit, i.e. it prevents no harm at all, then no harm is necessary in its provision, so there is no way to alleviate the blame in that way (nor by recourse to

[17] There is some wiggle room around *necessity* here, simply because judging the minimum necessary harm needed to enact a rescue is basically impossible, especially in emergency situations. Yet the rescuer would still be blameless if they do their best and end up causing ***a bit*** more harm than strictly, logically necessary. Another reason: a veteran Search and Rescue operative will almost certainly cause less harm in their rescue attempt than would some random untrained person, but in the absence of a veteran SAR, the extra harm caused by the untrained bystander is utterly unnecessary in one sense (if they'd done a better job, they would have caused less harm), but not another (they can only do the job so well, and if they don't do it, greater harm will result). I think Shiffrin would agree with this caveat.

hypothetical consent). But this is still true of harms caused in the provision of *non*-pure benefits – if only a very small amount of harm is necessary, then only a very small amount of blame can be lifted through the hypothetical consent of the person harmed, even if they are better off than they would otherwise be.

Shiffrin ends the discussion of the Wealthy case with the conclusion that Wealthy's charitable act was morally problematic, and Wealthy is morally blameworthy for the harms that ensued as a result of their risk-taking, even if Unlucky was overall better off that they would have been thanks to Wealthy's actions, and therefore Wealthy owes Unlucky additional compensation. The five million is *why* Unlucky was injured – it is the cause of harm, and therefore should not be considered compensation for that harm. What has been thus far described is a form of the *counterfactual-comparative account of harm* (often acronymized as *CCA*). I will spend the next section refining this conception of harm, and responding to select criticisms when such a response is fruitful to the goals of this thesis. I will not, however, attempt a more comprehensive defence of this counterfactual-comparative account[18].

1.2 Refining this Conception of Harm and Autonomy

In "Asymmetries in Benefiting, Harming and Creating" (2013), Ben Bradley writes that Shiffrin:

> […] reject[s] the part of the picture in which intrinsic goodness and intrinsic badness are thought to be symmetrical with respect to their impact on individual well-being [and] suggest[s] the possibility of a view according to which there is no single scale of well-being to which intrinsic goodness and badness contribute in opposing ways. Rather, positive and negative welfare, or the more specific components of welfare, are simply incommensurable; they provide different sorts of reasons for acting, and reasons of different strengths. (Bradley, 2013, p. 44)

With this, I agree. It is one of the things I like about Shiffrin's account, and it helps her duck (or at least soften) some of the criticisms levelled at a more standard counterfactual-comparative account of harm.

However, Bradley then goes on to state (on pp. 44-45) that this commits Shiffrin to the claim that *all* harms take lexical priority over *all* benefits. I don't think this follows from anything Shiffrin

[18] The counterfactual-comparative account has wide support, and also a great many critics. For a defence of the CCA, see (Klocksiem, 2012), (Klocksiem, 2022), and (Purshouse, 2016). Shiffrin refines her own conception of harm in (Shiffrin, 2012). For criticisms of the CCA, see (Bradley, 2013) and (Johansson & Risberg, 2019).

writes in *Wrongful Life*. Harms are indeed of greater moral importance than benefits, for two reasons: their asymmetrical impact on autonomy; and the fact that harms are certainly of greater ***psychological*** importance to the vast majority of people, and that should matter, at least somewhat, to any normative theory of harms and benefits. Human beings tend to be risk-averse, and prefer avoiding harms over attaining roughly equal benefits.

More importantly, however, is the claim that harms and benefits are different kinds of things. While this account does, as Bradley presents it, claim that harms and benefits do "provide different sorts of reasons for acting, and reasons of different strengths" (p.44), those reasons and strengths are not categorical, do not render the two incommensurate the way Bradley accuses. Harms and benefits are like apples and oranges – both are fruit, and have many relevantly similar aspects, but there are also importantly relevant ***dis***similarities between the two, such that they are not directly comparable in all respects.

Harms are normatively and psychologically more important than benefits, but this does not imply that ***all*** harms are more important than ***all*** benefits. If the harm Wealthy imposed upon Unlucky was that of a stubbed toe, I would not think that the stubbed toe takes absolute priority over the five million dollars[19].

The difference is made in the psychological effect the harm has on Unlucky. Harms create the gap Shiffrin mentions, in which they bring about "a cleavage between a person's life and her will" (p. 130), which prevents genuine retroactive consent and thereby robs hypothetical consent of its moral weight or argumentative force (especially in the case of unnecessary harms), but clearly there are some such gaps which ***can*** be subjectively bridged by the victim, some degree of unnecessary harm which can be swept under the rug or simply laughed off by the person suffering that harm, no matter how unnecessary it may have been.

This ties into the size of the benefit conferred. If, in the course of gifting me a single penny, Wealthy caused me to stub my toe, I might be more annoyed and upset than if I had simply stubbed my toe all on my own, since it is almost insulting that Wealthy made me stub my toe for a penny, and causing that additional negative psychological state is causing additional harm in addition to the harm of a stubbed toe. But for even just ten bucks, I could more easily put that annoyance aside, more easily bridge that gap, thus at least lessening the amount of harm I have suffered.

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[19] For a related and more robust argument against lexical priority in moral principles, see (Huemer, 2010)

But harm and benefit do not scale equally in this, and five million dollars will not help me bridge the gap of a broken arm and thereby wash out that harm. I might happily admit that, despite the grievous injury, I am better off with the broken arm and the money than I would have been without both, but I still register the injury as a harm[20], and neither the monetary benefit itself, nor the fact that I am overall better off than I was, removes the fact that I was harmed, nor dissolves Wealthy's moral blameworthiness. Wealthy has still caused harm, and is still responsible for that harm, regardless of the praiseworthy benefit he also caused.

In short, I am not wedded to the idea that all harms take lexical priority over all benefits. Nor, I think, is Shiffrin.

Now obviously, how this plays out will differ from one person to another. A person with unusually brittle bones or low pain tolerance might find that twenty bucks, or even a hundred, is insufficient to wash out the harm of a stubbed toe. What one registers as a harm depends very much on their particular psychological state[21], but it is also possible for someone to not realize they even have been harmed[22].

In such a case, we can still say that they have received more or less benefit than they otherwise would have; received more or less harm than they otherwise would have; and are overall better or worse off than they otherwise would have been; even if they do not themselves realize it. Of course, if they don't realize they have been harmed, then it seems the harm/benefit asymmetry has disappeared, at least in the psychological domain. Yet while it is possible for someone to not realize their autonomy is being meaningfully restricted, it still ***is*** being restricted.

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[20] It might, in fact, be psychologically impossible for any amount of money to retroactively reduce a severe injury to a "mere cost" in one's mind. I won't say I know this is true for all people, but my gut tells me it's true for the vast majority. As said earlier, if Unlucky ***were*** able to give actual retroactive consent to the injury, and thereby retroactively reduce his injury to a "mere cost", this would at least reduce Wealthy's blameworthiness.

[21] This ties into the idea that consent (even in the limited case of retroactive consent) can turn harms into "mere costs of receiving a benefit". I am specifically and only saying that a small enough harm can cease to be a harm at all when paired with a sufficiently large benefit, ***if*** the putative victim subjectively renders the harm as just such a "mere cost". And while this, too, will play out differently from one person to another, there are limits. I doubt any human being is psychologically capable of ***retroactively*** reducing a shattered arm – including hospital bills and the lengthy recovery time, among all other harms of such an injury – to an autonomously- and wilfully-paid "mere" cost in this way.

[22] This can happen through harms which are so socially normalized and internalized as to be invisible to us, or by having beneficial alternatives denied to us without our knowing they were ever available in the first place.

Here, it will be useful to make explicit how I parse out two different aspects of autonomy, and personal autonomy in particular. Personal autonomy is the ability to make informed, uncoerced, meaningful decisions about the course of one's life – call this the philosophical aspect of autonomy. But the ***feeling*** of making, or being able to make, such decisions is important as well, and this I call the psychological aspect.

The psychological aspect of autonomy to reduce or eliminate some harms – much moreso necessary harms than unnecessary ones – plays an important role in my account of harm, but it is not singular in that respect. A citizen of Big Brother's Oceania might think the impositions of their totalitarian ruler are necessary, and overall beneficial, but they can be wrong about that. With a little attention from the Ministry of Love, they might even genuinely believe that they are as free as a human being can be, but they can be wrong about that too. The psychological aspect of autonomy is very important, but it is not the whole story.

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Shiffrin ends her paper by relating the act of procreation to the Wealthy case. Procreation is morally risky, and parents are morally blameworthy for the harms that ensue as a result of their risk-taking. They owe their child compensation for the harms their child experiences in life, a life they would not have had if the procreative act had not taken place. This compensation is owed even if the overall quality of the child's life is positive, because of the five points raised above. 1) The harms of life are asymmetrical with the benefits; 2) the benefits conferred upon the child by their conception are not of the same kind as the harms experienced in the child's life; 3) the child did not consent to their life, and in fact they could not, so autonomous self-determination has no force in reducing the harms which result from the act of procreation; 4) the harms of life are not necessary for the benefits (i.e. the child does not need to suffer in order to experience life); and 5) the harms of life are inseparable from the benefits, as the harms of life are *caused by* the (potentially overall beneficial) conferral of life.

> All of these burdens are imposed without the future child's consent. This, it seems, is in tension with the foundational liberal, anti-paternalist principle that forbids the imposition of significant burdens and risks upon a person without the person's consent. (p. 137)

"Wrongful Life" is one of those rare and interesting papers that really shook me up, sending my mind racing in various different directions as I turned the argument over in my head. I don't know if I agree with the conclusion – I certainly don't ***want*** to – but I have not yet found a conclusive reason to reject it.

Regardless of whether or not I agree with Shiffrin's conclusion, I find her account of harm convincing. However, there are additional conclusions to draw out of this argument, which I think are just as interesting as her conclusion regarding the moral risks of procreation. Shiffrin's argument applies just as strongly to the state as it does to procreation, via a pair of implications in the Wealthy case that go unexamined[23].

1.3 What does Wealthy Actually Owe?

The first stems from the external constraints imposed on Wealthy, which require him to take morally problematic risks he would not otherwise need to take in pursuit of morally praiseworthy action. In the Wealthy case, the constraints are explicitly imposed by the state.

> [d]ue to historical tensions between the islands' governments, Wealthy and his agents are not permitted to visit the neighboring island. They are also precluded (either by law or by physical circumstances) from communicating with the island's people. To implement his project, then, he crafts a hundred cubes of gold bullion, each worth $5 million. (p. 127)

Unfortunately, the state has come along and said no, he is not allowed to do it the risk-free way, either by going in person or by wiring money through a bank. This is an external constraint on his action.

Externally-imposed constraints should have the same blame-alleviating effect in the Wealthy case as they do in the rescuer case (though the ***amount*** of blame alleviated might be different).

When discussing the rescuer case, Shiffrin writes: "[t]he threat of drowning or the terrible currents are responsible for [the rescued person's arm being broken]; if anything, ***they*** harm her" (p. 125, emphasis mine). If this kind of external constraint is to blame in the rescuer case (thus alleviating blame on the rescuer), why not in the Wealthy case?

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[23] The first is directly relevant to her argument about procreation, such that I consider it a weakness of her paper that she does not include it, though it is quite minor. The second is unrelated to the topic of procreation entirely, so its absence from *Wrongful Life* is not a flaw.

I agree with Shiffrin that there is an asymmetry between *harm in the pursuit of preventing greater harm* and *harm in the pursuit of providing benefit*, for all the reasons I have listed previously. But if moral blame is shifted onto external constraints which necessitate otherwise unnecessary harm in the pursuit of morally praiseworthy action in the rescuer case, what is it about that asymmetry that removes the alleviating effect of external constraints in the Wealthy case? Why is it that external constraints are fully to blame in the rescuer case, but carry no blame whatsoever in the Wealthy case?

If performing morally praiseworthy actions is made more risky than they might otherwise be due to external constraints, then to the degree that these additional risks result in additional harm, those external constraints are to blame to that same degree – and this is true both in the rescuer case, and the Wealthy case.

While I appreciate the usefulness of abstract thought experiments in helping us narrow in on our principles and clarify our arguments, thought experiments can easily – and accidentally – be constructed in such a way that we miss what isn't there, even when what isn't there is directly relevant. The Wealthy case and its restrictions work for Shiffrin's purpose, but I am taking this thought experiment in a different direction, and what isn't there for Shiffrin is now relevant to my purposes.

In addition to external constraints injecting moral risk into the pursuit of morally praiseworthy actions, external constraints also impose some of the harm caused to Unlucky. The healthcare costs associated with fixing a broken arm, for example, are features of the broader society, not of throwing a golden brick out of a plane. Wealthy is not the sole reason this cost exists, so he is not solely blameworthy for them either – the external constraints are to blame for some of the harm, to the degree which they increase the harm.

In *The Politics of Reality* (1983), Marilyn Fry wrote:

> [T]he experience of oppressed people is that the living of one's life is confined and shaped by forces and barriers which are not accidental or occasional and hence avoidable, but are systematically related to each other in such a way as to catch one between and among them and restrict or penalize motion in any direction. It is the experience of being caged in: all avenues, in every direction, are blocked or booby trapped (p. 4)

Social systems (including, but not limited to, the state) can fill the role of external constraint, and are blameworthy for the moral risks they necessitate and the proportion of harm that results.

This is not to let Wealthy off the hook entirely. Wealthy could always choose to… *not* throw 200-pound bricks of gold from an airplane. He is not the reason why it is necessary to take this risk in the pursuit of doing good, nor the reason why the consequences of doing so are as bad as they are. But his decision is still inescapably part of the process that led to this result, and it is not a decision he *had* to make.

This is where the supplementary force of ***pure*** benefit comes in. Throwing money at people who don't strictly need it cannot be construed as preventing greater harm. It is a pure benefit, so the unnecessariness of the harm is greater. I say this is merely supplementary, and not important in itself, because the blame does not disappear outright if the beneficiaries are poor instead of rich. There are harms that stem from a lack of money, and these harms would be prevented by the sudden appearance of five million dollars shattering their arm. Still, Wealthy would be blameworthy even in this case of *non-pure* benefit. Less blameworthy, but not much less. He could have chosen to toss lighter bricks, with parachutes, for example, and in so doing reduce (but likely not eliminate) the risks – and even if those lesser risks did manifest, the level of resulting harm would have been lower, so at least some of the harms imposed by the 200-pound parachute-free bricks are strictly unnecessary even if Wealthy were enriching the tired, poor, and huddled masses.

To explain why requires point 4 from earlier (hypothetical consent alleviates blame only if the harm is necessary). In cases where the beneficiary does not give *actual* consent – thus indicating ahead of time that they accept the harm as a mere cost of receiving a benefit – the degree to which the harm is unnecessary is the degree to which the act is bad. When greater harm is at stake, and some level of harm is necessary to prevent it, *that specific level* of harm is not blameworthy. The pure benefit of the Wealthy case as Shiffrin presents it does not create a different or unique kind of unnecessariness, however. It simply represents one extreme, where the harm is fully unnecessary, and thus the causes of that harm are fully blameworthy (though that blame can be distributed amongst the causes, such that no single cause carries 100% of the blame).

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Let me wrap this section up.

There are various artificial constraints placed on Wealthy, such that he *must* take morally problematic risks if he wishes to perform morally praiseworthy actions. This shifts some of the blame off of Wealthy and onto those external constraints, just like in the rescuer case – "***they*** harm her", according to Shiffrin.

This implication does not yet amount to an argument against the state yet. However, in addition to whatever harms the state might cause directly, the state is at least partly blameworthy when individuals cause more harm, or suffer more harm, than they otherwise would as a result of constraints imposed by the state[24]. This is true even if the state does not provide *pure* benefit, and it is true even if the effects of the state are overall beneficial.

1.4 Harm and the Minimal State

The second implication I want to draw out of Shiffrin's argument stems from the fact that the political state is closer to Wealthy than it is to the rescuer – that is, closer to a case of causing unnecessary harm in the pursuit of providing a benefit than it is to a case of causing necessary harm to avoid greater harm. Justifying this claim will take up the remainder of not just this chapter, but this enitre thesis.

To pursue this topic, I first need to establish what I mean by "the state". To explain that, however, I must take a brief detour and explain authority first.

Authority is the right to be obeyed[25]. This necessarily involves an influence on the behaviour of others, but there are many forms of influence that are not contained within the concept of authority. Authority is not mere force, nor is it violence or coercion, though commands issued by a legitimate authority may require their use to ensure obedience.

Legitimate authority, taken as this right to be obeyed, confers normative reasons for people to do as you say, i.e. they ***should*** obey, or they have a ***duty*** to obey[26]. This is what separates authority from power. Naked power might confer the ability to be obeyed, and can even provide prudential reasons for others to obey. These prudential reasons to obey can have different positive or negative flavours depending on the kind of power and how it is deployed, i.e. a person should obey ***because*** it will be good for them if they do; or ***because*** it might be bad for them if they don't.

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[24] What can I say, I really like foreshadowing.

[25] As said in the introduction, I take this basic definition from both G.E.M. Anscombe and Robert Paul Wolff, partly because it accurately captures the term as I mean it, and partly because Anscombe and Wolff are about as politically far apart as it is possible to be, yet they both share this sense of authority, so it is at least palatable to a wide range of political standpoints.

[26] The "right" to be obeyed here can be parsed in a variety of ways. You might reject a rights-based approach to normativity entirely. This is fine. The important part here is that legitimate authority generates normative reasons to obey the holder of that authority. The particular framework in which this normativity is embedded is not the topic at hand.

Because authority by itself does not necessarily confer the ability to be obeyed, claims of legitimate authority often come with the additional claim that the wielder of that authority has the right to enforce obedience. How far this additional right to enforcement extends can vary wildly. Locking up murderers; firing an employee; barring entry to a location; evicting a tenant; verbal reprimand; or threatening any of the above. All these (and more) are expressions of power, but here I am more interested in the ways liberal philosophers attempt to legitimize the authority which in turn legitimizes that power.

Taken alone and without any qualifications, the range of authority is extremely narrow. An expert in some field has a degree of authority only in their field of expertise, for example, and has almost no right to enforce this authority by any means but reason and convincing argument. If you are just learning to weld, you should obey the instructions of an experienced welder, insofar as those instructions pertain to learning how to weld, but the authority of the welder does not extend to the use of violence or incarceration in the pursuit of teaching someone to weld. When fleeing a burning theatre, you should obey the staff who, presumably, know the building better than you, and have a fire escape plan in place – and the deployment of physical force may be legitimate in coercing the unreasonably obstinate.

In *God and the State,* anarchist Mikhail Bakunin made the point like this:

> In the matter of boots, I refer to the authority of the bootmaker. Concerning houses, canals, or railroads, I consult that of the architect or engineer. […] But I do not [allow the bootmaker, architect, or engineer] to ***impose his authority upon me*****.** […] If I bow before the authority of the specialists and avow my readiness to [follow their directions], it is because their authority is imposed upon me by no one, [but] by ***my own reason***. [27] (Bakunin, 1970, pp. 32–33) (emphasis mine)

To impose (or enforce) authority on someone is necessarily to act on them without their consent[28]. As Shiffrin would put it, this denies them their autonomy, it cleaves their will from their life, which is precisely what gives harm its "special badness". Remember that it is not ***only*** harm which has this cleaving effect. Unnecessary and imposed (or un-consented-to) harm has this effect ***in***

[27] Anarchists are not perfectly aligned on this point. Many use the term *authority* only in the more restricted sense of *political authority* I am about to describe.

[28] To clarify, a person may willingly and freely obey a legitimate authoritative request or command, but in that case they have given their consent, and the authority in question is not imposed upon them, and no enforcement is needed.

addition to its own disutility, but the suppression of autonomy is bad in itself, even if not associated with or the result of other harms.

Recall again back to Shiffrin's points 3 and 4. The harms caused by enforcing authority can be imposed ***if and only if*** the harm of that imposition is necessary to prevent some greater harm. So the *right to be obeyed* aspect of authority does not imply an attendant right to harm people except to prevent greater harm, in which case you are only justified in causing the minimum amount of harm necessary for that prevention[29]. Here, it would be good to also recall from *footnote 17* that I think this conception of "necessary" has some wiggle room. I don't intend to be a stickler about this and say that any amount of harm above the logically minimal amount is meaningfully problematic.

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Whereas simple authority is interpersonal and highly limited in scope, ***political*** authority is institutional, ***im***personal, and wide ranging, the result of human-made social structures which confer the right to be obeyed on people who hold particular positions within the relevant institution, and extend that right over large populations.

"Positions" in this sense can range from monarch, president, or prime minister, to police officer, judge, and low-level bureaucrats like insurance clerks, tax collectors, or property assessors. They are all conferred with authority by their place in the social structure, and we are legally bound to obey them. Not for any personal qualities they might hold and which we might personally assess on a case-by-case basis, but by the mere fact that they hold their position in the social structure that is the state. The law does not allow for personal judgement regarding the worthiness of legal authority, and does not care if I consent[30]. I am legally obligated to obey whoever holds the relevant position regardless of why or how they have come to do so (so long as the *how* is in line with legitimate rules and processes).

The authoritative social structures in which people sit, not the people themselves, are what I refer to when I say "the state", and it is the legitimacy of this structure which is sensitive to consent.

This is not to make an ontological claim that social structures like the state have real, positive existence, separate from the people that make them up. It is my view that social structures are

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[29] Foreshadowing is a literary device in which a storyteller gives an advance hint of what is to come later in the story.

[30] Specifically, ***the law*** does not care if I consent, but the legitimacy of the authority of legislators or other agents of the state to ***pass*** such a law ostensibly derives from consent.

emergent systems, social phenomena reducible to individuals and their interactions, and are outright fictitious. But if so, they are *useful* fictions to which we can meaningfully refer, even if only as a cognitive tool to aid our understanding. If we want to understand and act in the world, it must be legible to us, so we necessarily must abstract and simplify[31].

It is important to note that, in addition to the right to be obeyed, the state further asserts that it is justified in enforcing that right with coercion – including violence, or credible threats of violence, if need be. In other words, the state claims hypothetical consent for causing harm to enforce their right to be obeyed, regardless of actual consent.

I'm sure you can already see the trap here, so let me quickly say something. I am not cynically manipulating definitions to unfairly snare the state. I have simply restated Weber's *monopoly on violence* definition of the state in the language of harm and legitimacy, and while such a monopoly is not usually considered sufficient for the state, a ***near*** monopoly is almost universally considered necessary – its presence does not guarantee a state, but the state requires its presence.

I am not sure what a state without such coercive enforcement of authority would even look like. Jettison that, and out goes the entire force of the law, reducing judges, police, leaders, and legislators to merely some people far away who ask me to follow their rules, and nothing will happen to me if I don't.

This is less than even Robert Nozick's *minimal state*. While Nozick's right-libertarian principles might be incompatible with those of many liberal philosophers, I will make regular use of his concept of a minimal state going forward, as it sets a sort of theoretical lower limit on the level of authority necessary for a political organization to count as a state. Most liberal political philosophers think the state should wield much more power than this minimal state, the use of which requires a stronger claim to the right to be obeyed, which in turn requires more robust legitimation. Thus, taking on Nozick's minimal state means taking on the most restrictive and difficult standard for my forthcoming argument to meet.

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[31] Every question can, if reduced far enough, be answered with *because the Big Bang happened*. But in almost every case, this explains nothing we are meaningfully interested in when we ask questions. We have to stop the reduction somewhere if we want to understand the world we live in. Where this reduction should end is a pragmatic problem, and depends on what we are trying to understand, what questions we want answers to. Since I am trying to understand the ways in which hypothetical consent can make authority, especially state authority, legitimate, analyzing the state as a distinct thing is pragmatically and epistemically necessary, even if, strictly speaking, I take such a position to be ontologically false.

The minimal state serves three functions: contract enforcement (judiciary), internal security (private protection agencies, a sort of proto-police), and protection against external invasion (a military). This requires a monopoly, or close to a monopoly, on the use of force in a territory, and it must use that monopoly to provide these three services for everyone in that territory (Nozick, 1974). According to Nozick, this minimal state is necessary for the protection of individual rights. In other words, without the minimal state it is difficult-to-impossible to secure the rights of the individual, and any social group of sufficient size will always form *at least* this minimal state to secure those rights. These two claims – that the state is necessary for a desirable society, and the state is historically inevitable – will be investigated more closely in Chapter Three.

If either is true, the harms of the minimal state are necessary (insofar as they prevent the greater harms of the non-political state of nature[32]), and it is therefore not morally blameworthy for its harms. It is, in fact, morally praiseworthy for the beneficial actions which unfortunately cause them. It is, however, clear that the minimal state will cause harm. Enforcing contracts, even if they should be enforced, will impose upon some of us without our consent. It sometimes requires that harm be done, usually in the form of violence, sanction, or deprivation, or credible threats thereof, to force some people to conform to the private contract. ***Even if*** this harm is necessary to prevent greater harm, and therefore these acts of coercion are morally blameless, they are still harm, and even Nozick's minimal state must enforce a (near) monopoly on the ability to perform these actions.

It is not logically necessary for the state to enforce such a monopoly, but it is ***historically*** necessary. If it does not, it has no way of suppressing challengers or enforcing cohesion, and will be replaced or dissolve, respectively. These are existential threats to the state. States that don't utilize their powers of coercion to enforce their authority against resistance, even justified resistance, die out, and states that do, survive. By analogy to evolution, the practice trends toward fixation among all states.

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I have argued in this chapter that when the state punishes the breaking of contracts, provides security, and defends its own existence, it inevitably causes harm. Hypothetical consent can be used to legitimize the authority to cause this harm only to the degree that this harm is necessary.

[32] More on the state of nature in Chapters Two and Three.

What level of harm is actually necessary to avoid the greater harms of the non-political state of nature? And, if we can answer that question, what does that answer say about how we understand liberal theory? The remainder of this thesis will explore these questions more thoroughly.

Chapter 2 – Some Cognitive Scaffolding

Some more harms of political authority, why we would consent to such harm, and why non-ideal philosophy is the ideal approach to analyze this topic

Before I can answer the questions that closed out the previous chapter, some refinement is needed. First, while I touched briefly on a few ways authoritative institutions can cause harm, more needs to be said. The discussion in Chapter One primarily considered physical harms and related consequences – pain, drowning, broken limbs, healthcare costs, etc. – which will be imposed in the enforcement of the law and political authority. This chapter will briefly expand that analysis, investigating how political authority, at least on the face of it, seems opposed to the principles of liberty and equality.

Second, I have been relying on hypothetical consent without fully fleshing out what that means, or how it might interact with harm and the legitimization of authority. I hold what I take to be an generally acceptable conception of hypothetical consent, at least in politically relevant cases – in brief, if a reasonable person ***would*** consent, that is sufficiently robust to support claims of political legitimacy[33] – and this conception is going to play an important role both in answering how the harms of authority could be legitimized, and in the arguments to come in Chapter Three, so I will spend some time fleshing out the theory before moving on[34].

In the previous chapter, I wrote of consent in regard to acts. Here, I am expanding this to include consent to *states of affairs* – though I take consenting to a state of affairs to simply mean consenting to all (or at least most) of the acts taken to bring about and sustain that state of affairs, so not much has changed. In this context, I take a "political state of affairs" to be the entire social, legal, political, and economic situation a person finds themselves in.

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[33] There are cases where this definition of hypothetical consent is too specific. For example, when dealing with a comatose patient, we do not refer to a standard of "what a reasonable person would consent to". Rather, we (usually) rely on the knowledge of close family to guide our actions based on what they know about what the patient would want. We could call this something like *hypothetical consent by proxy*. This is a relevant aspect of hypothetical consent, but for reasons I will explore later, I do not think it applies to the actions of the political state.

[34] To keep the scope of this thesis manageable, I will not be giving a robust defence of hypothetical, as opposed to actual, theories of consent and legitimacy, except where responding to a particular criticism serves my final purpose. Likewise, I will not spend much time on what constitutes a reasonable person. I am simply relying on a generic sense of "reasonable".

Third, Chapter Three takes a specifically non-ideal approach to liberal theory, drawing on fields such as psychology, anthropology, and history, and drawing out a novel concluding argument by incorporating information from these disciplines into liberal theories of hypothetical consent. I will spend some time stating why I think such an approach is indispensible, not just for my own project, but for political philosophy as a whole.

In Chapter One, I wrote briefly on the kinds of harm which result from state action, even from the minimal state proposed by Robert Nozick, and that the ideal state conceived of in liberal theory is almost always invested with much greater power than that minimal state – and therefore, the ideal liberal-democratic state requires a much stronger claim to legitimate authority than the minimal state. Trying to pin down a strict definition of liberalism (or any political school of thought) is something of a fool's errand. From Jeremy Waldron's "Theoretical Foundations of Liberalism":

> Partly this is because those who call themselves "liberal" or "socialist" or "conservative" have never had anything like complete control over the use of that terminology: an opponent is often happy to call a view 'liberal' which many selfstyled liberals would repudiate.
> […] these bodies of theory were not developed in isolation from one another. From the point of view of the modern classifications, they seem hopelessly eclectic and impure pieces of work. Those we call "liberals" would think nothing of responding to, drawing on, or admitting to having been influenced by the works of those we call "conservatives" or "socialists"[35]. (Waldron, 1987, pp. 127–128)

I have no intention of trying to nail down a working definition of liberalism or liberal-democracy here. I do, however, aim to shift our understanding of two common liberal principles: liberty, and equality. According to Akeel Bilgrami, liberty and equality are "the most central political ideals that define the modern period of the North" (Bilgrami, 2021, p. 110). Libertarians and "classical" liberals focus primarily on liberty as a core principle, though even then, equality plays an important role in the good functioning of a legitimate state[36]. Meanwhile, liberal egalitarians take these two principles to

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[35] Conservatives, likewise, have always gladly interacted with and absorbed aspects of liberal and socialist theory, while socialists have taken on many aspects of conservative and liberal thought. The same is true of libertarians, unmentioned by Waldron. None of these traditions are "pure" in any meaningful sense, and especially given the hegemonic breadth of liberal thought for the last hundred years, even many who loathe the very thought of being "a liberal" are, in fact, comfortably contained within the philosophical tradition of liberalism. I take my argument to work just as well on conservative, socialist, and libertarian thought as it does liberal.

[36] For example, Nozick's minimal state should be impartial and fair; treat like cases and like persons alike; defend the rights of each person without bias or favouritism; and not punish contract-breaking in arbitrary or selective ways.

ride together, in that we cannot have the kinds of liberty we care about without also having some meaningful level of socio-economic equality, and vice versa.

> There is little disagreement among political philosophers, democratic theorists or empirical researchers of democracy that freedom and equality are the two core principles of liberal democracy. What is highly disputed, however, is the meaning of the two democratic principles and the proper relation between them that makes for a good political order. Building on centuries of political thought, more recent views on this question range from the firm conviction that too much socio-economic equality jeopardises political and individual freedom to the position that a certain level of socio-economic equality is necessary for the proper realisation of freedom. (Giebler & Merkel, 2016, p. 594)

I want to briefly draw attention to a particular phrase here: "the meaning of the two democratic principles ***and the proper relation between them***". Liberty and equality are often framed as being in tension with one another, if not mutually antagonistic, at least in part. We often imagine that perfect equality requires some imposition upon our liberty, or that total liberty must naturally result in inequality.

As Akeel Bilgrami points out in "The Political Enlightenment: A View from the South" (Bilgrami, 2021), there is a serious mystery here. Why have we formulated our political theory in such a way that our ***two most fundamental values*** are in irreconcilable, non-zero-sum conflict? Bilgrami's solution is to look outside the liberal tradition to find a more fundamental value, as our understanding of liberty and equality are too tied up in specific conceptions of the terms.

Like my earlier reaction to Simmons (see footnote 1 in the introduction), I agree with the criticism, but this mystery is the result of a general failure of liberals to take their principles with appropriate seriousness and to incorporate relevant empirical data which should inform how we understand our principles, rather than a flaw in the principles themselves.

2.1 Liberal Principles and Consent to Political Authority

The (or at least, a major) reason political authority needs legitimation in the first place is because we recognize that it is often imposed upon a population through coercion and force. This imposition often harms those living under the authority of the state, even if overall the benefits outweigh the

harms[37], or if some of those affected accept the harm as "mere costs" of receiving the benefits of state authority[38]. If it were not, there would be little in need of legitimation.

The more limited sense of personal authority – the right to be obeyed, derived from one's relevant personal expertise or knowledge – supports neither imposition nor significant enforcement outside of emergencies, e.g. you should obey the commands of staff escorting a crowd out of a burning cinema, because they know the building and have a fire-escape plan, and if you do not, they may in fact have a moral obligation to force you to obey in pursuit of preventing greater harm, to yourself or to others in the crowd. But the range of this authority is narrow, temporary, and highly sensitive to context.

The other, political sense of authority – the right to be obeyed, derived from one's position in society regardless of personal qualities[39] – is deeply ***im***personal. The subject of that authority is not invited to weigh its merits, not allowed to judge for themselves the legitimacy of the claimed right to be obeyed. The range of political authority is vast, spanning the entire citizenry of a country and beyond. Political authority is permanent, and remains even when the person inhabiting an authoritative position in society changes. And it is difficult, often impossible, for the state to meaningfully attend to the context of any particular situation.

To see why, I want to bring in some conceptual work by the anthropologist James C. Scott, in particular his excellent book *Seeing Like a State* (Scott, 1998). Scott's analysis focuses on what he calls High Modernism, an often utopian belief in the ability of rational social planning and scientific management of society[40]. I will be reframing some of his analysis into the terminology I have been using, such as harm and the minimal state.

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[37] As discussed in the previous chapter, morally praiseworthy, even morally obligatory, actions can, and often do, cause harm.

[38] If all of those affected accept the harms they suffer as "mere costs", then this part of the problem disappears. But, as I will discuss briefly in this chapter, and more thoroughly in the next, it is entirely possible for a person to make this psychological move because they believe something false. In such a case, it would not be reasonable for them to do so, which throws a potential wrench in the power of hypothetical consent to lend legitimacy to the authority to perform the act that caused the harm.

[39] So long as the attainment of that position followed the proper procedure, which must itself be legitimate.

[40] "It is best conceived as a strong, one might even say muscle-bound, version of the self-confidence about scientific and technical progress, the expansion of production, the growing satisfaction of hum an needs, the mastery of nature (including human nature), and, above all, the rational design of social order commensurate with the scientific understanding of natural laws. It originated, of course, in the West, as a by-product of unprecedented progress in science and industry."

Scott argues that modern states attempt to make society more "legible" (i.e. more understandable) by simplifying and standardizing things like land ownership, agriculture, names, urban planning, and social practices. While this legibility helps the state with taxation, control, and administration, and is necessary for any modern state, it often comes at the cost of erasing rich cultural practices, and washes out context-specific practical and experiential knowledge held by individuals.

In order to perform its functions of contract enforcement, internal security, and military defence, and to enforce via coercion its authority to perform these functions, the minimal state requires a great deal of information about those living under it. But the information it needs to collect, incorporate, and act upon is incredibly complex. Even the relatively simple, trimmed-down task of *protecting property rights*, a libertarian staple, is vastly more complex a task than any human being could hope to manage without forcing all the relevant information into a simplified form which is legible to the state. There are many ways to conceive of property, and a limitless variety of ways human beings have organized ownership of objects and land, and no state could hope to formally manage all of this variety.

Be it individually-owned (private) property, communally-owned (public) property, or government-owned (also, annoyingly, called public) property, or any of many other ways to conceive of the concept of "property", they all share this core idea: to claim ownership of property is to claim the right to exclude others from its use. It might be that no one has this right over any object, in which case you have a society without a conception of property, but if there ***is*** a conception of property, this is its primary feature. And there are so many ways to shape this concept, many of which are entirely compatible with one another. How is the minimal state to determine which, among the many possible property schemes, it is to enforce? Must it pick one, or can it allow for multiple overlapping property schemes?

And this is only to investigate the simple idea of "what counts as property". Once the state has sorted out an acceptable scheme, it still needs to gather data on who – be it an individual, a community, all persons, a government, or some combination of these – actually owns a given piece of property, for which it needs consistent and predictable names.

According to Scott, names have historically been incredibly fluid. Limiting this discussion solely to English naming conventions, last names in particular have, until relatively recently, been slippery things, given as conventions for locals to refer to, rather than formal identifiers. One might take the

first name of a parent as one's last name, until getting a job, only to then move to another village and gain yet another name. No longer Johnson, the person in question becomes Fletcher, only to move and, having come from the West Country, is now named West. To the people who use these conventions, this is easily tracked, and is in fact more informative than a static and unchanging last name. To the state, this is an incomprehensible and informal mess of constantly shifting information.

Even if you trim out all of this rich and vibrant complexity and restrict yourself only to a Nozickian conception of property, Nozick's principles and arguments still support a robust form of publicly-owned communal property[41]. The boundaries of this community-owned property, fully in line with right-libertarian principles, are constantly in flux, changing with use and convention. While I can easily imagine a political institution which accounts for this complexity by conceding the power to define what counts as property to the owner of that property, this concession represents such a reduction in authority as to place the institution in question well below the level of authority needed for the minimal state.

Scott's ultimate point is that formal order is always, and to a considerable degree, parasitic on informal and inexact processes, which the formal scheme does not recognise and cannot itself create (at least, not alone), but without which it could not exist. The creation of permanent and inherited last names, standardisation of weights and measures, creation of population registers and land surveys, invention of freehold property ownership, standardisation of language and legal practices, and organisation of transportation are all tasks the minimal state must perform to make the complex information it collects legible to its agents. All of these changing informal processes must be formalized and made static so that they can be recorded and monitored and tracked, or the minimal state cannot perform its functions.

This concept of legibility and state formalization represents a significant difference between personal and political forms of authority, in that personal authority is much more sensitive to context and experiential knowledge, and far more responsive to the shifts of informal processes, than political authority can be. Even the authority of the minimal state requires interfering in the normal flowing process of human social life, which can easily be read as interfering with the principle of liberty. And this authority is not equally distributed, instead being assigned to particular people who hold particular social positions, which can likewise be read as interfering with the principle of equality.

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[41] Nozick would ***absolutely*** not agree with this, but anarchist philosopher Roderick T. Long makes a convincing argument that this is, in fact, the case. See "A Plea for Public Property" (Long, 2011). More on this, and why it is important, near the end of this chapter.

Further still, most forms of liberal theory posit an ideal society in which political institutions carry far more authority than that of the minimal state, requiring greater formalization of, and interference with, that process. And, if you'll allow me a moment of poetic flourish in which I paraphrase one of the many themes found in Frank Herbert's *Dune*, you cannot understand a process by stopping it.

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The practical impossibilities of acquiring actual consent on a political scale renders every state, even perfectly ideal ones, utterly illegitimate. It would not be possible for any state to get the actual consent of each and every person for each and every law or command, and therefore no liberal-democratic state of any meaningful size could ever be legitimate, neither in practice nor theory[42]. But this requires that one hold *actual* (rather than hypothetical) consent as the relevant theoretical standard for evaluating the moral permissibility of state action or a political state of affairs, and I do not[43].

For the sake of space, and to keep the scope of this thesis manageable, I will not be giving a full defence of hypothetical consent here, nor my reasons for holding hypothetical consent over actual consent as the proper relevant standard for theories of political legitimacy, except where responding to a particular criticism serves my final purpose. However, a brief reminder of the previous chapter's exploration of harm and consent will help clarify the position I do hold before moving on.

To quote Shiffrin, "[a]bsent evidence that the person's will is to the contrary, it is permissible, perhaps obligatory, [to cause harm in the prevention of greater harm]" (Shiffrin, 1999, pp. 11–12). In situations where you cannot get actual proactive consent for the imposition of harm ***and*** you have good reason to think they would consent if asked (so, absent evidence that the person's will is to the contrary, and good reason to think it would not be), hypothetical consent is good enough, at least to the extent that the harm you cause is necessary to prevent greater harm. Any risk of harm beyond that point introduces moral risk. Hypothetical consent does not alleviate your blameworthiness for any unnecessary harm you cause.

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[42] Even the minimal state, with its minimal impositions (and therefore minimal opportunities for non-consent) would struggle to get the actual consent of more than a relatively small number of people. A few dozen, perhaps a few hundred people at most.

[43] I do, however, think that the standards of hypothetical consent are much higher than often presented, and that actual consent might, at least sometimes, carry more normative weight when it you can get it. More on this shortly.

The actions of any state that exercises its authority over more than a few hundred citizens will always be in just such a situation, unable to get actual proactive consent for, as an easy example, prohibitions against murder[44]. Clearly, we want prohibitions against murder, and we want these prohibitions to be held society-wide. We also want our response to breaking these prohibitions to be fair and uniform. That is to say, we want the punishment to fit the crime, the rehabilitation program to be relevant to the act, etc.; and we should have a roughly similar response to roughly similar acts performed by roughly similar people, regardless of who they are[45]. Thus, absent evidence that society's will (i.e. the will of each member of society) is to the contrary, and on the assumption that prohibitions against murder and punishments for breaking those prohibitions are necessary to prevent the greater harm of lawlessness (and therefore society's will would not be to the contrary if asked), the harms of prohibition and punishment are permissible, if not morally obligatory.

Some forms of actual consent theory might hit a snag on that "absent evidence that the person's will is to the contrary" bit. It is entirely possible for someone to withhold consent ***when they should not do so***, i.e. a person might unreasonably refuse to give their actual consent to a given act, even when there are good reasons – morally and prudentially – for them to consent. Sticking to the case of punishment for murder, obviously many murderers do not consent to imprisonment, or to any punishment at all. You might think that, in committing murder, the murderer has given up their right to have their consent taken into consideration. ***However***, the authority to override unreasonable non-consent in this way is exactly the sort of thing we are trying to legitimate here – that is to say, the authority to determine when actual non-consent can be overridden, such as when punishing a murderer, is itself the kind of authority that is meant to be legitimized by consent in the first place.

Further, there might be many non-murderers, for whom there is no conflict of interest or suspension of consent, who think that murderers should not be punished. They may, for instance, believe that prohibitions against even something like murder do more harm than good, or excessively infringe upon the value of liberty[46] – and in practice, though we want criminal punishment to be fair and uniform (if we want punishment to occur at all), it rarely is, infringing deeply upon the principle of equality as well, especially equality before the law – one of the fundamental expressions of the

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[44] The choice of this "easy example" is not accidental, and will come up again in Chapter Three, because foreshadowing is fun like that.

[45] Obviously, there is nuance around what counts as roughly similar acts, committed by roughly similar people – mental illness, coercion, and other extenuating circumstances should be taken into consideration, and render these acts and the people committing them meaningfully different.

[46] Whether they are right about this or not – whether or not their non-consent is reasonable – is another theoretical question with inescapably empirical components.

principle of equality, on which much of liberalism rests. Whatever their reasons, these people represent meaningful, actual non-consent to the authority to punish murderers.

The ease with which hypothetical consent theories handle issues like this is part of why they are so attractive. A reasonable person ***would*** consent to prohibitions against murder, and therefore everyone ***should*** consent, giving some normative grounds for enforcing that prohibition[47], or at least for ignoring unreasonable or ill-informed non-consent.

In other words, hypothetical consent can give normative support to the claim that the state has the right for its prohibition against murder to be obeyed, and is safe in issuing that prohibition and enacting it within the bounds of its authority without needing to proactively obtain actual consent[48].

It would be good to remember the distinction between proactive and retroactive consent explored in Chapter One. We cannot assume that someone who hypothetically ***would*** give actual proactive consent ***actually will*** give their retroactive consent. This puts theories of hypothetical consent in an interesting conundrum against theories of actual consent, in that by trying to avoid the practical difficulties that any large institution has in acquiring the actual consent of all those over whom it exercises its power and authority, that institution may take reasonable people who genuinely would have given their proactive consent had they been asked, and by acting upon them turn them into reasonable people who now ***do not*** give their actual ***retroactive*** consent, specifically because they were not asked[49].

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Throughout these first two chapters, I have laid out an, admittedly limited, selection of harms any state, be it Robert Nozick's minimal state or a more authoritative ideal liberal democracy, must impose to maintain its authority and perform its basic functions. Some of these harms are quite

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[47] Whatever shape that enforcement might take, be it retributive, rehabilitative, transformative, etc.
[48] To call back to a footnote from the introductory chapter, I do not think this move from actual to hypothetical consent reduces consent to a "quasi-voluntarist standard" and that philosophers "have illicitly appropriated the justificatory force of voluntarism while being [...] in no real way motivated by it" (Simmons, 1999, pp. 760–761). But, and this is an important but, many philosophers, intentionally or not, ***do*** in fact duck (or at best, fail to understand) the high standards of hypothetical consent, and thus fail to understand what kind of society best instantiates their principles.
[49] Though my view of the relevant literature is limited, discussion of this aspect of hypothetical consent and its implications for political legitimacy appears to be non-existent. Perhaps this means the discussion is trivial, and I have merely missed something obvious. I think the hypothetical consent theoretician could at least say that, because they ***would have*** proactively consented, they ***should have*** retroactively consented. But this is pure speculation on my part.

severe, or are at least quite intrusive, and beyond merely harming us directly, they also negatively impact our core liberal principles.

We have also seen how consent can reduce harm to the "mere cost" of receiving a benefit. Actual consent can do a lot more work, but in situations where it cannot be acquired, or it is unreasonable to think it could be acquired, hypothetical consent can pick up the slack when the harms being imposed are necessary to avoid a greater harm.

2.2 Potential Dangers of Ideal Theory

So, we have at least one avenue that can legitimize political authority, with all its attendant harms, and that is consent to such a state of affairs. Achieving the actual consent of all those over whom that authority operates is impractical, so we rely instead on hypothetical consent, which is to say, if a reasonable person would consent to a state of affairs in which political authority is present, then that state of affairs and that political authority are legitimate.

The next step is obviously to ask, what politically authoritative state of affairs would a reasonable person consent to, anyway? Unfortunately, despite its obvious centrality to any theory that seeks to answer Williams' basic legitimation demand[50] and establish the legitimacy of political authority, this question always seems to get swept under the rug, either by simply assuming the answer is obvious – often so obvious that the theoretician in question seems annoyed that they must their time answering it – or by not mentioning it at all.

Harold Laski introduces his book *Authority in the Modern State* by planting his flag in the "it's so obvious" camp (and for all of the following quotes, emphasis is mine):

> We start with the one ***compulsory form of human association*** – the state – as the centre of analysis. […] Outside our state-context we are, after all, largely unintelligible, must be, as Aristotle so scornfully proclaimed, beasts or gods who defy interpretation. (Laski, 1919, p. 5)

Fellow "this is obviously true" traveller John Horton said the following (taken from the transcript of a podcast interview):

> If one dispenses entirely with the idea of political obligation, one is left with a serious problem. It ***surely*** is not sufficient simply to leave it to people to make their own decisions about which laws they want to obey, which authorities they want to obey

[50] As discussed in the introductory chapter.

> when, and such like. It seems to me that such a view is ***clearly impossible***. (Edmonds & Warburton, 2011)

G.E.M. Anscombe falls into the "annoyed that she has to waste time on this" camp:

> Two attitudes are possible: one, that the world is an absolute jungle and that the exercise of coercive power by rulers is only a manifestation of this; and the other, that it is both necessary and right that there should be this exercise of power, that through it the world is much less of a jungle than it could possibly be without it, so that one should in principle be glad of the existence of such power, and only take exception to its unjust exercise.
> ***It is so clear*** that the world is less of a jungle because of rulers and laws, and that the exercise of coercive power is essential to these institutions […] (Anscombe, 1981, p. 45)

> "To think that society's coercive authority is evil is akin to thinking the flesh evil and family life evil. These things belong to the present constitution of mankind; and if the exercise of coercive power is a manifestation of evil, and not the just means of restraining it, then human nature is totally depraved in a manner never taught by Christianity." (Anscombe, 1981, pp. 46–47)

And when Jeremy Waldron investigates the theoretical ***foundations*** of liberalism, his analysis simply assumes the existence of the state (Waldron, 1987), which does not seem very foundational to me. Laski at least ***says*** that he is making this assumption, but Waldron does not seem to think an explicit mention is worthwhile.

Rawls too simply assumes, without much argument, the existence of the state in his ideal society, indicating his belief that any reasonable person[51] would, from behind the veil of ignorance, choose at least some kind of authoritative political state (Rawls, 1999). He also writes:

> Our topic, however, is that of social justice. For us the primary subject of justice is 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. By major institutions I understand the political constitution and the principal economic and social arrangements. (Rawls, 1999, p. 6)

[51] Here, I mean the generic conception of a reasonable person I have been using throughout, not Rawls' specific concept.

Here, Rawls is taking the "basic structure of society" to include "major social institutions" with the power to distribute rights and duties, and divide advantages in society, presupposing at least some form of political authority. Much like Waldron's putative foundations, this does not seem very basic to me.

In short, the claim that any reasonable person would consent to the (not insignificant) harms of state authority – usually a level of authority far in excess of the minimal state – is so often taken to be so obvious among most political philosophers that it requires no argumentation at all.

But, like any unspoken, hidden, or unexamined premise, its obviousness is certainly open to debate, because what laws and institutions you ***imagine*** a reasonable person ***would*** consent to rests on your intuitions about human nature, and those intuitions rest on beliefs about psychology and history. That is to say, many arguments in political philosophy rest on empirical facts about what human beings are, or have been, like. Continuing the trend, this connection often goes unacknowledged when philosophers do political theory, because as Karl Widerquist puts it:

> Political philosophers and theorists don't usually think it's their job to check facts. We check for logical validity and normative plausibility; we usually leave fact checking to the empirical disciplines. (Widerquist, 2010, p. 1)

We abstract away from reality, work in the realm of ideal and concept. But this can be dangerous to clear thinking, in sneaky ways. In "Ideal Theory as Ideology" (Mills, 2005), Charles Mills writes that ideal theory relies on idealization and abstraction "to the exclusion, or at least marginalization, of the actual" (p. 168)

> What distinguishes ideal theory is not merely the *use* of ideals, since obviously nonideal theory can and will use ideals, […] ideal theory either tacitly represents the actual as a simple deviation from the ideal, not worth theorizing in its own right, or claims that starting from the ideal is at least the best way of realizing it. (p. 168)

Mills then lays out a series of abstractions frequently found in political theory. Political philosophy has to characterize human beings in *some* way,

> so some overt or tacit social ontology has to be presupposed. An idealized social ontology […] will typically assume the abstract and undifferentiated equal atomic individuals of classical liberalism. Thus it will abstract *away* from relations of structural domination, exploitation, coercion, and oppression, [which] profoundly shape the ontology of those same individuals. (p. 168)

John Rawls defends precisely this approach in *A Theory of Justice*:

> What I have attempted to do is to generalize and carry to a higher order of abstraction the traditional theory of the social contract (pg. xvii) […] The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of more pressing problems. (Rawls, 1999, p. 8)

And in "Facts and Principles", G.A. Cohen says something similar, in even stronger terms:

> […] the question for political philosophy is not what we should do but what we should think, even when what we should think makes no practical difference. (Cohen, 2003, pp. 242–243)

This approach to theory-building is uniquely philosophical – and, as someone who came into philosophy with a multidisciplinary background, utterly flabbergasting. I urge, as Mills does, that you

> […] perform an operation of Brechtian defamiliarization, estrangement, on your cognition[52]. Wouldn't your spontaneous reaction [to this approach] be: *How in God's name could anybody think that this is the appropriate way to do ethics?*" (p. 169). […] this spontaneous reaction, far from being philosophically naïve or jejune, is in fact the correct one. If we start from what is presumably the uncontroversial premise that the ultimate point of ethics is to guide our actions and make ourselves better people and the world a better place, then [this approach] will not only be unhelpful, but will in certain respects be deeply *antithetical* to the proper goal of theoretical ethics as an enterprise. (Mills, 2005, p. 170)

This does not mean ideal philosophy is useless. In "Ideal Theory in Theory and Practice" (2008), Ingrid Robeyns writes:

> We don't know if [the ideal] can be reached, [yet it] is our ultimate goal. It gives us the direction in which we should be moving to reach a (minimally) just society. […] Take Rawls' theory of justice: it clearly spells out which principles of justice should be met before a society can, according to Rawls' view, be considered fully just. (Robeyns, 2008, p. 345)

While I agree with Robeyns here, it is only to a point. For example, there is nothing in Rawls that tells us what kind of inequality really is to the benefit of the least well off[53] – it's an open

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[52] Meaning, forget what you know and view the topic as someone who has not been trained to do philosophy this way.
[53] The second part of Rawls' difference principle, a core component to his theory of justice.

question, which needs an answer before we can actually identify the form of the ideal society[54]. Rawls' theory of justice does not "clearly" spell out what this principle, this "ultimate goal", actually *is*[55]. To quote from *Democracy for Realists* (which itself includes a quote from Wallas, 1908):

> Even if reality necessarily fails to correspond to the ideals, [ideal theorists argue] the ideals are valuable and should serve as the basis for modifying or reconstructing the reality. But for this argument to make sense, it must at least be the case that the ideals are not *too* unrealistic[56].
>
> [A century ago] Graham Wallas (1908, 127) skewered the logic of unrealizable ideals: 'No doctor would now begin a medical treatise by saying, 'the ideal man requires no food, and is impervious to the action of bacteria, but this ideal is far removed from the actualities of any known population.' No modern treatise on pedagogy begins with the statement that 'the ideal boy knows things without being taught them, and his sole wish is the advancement of science, but no boys at all like this have ever existed.' (Aachen & Bartels, 2016, p. 7)

Just as theories of medicine must start with empirical facts about human biology, and educational theories must be grounded in practical consideration of how learning actually occurs, action-guiding normative theories have to incorporate ***from the start*** the relevant (but messy) empirical facts about psychology and history that philosophers would prefer to leave to other disciplines, because "[while] it is possible to do ethical theory without reference to facts, it is not possible to ***apply*** ethical theory without reference to facts." (Widerquist, 2010, p. 1, emphasis mine).

And I refer you back to Mills above. The whole point of ethical theory, including political philosophy, is to guide real human action. Ethics demands application, and any action-guiding theory needs to be sensitive to empirical facts about the actions it guides, and the people performing those

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[54] Obviously, I am giving a very limited view of Rawls's theory here, and he does provide a variety of features we should look out for when appraising whether or not a society is just. The point here is not to criticize Rawls or his theory, merely to point out that what you think it takes to meet his principles – what a society that accounts for the features Rawls writes about might look like – depends on your pre-existing beliefs.

[55] One could respond by saying that the principles presented by ideal theory are *meant* to be abstract, and that further work is needed to really clarify them. But then ideal theory is not "clearly spelling out" anything.

[56] Rawls argues that his ideals are, in fact, not too unrealistic. I am agnostic on this particular question, and it doesn't actually matter for my purposes. I am arguing that a) what you think counts as "realistic" or "too unrealistic" depends on your background beliefs regarding human psychology and history, and b) even if we have realistic ideals, what you think it would take to satisfy them likewise depends on those background beliefs.

actions. This is well understood in concepts like “ought implies can”, but I think the empirical tendrils run much deeper than that, especially in political philosophy.

The problem is that heavily idealized theory leaves wide open conceptual spaces, which need to be filled before what the ideal actually ***is***, is made clear. Defenders of ideal theory rarely deny that we need ***non***-ideal theory to transition from our present society to our ideal one. I am going further. There is no reason at all to think we can simply ***imagine*** our way to an understanding of worthwhile goals in the first place, if our imagination is not firmly grounded in facts. The goals identified by ideal theory tell us nothing about what those goals look like – they do not, in fact, "give us the direction we should be moving".

The goals identified by ideal theory are black boxes in a dark room. We can stumble around at random, grasp at anything that feels right – without ever knowing what ***right*** is supposed to feel like in the first place – or we can incorporate relevant facts and turn on the lights. Importantly, light does not simply illuminate the space between us and our goal. It illuminates the goal itself.

Ideal theory might identify a goal, but fact-sensitive, non-ideal theory clarifies it. Ideal theory tells us where we want to go, non-ideal theory is the signpost that tells us where that actually is. The danger lies not in the ideal theories, but in our ability (or inability) to fill the abstract spaces of those ideal theories with relevant knowledge and concrete facts. If we don't have the relevant knowledge, what we bring into our ideal theory in might not be concrete, but mud, laying the foundations of an epistemically unsound theory.

I take myself to have made five closely related and overlapping points here.

1) Ideal theory alone is not sufficient to formulate worthwhile goals. We need to include some reference to empirical facts about human beings in order to conceptualize ideals worth having, worth philosophizing about. I am not saying that political philosophers fail to do this – and in fact, I think most philosophers ***do*** do at least this much.

2) Which relevant empirical facts you hold will heavily impact what you think are worthwhile ideals to have in the first place.

3) Those same empirical facts will likewise determine what you imagine a society that meets those ideals would look like, i.e. what you imagine the features of an ideal society would be.

4) Those same empirical facts will likewise determine what you think we must do to get from here to there, i.e. what changes to should be made to improve real-world societies and move them towards your imagined ideal society.

5) Political philosophers do not seem particularly concerned with investigating their beliefs about the directly relevant empirical facts that underpin all of the above, and therefore their political imaginations may not – almost certainly ***do*** not – rest on strong epistemic foundations.

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To provide an example, I want to quickly return to a rather controversial claim I made earlier, that Nozick's theory of property supports a robust array of public ***communal*** property, in addition to the individual private property he is normally associated with. Again, I do not think Nozick would agree with this interpretation of his theory, but it doesn't matter. I have a very different conception of what his theory actually entails, because I have a different set of beliefs about the relevant empirical facts.

In "A Plea for Public Property" (Long, 2011), Roderick T. Long provides a quick thought experiment:

> Consider a village near a lake. It is common for the villagers to walk down to the lake to go fishing. In the early days of the community it's hard to get to the lake because of all the bushes and fallen branches in the way. But over time, the way is cleared and a path forms – not through any centrally coordinated effort, but simply as a result of all the individuals walking that way day after day.
> The cleared path is the product of labor – not any individual's labor, but of all of them together. If one villager decided to take advantage of the now-created path by setting up a gate and charging tolls, he would be violating the collective property right that the villagers together have earned. (Long, 2011, p. 160)

How much property in the world falls under this conception? This is an empirical question, and how you answer it ***drastically*** alters Nozick's theory. And it turns out, quite a lot of the original appropriation of land in particular, which so concerned both Locke and Nozick, happened in a way more closely resembling that Long laid out, and very little of it looks anything like the ***individual*** mixing their labour with the land that Locke (and Nozick) imagine.

Long continues.

> A somewhat different libertarian argument for private property focuses on the human need for autonomy: the ability to control one's own life without interference from others. Without private property, I have no place to stand that I can call my own; I have no protected sphere within which I can make decisions unhampered by the will of others […] But what is the position of those who are not property owners (specifically, those who do not own land)? A system of exclusively private property certainly does not guarantee them a "place to stand." […] If everywhere I can stand is a place where I have no right to stand without permission, then, it seems, I exist only by the sufferance of the "Lords of the Earth" (in Herbert Spencer's memorable phrase).

Far from providing a sphere of independence, a society in which all property is private thus renders the propertyless completely dependent on those who own property. This strikes Long as a dangerous situation, given the human propensity to abuse power when power is available. If the poor and landless destitute do not have "a place to stand", their autonomy is unfairly restricted, and in such a case, Nozick's libertarian principles require enough public property be open for use that no one's autonomy be restricted by lack of land ownership, or ownership of property more generally.

But whether or not the propertyless are actually restricted, and how much is necessary to alleviate this restriction, are empirical questions, and how you answer them ***drastically*** alters Nozick's theory.

And so on. Long identifies a series of arguments deployed by right-libertarians, especially in the Nozickian tradition (which itself borrows heavily from the Lockean tradition), in favour of private property, and shows how every single one necessitates open, public and communal property. But every time, how far this necessity extends depends on empirical facts about community behaviour, the effects of social structures, and how much (and whose) labour went into the land, or into a given product.

Long also dispels the Nozickian argument for intellectual property, based entirely on empirical facts about how ideas spread. It is not necessary to get into this argument here, merely to point out that this entire discussion is positive evidence in favour of my proposition. Without changing a word, Nozick's theory means something wildly different depending on the background beliefs you hold about relevant empirical facts. This is true not just for Nozick's theory of property, which I have used merely as an example, but to any political theory.

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Principles inform practice and practice informs the theory that generates those principles, both processes feeding into one another in a virtuous circle, with neither coming first nor taking priority. That is the structure of non-ideal theory as I see it[57].

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And with this, I have done enough prepatory work that I can finally get to the point. In this chapter, I have provided a few connected ideas about harm and consent, and shown how even a level of authority as low as that of Robert Nozick's minimal state must intrude in a wide array of social and individual processes which often go unnoticed. Since they go unnoticed, they go un-imagined, and un-theorized, much to the detriment of political theory.

The next chapter is dedicated to asking two questions: given the understanding of harm I laid out in Chapter One, and how it interacts with the content of this chapter, what ***would*** a reasonable and well informed person actually consent to; and what, therefore, should we imagine when we picture the ideal liberal society?

[57] This is a different – though I would argue, mutually compatible – conception of non-ideal theory than that held by Charles Mills. For him, ideal theorists theorize about perfect justice as a means to understand injustice in the world; while non-ideal theorists build theories of current and historical ***in***justice, giving them a better understanding of that injustice. My position is that theorizing about perfect justice cannot be done well without a deep and thoroughgoing infusion of empirical facts into our ideals and principles, and that these non-ideal facts are just as integral to political theory as the ideals themselves. Without them, we cannot understand our own principles and ideals.

Chapter 3 – Killing the Imagination

How mistakes we make about human psychology and human history degrade our ability to imagine alternative societies, and how this obfuscates the role of consent in liberal philosophy

When Jeremy Waldron says that "a social and political order is illegitimate unless it is rooted in the consent of all those who have to live under it"(Waldron, 1987, p. 140), what does he mean by "those who have to live under it"? Is he referring only to the citizens of the state that wields authority over them? Does he include non-citizens[58]? It is entirely possible for a state to exercise its authority over people far beyond its borders, and can easily cause harm in doing so. Does Waldron think a given liberal-democratic state needs the (hypothetical) consent of those people to be considered legitimate?

If Waldron were to (erroneously) think that state authority extends only over its own citizens and ends at its own borders, then what he thinks authority, legitimacy, and consent ***means*** within his broader theory would be different than if he were to realize that political authority impacts a vast number of non-citizens all over the world.

Canada is often described as three mining companies in a trenchcoat, and uses its power to influence environmental and industrial laws all over the globe – as in Africa, where Canadian mining companies, backed by the power and of the Canadian state, suppress wages, labour rights, and environmental regulation in pursuit of extracting and exporting resources for use in the Canadian and global markets (*Profiles of Some Canadian Mining Companies Operating in Africa*, 2001). To repeat myself from previous chapters, even if you think the impact these companies have is overall beneficial, providing jobs and stability for impoverished locals, the harms they cause are not necessary to grant the benefits, and the authority of these companies is tied up tightly with the authority of the Canadian state. How much does the consent of African employees matter to the legitimation of the authority of Canadian corporations, and Canadian political institutions?

To be clear, I am not a Waldron scholar. It is entirely possible that he has easy answers to these questions. My point is that, when it comes to the legitimation of authority, whose consent you think is relevant depends on how far you think the authority being consented to actually extends, and that is

[58] Either within or without the state in question. Though the vast majority of non-citizens live outside a given state, permanent residents, tourists, and undocumented migrants are just a few examples of non-citizens living ***within*** that state, even if only temporarily.

an empirical question with strong normative and theoretical implications. Without changing a word of the theory, Waldron has very different ideals depending on what he might believe about how far, and how strongly, state authority extends.

In this chapter, I will explore this method of analysis, taking recent evidence from psychology, anthropology, and history, and filtering that information through the concepts discussed in the previous chapters – authority, harm, hypothetical consent, liberty, and equality. I will continue to use Nozick's concept of a minimal state to set a lower bound on what I mean when I talk about the state, though my argument is not limited to that minimal state.

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A quick note before I continue. Throughout the previous chapters, I have emphasized that this thesis is not concerned with the injustices of actually existing states. While I am personally very concerned with such things, that is not the topic of this work.

However, at multiple points in this chapter, I will use evidence of such injustices of actually existing states to support my conclusion, which is that correcting for false beliefs about the facts of human psychology and history should change what we think our theories mean. To make this argument, I have to work with the evidence I have, which will have to come from actually-existing socio-political structures, i.e. actually existing states.

I am not trying to argue that injustices performed by such states support my point, ***but*** they contain generalizable lessons which do, often by providing evidence in contradiction to beliefs commonly held among the general population, including political philosophers.

Most notably, I will talk about the history of human poverty, especially in its relation to the rise of the modern nation-state and capitalism; and about the punishment bureaucracy and its effects on pro- and anti-social behaviour. A few other topics will come up, but again, the focus is on correcting false beliefs, not about the injustices themselves.

Speaking of false beliefs…

3.1 The Hobbesian Hypothesis and Consent

In 2017, philosopher Karl Widerquist and anthropologist Grant S. McCall published their first book together, *Prehistoric Myths in Modern Political Philosophy* (Widerquist & McCall, 2017). In it,

they describe something they call the "Hobbesian hypothesis". They present a few different versions of this hypothesis, but in every version, it is closely connected to (some version of) the Lockean proviso. Their focus is on what they call the "weak" version of the Lockean proviso, which they present thusly:

> […] an institution (such as the state or the property rights system) can justly be imposed on people providing everyone living under its authority is better off than they could reasonably expect to be in a society without such authority. (Widerquist & McCall, 2017, p. 4)

And the correspondingly weak Hobbesian hypothesis:

> Everyone is better off or at least as well-off under the authority of a sovereign state (and/or under the authority of the private property system) than they could reasonably expect to be living in a society outside of any such authority. (Widerquist & McCall, 2017, p. 4)

Widerquist and McCall stress that this is, in fact, no more than a hypothesis. Though much ink has been spilled regarding the Lockean proviso, most political philosophers, with little if any argument, simply expect readers to take the Hobbesian hypothesis as true – that the weak Lockean proviso is, in fact, fulfilled. According to Widerquist and McCall, even when philosophers take a stronger version of the Lockean proviso as the correct standard for political philosophy[59], and state that this stronger version is ***not*** satisfied, they still take the weaker version to be so. But this is an empirical claim which has received, and continues to receive, minimal investigation. So while few philosophers use the term hypothesis to describe this Hobbesian premise (if they mention it at all),

> The correct word for an unverified empirical claim is a *hypothesis*. Hence we are unapologetic about attributing this term to Hobbes and other theorists making similar claims […] (Widerquist & McCall, 2017, p. 5) (emphasis in original).

The authors identify the works of Thomas Hobbes as the strongest source of this premise's popularity in modern political philosophy, hence *Hobbesian* hypothesis. But while Hobbes may have made this move popular, he did not invent it[60], nor was he the last to use it. Widerquist and McCall

[59] As their focus is on the "weak" Lockean proviso – which is more common, more difficult to argue against, and contained within the stronger version – the authors do not provide a clear example of this "strong" proviso, and do not spend much time on it.
[60] A similar premise can be found in the works of Plato and Aristotle, for example.

spend some time providing examples throughout the book, with a focus on works of political philosophy from the 1950s on.

To do the same here would take an entire chapter of its own, for which I do not have room. Such an effort would not be directly relevant to the project of this chapter anyway. Strictly speaking, my argument does not rely on the claim ***that*** political philosophers do not properly engage with empirical evidence which is directly relevant to their theories, but that ***if*** we fail to do so, an accurate understanding of human psychology and human history can, and should, change what we think our principles actually require, what our own theories actually mean.

I also think that we ***do***, in fact, fail to engage with the deeply embedded empirical content of our theories, and as such have a poor understanding of what our theories actually suggest about the ideal society, about justice, and about the principles of liberty and/or equality. Though I have sprinkled in a few examples of my own in previous chapters, and will continue to do so throughout this chapter, I will not be recreating all the evidence for this rhetorically supportive, but technically tangential, claim. I simply refer you to the work done by Widerquist and McCall in *Prehistoric Myths in Modern Political Philosophy*.

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The pair explores a few different forms both the proviso and hypothesis can take, depending on their use in contractarian and propertarian approaches to political philosophy[61], but in every case, the emphasis on ***everyone*** being better off is crucial. Both traditions are framed as theories of "mutual advantage". Individuals only opt (or hypothetically ***would*** opt) into the social contract, for example, if it is to their benefit, or at least not to their detriment, i.e. the society laid out in the social contract must at least not result in their being worse off than they would otherwise be. So,

> […] if "everyone" doesn't literally mean everyone, then a "mutual advantage theory" literally isn't a theory of mutual advantage. […] Presumably, it is most important to justify that authority to the people on whom that authority is most onerous, but the non-literal reading of "everyone" singles out exactly that group as the one that can be ignored. (Widerquist & McCall, 2017, pp. 59–60)

[61] "Propertarian" theory, according to Widerquist and McCall, is a rights-based theory which posits strong private property rights as the only or primary foundation of the ideal society, and the proper role of the state is to defend these rights. This thesis will focus on the contractarian tradition of state legitimation, but as I have said throughout, I think the argument travels cleanly to other traditions – to any theory that relies on the Lockean proviso, or the Hobbesian hypothesis, or on consent.

To rephrase this into the terminology I have been using: since it is the harms of authority that are most in need of legitimation, then it is the consent of the people who suffer the most harm (or fail to receive the most benefit they otherwise would have received or experienced) due to state authority that matters most. This centrality of mutual advantage is not universal among contractarians, but it is an important aspect of most social contract theories.

In relation to contractarianism and hypothetical consent, the Lockean proviso and Hobbesian hypothesis serve as premises in the following argument, which they take to be common in modern political philosophy:

> P1: Lockean proviso: the state is justified if it benefits people so much that they would consent to it if they were all rational, reasonable, and sufficiently well-informed.
> P2: Hobbesian hypothesis: the state does in fact benefit people that much.
> C: The state is justified[62].
> (Widerquist & McCall, 2017, p. 42)

In trying to put the entire Lockean proviso into one P1, the authors have packed quite a lot into that single premise, so let's unpack it a bit.

> P1a: If the state provides enough benefit, then rational, reasonable, and sufficiently well-informed people would consent.
> P1b: If rational, reasonable, and sufficiently well-informed people would consent to the authority of the state, then the state is justified.
> P2: The state does in fact provide enough benefit, such that any rational, reasonable, and sufficiently well-informed person would consent.
> C: Therefore, the state is justified.

I want to draw your attention to the phrase *sufficiently well-informed*, as that has so far been only lightly touched upon. In the field of medical ethics, which is by its very nature forced to come to terms with empirical fact and real-world behaviour in the application of ethical theory, consent alone is not good enough. It is not good enough to get explicit and actual proactive consent, even if that

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[62] Because they are speaking very broadly, the authors leave open just how far "the state is justified" goes. I doubt they are claiming that all philosophers who use an argument of this form – whether it be implicit and unspoken, or stated explicitly – are themselves claiming that all states are perfectly just. While that is left as an open possibility, Widerquist and McCall are more likely claiming that philosophers who use this argument are themselves claiming that the political authority of the state is justified against a state of affairs that lacks any kind of political authority. Avoiding this ambiguity is why I prefer to use *legitimate* in this context, and I think you could swap in the word *legitimate* where they use *justified*.

consent is not coerced in any way. Consent must also be ***informed***. In order to count as consent worth counting, the consenting person must be reasonably well informed of the consequences of their choice, and the consequences of relevant alternatives. And while medical ethics deals most often, though not exclusively, with direct and explicit *actual* consent, the importance of informed consent still applies when that consent is hypothetical.

This stronger notion of consent better gets at what we want from consent in the first place. In medical practice, the need for informed consent is predicated on the connection between consent and autonomy, in that someone who is better informed is better able to make decisions which are meaningfully autonomous. Autonomy is tied directly to the principle of liberty, and as we will see in a later section, autonomy also weighs heavily on the causes of anti-social behaviour.

This is why in the previous chapter I called attention to how we inevitably slot our own beliefs into the open spaces of ideal theory. It is not enough to say that we imagine a reasonable person would choose something like contemporary liberal democracy over a society without any political organization[63]. In order to claim legitimacy for any authority, we must show that a reasonable person would consent to that authority even if, or better yet ***because***, they are well-informed of relevant alternatives.

To bring back a concept from Chapter One's discussion of harm, consent can reduce the harms of state action to a "mere cost" of receiving the benefits of that action, but this emphasis on informed consent can lead us back into the messy distinction between the philosophical and psychological aspects of autonomy that has come up in previous chapters.

It is entirely possible for someone to consent to harms suffered by the imposition of political authority because they ***erroneously*** believe those harms are necessary to avoid greater harm, or that the benefits are, compared to any viable alternative state of affairs, so beneficial that they render the harm practically invisible, and thereby subjectively reduce the harms they suffer due to exercises of state power to "mere costs" necessary to achieve a desirable state of affairs. In this case, the person's

[63] Saying (and I'm paraphrasing here) "it's better than nothing", as if the only alternative to status quo political organization is *no* organization, has a venerable history in liberal philosophy. Hobbes made this explicit in *The Leviathan* as a fundamental premise in his state-of-nature argument, but it did not end there – it remains a common sentiment even among philosophers today. For example, John Horton (2012) says that "[living outside of political organization] virtually always makes a worthwhile life extremely difficult" (pg. 139), and while it is not stated explicitly, by "political organization" he means the state.

psychological autonomy, their ***feeling*** of autonomy, is preserved, while their ***philosophical*** autonomy is restricted.

And this gets us into another sticky problem. Because this person holds false beliefs about the nature of the harms suffered and benefits received, they are consenting in error. They consent, but only because they are not well informed about their situation and the viable alternatives – they ***do*** consent, but ***should*** not. If, as discussed in the previous chapter, hypothetical consent gives theoretical backing to reject the non-consent of people on the basis of their ***non***-consent being unreasonable or ill informed, then there is a symmetrical allowance to reject the ***consent*** of people when that consent is likewise unreasonable or ill informed – up to and including those who give their actual, even proactive, consent.

This is why I disagree with A.J. Simmons when he says that hypothetical consent reduces consent to a "quasi-voluntarist" standard that subsequently robs consent of its legitimizing power (Simmons, 1999). Simmons' concern regards the use of hypothetical consent as a tool to ignore actual non-consent, and while I agree that theories of hypothetical consent are often deployed to get around the inability of actual consent to legitimate the state, by taking seriously this problem of erroneous and illegitimate consent, I think the hypothetical standard is actually quite high.

3.2 The Hobbesian Hypothesis is False

The main thrust of *Prehistoric Myths in Political Philosophy* is that the Hobbesian hypothesis is false, even in the wealthiest of liberal democracies, and that therefore the Lockean proviso is not actually satisfied. The authors identify a few key metrics – life expectancy, average height (as a proxy for overall nutrition, especially in childhood), and access to leisure time – and find that the poorest 5-10% of people in liberal-democratic states today are ***worse on all three metrics*** than both modern stateless people can reasonably expect to be, and pre-state humans were on average. That is to say, humans living in the state of nature tend to live longer, have better access to nutrition, and have vastly more free time for leisure activities[64] than the poorest people living in industrialized liberal democracies today (Widerquist & McCall, 2017).

[64] It is difficult to draw any meaningful comparisons between modern and pre-state lifestyles, and how much work is needed to sustain them. The standard 40-hour workweek does not describe how much work we do. Most people spend many hours outside of their job performing tasks necessary to meet their basic needs, such as shopping, and travelling to and from their jobs. This time is not leisure time, nor is the time our poorest spend begging on the street, even if they don't have full-time jobs – and many do.

Thus, the Lockean proviso is not fulfilled, not even by the wealthiest societies to have ever existed on this planet. It is not the case that ***everyone*** actually is made better off than they would otherwise be by the presence of the state, or by inclusion into the social contract. In fact, many of us are made ***worse*** off than we would otherwise be. Whatever benefits authoritative state institutions might provide for most of us, they cause a great deal of harm to some people living under that authority, while simultaneously preventing those people from attaining the benefits, however small they might be, of life outside of that authority. There is no reason to think that these people would hypothetically consent to such a state of affairs, and since these are precisely the people suffering the greatest harm from the authority that makes this state of affairs possible, these are precisely the people whose consent matters most[65].

Widerquist and McCall were hardly the first to argue something like this. Many people have presented criticisms of, and evidence against, liberal-democratic and capitalist states. To recreate that mountain of evidence here would be a Sisyphean task. And such criticism is often ineffective, for at least two connected reasons. First, the overwhelming majority of these criticisms are negative and deconstructive, providing no plausibly viable constructive alternatives. Second, because no alternatives are given to the authoritative institutional structures that are being critiqued, the immediate comparison is between something like the status quo, whatever its negatives, set against medieval feudalism, slavery, or worse yet, nothing at all; and in that comparison, liberal-democratic states, whatever their negatives, look pretty good[66].

We often look back at recent history and see the progress we have made – and a great deal of incredible positive progress has, in fact, been made over the last two hundred years[67] – and we extrapolate backwards from there. We see the sorry state of, to take an easy example, the rights of Blacks in the United States in the 1950s; we see that it was worse in the 1920s; worse still before the

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Even after correcting for all of that and leaving room for error, stateless and pre-state peoples spent significantly less time working than almost all of us, ***especially*** the poorest of us.

[65] I said earlier that I am interested in exploring our theories of the ideal society, and not, at least for the purposes of this thesis, in the injustices of actually existing states. And here I am, talking about exactly that. I am going somewhere with this, I promise, though I do take Widerquist and McCall's conclusions to be pretty damning as to the legitimacy of actually existing states.

[66] Another reason: when it comes to the suffering of the people shoved to the bottom, most of us, including most philosophers, just don't give a fuck.

[67] Medicine, infrastructure, the rights of all people, especially women and people of colour – these have all vastly improved, and ***most*** our lives are vastly better off for it. But "most" isn't good enough, and plenty of people have been made worse off by this process.

end of slavery in the United States; and so on; and we imagine that this pattern of violent, oppressive race relations must continue on back through time. So too with the rights of women; with horrible plagues and epidemics; with access to clean water; with violence and warfare and famine.

When talking about the history of human poverty, the authors of "Capitalism and Extreme Poverty" put it like this:

> The standard public-facing narrative about global extreme poverty (defined as the inability to access essential goods such as food) holds that widespread absolute destitution is the natural condition of humanity, and that the rise of capitalism delivered a steady and dramatic reduction in global poverty over time. (Sullivan & Hickel, 2023, p. 160)

In a way, this is a reflection of the Hobbesian hypothesis. And, much like the Hobbesian hypothesis, this belief is so deeply engrained that people often feel no need to cite their sources. But when they do, and you track down their source – and their source's source, and that source's source, and so on – you almost always end up at a specific data set found in "Inequality among World Citizens" (Bourguignon & Morrisson, 2002), which rose in popularity when it was converted into the form of a visual graph by Martin Ravallion's *The Economics of Poverty* (Ravallion, 2016), then exploded to even greater heights when the graph was presented in Steven Pinker's incredibly influential *Enlightenment Now* (Pinker, 2018).

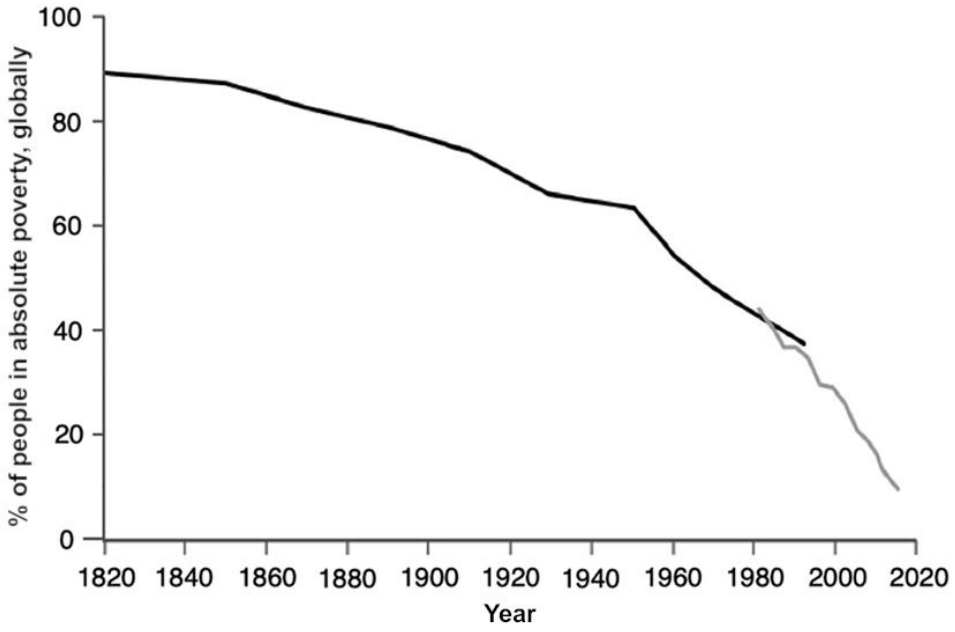


Figure 1 - the aforementioned graph

This gives the impression that, prior to the early 1800s, roughly 90% of humanity was living in extreme poverty, and seems to contradict the evidence provided by Widerquist and McCall. But first, this graph only provides the general ***average*** trend in poverty. It might be the case that the vast majority of people today are so much better off that those at the bottom, who we now know are worse off, are washed out by the averaging process.

Second, and more importantly… why does this graph begin in 1820? The original data set relies on purchase power parity (PPP) as a proxy for the ease or difficulty in acquiring basic necessities, as far back as it goes (this is the grey line in Figure 1). For the long stretch of time before PPP information was available, GDP is used instead (the black line). But information about GDP goes back much further than 1820, and while it does get less and less precise the further back one goes, the choice of 1820 seems, at least on the face of it, rather arbitrary.

One could be cynical and say that Ravillion (and Pinker) chose to cut their graphs at that particular year because that decade marks absolute rock bottom for global extreme poverty. That is to say, the years around 1820 represent the highest proportion of people living in extreme poverty in all

of human history[68]. Starting their graph at the highest point of human poverty makes the subsequent reduction appear more substantial. In other words, placing their start date at 1820 shows the greatest contrast between the highest and lowest points, even if that contrast is misleading, for reasons I will explain shortly.

But I don't actually think they had this in mind when it came to selecting their start date. I think their choice does have this effect, which partly explains why that specific graph has become so popular – the results are stark, and seem so clear! – but there is another, perhaps better, explanation.

Their goal is to show the positive effects of capitalism and liberal democracy on overall human well-being, and 1820 seems like a pretty good starting point for such a goal.

This, however, relies on a common mistake. Many people think of capitalism as a phenomenon of the 1800s, but this is not so. Among historians, it is not controversial to say that capitalism had reached full maturity centuries earlier, sometime in the late 1500s to mid 1600s (DuPlessis, 2019; Sullivan & Hickel, 2023; Tilly, 1985)[69]. There is plenty of wiggle room here, with some historians pushing the date a bit earlier or a bit later, but to place the advent of capitalism as late as the early 1800s is not merely controversial, it is laughable.

There is another problem. While purchase power parity serves as an okay approximation of extreme poverty[70], GDP doesn't even deserve that lukewarm praise. GDP and extreme poverty ***usually*** ride together, but frequently come catastrophically apart, and do so frequently enough to make GDP as a measure of extreme poverty very unreliable. Sullivan and Hickle provide three better criteria, all three of which do a better job of tracking extreme poverty than either PPP or GDP, and they are: real wages, height as a proxy for access to nutrition (especially childhood nutrition), and child mortality[71].

Sullivan and Hickle track these three metrics back much further than 1820. Their work shows, rather conclusively, that everywhere capitalism is introduced, be it Europe in the 1600s, or elsewhere

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[68] There have been many times and many places where extreme poverty was higher, but these are temporary localized outliers, the result of disaster, famine, and war. They are rarely widespread enough, for long enough, to show up on a graph of global average extreme poverty – just like our forgotten poor.
[69] Obviously, the shape of the economic system we call capitalism has changed in the intervening centuries. "Mature" here means that the feudal economy was mostly gone, and the core features of a capitalist economy were all in place.
[70] Though, owing to its relative youth, we don't have enough experience with PPP to know how good a job it does of tracking extreme poverty in the long term.
[71] Conveniently, these partially overlap with the data used by Widerquist and McCall. Isn't it strange that those who use better data are so often critical of actually-existing political and economic structures?

in the world via European empire-building and colonial expansion, we see a significant decrease in real wages, a reduction human height and weight (suggesting a decrease in access to nutrition), and an increase in child mortality and maternal death in childbirth. These criteria do not improve until deep into the industrial revolution, specifically coinciding with the rise of social and labour movements that represent a concerted effort to resist the political authority that caused these harms. And in many places, these better indicators of extreme poverty ***still have not recovered*** to the level they were at centuries ago, which means that a higher portion of people live in extreme poverty in those places than did so a few hundred years ago, before the introduction of modern economic and political systems. Just as the fact that the poor and destitute of liberal democracies are worse off than those living in the state of nature is washed out by the statistical averaging of the graph above, so too are the people living in these regions of the world. These are the people whose consent matters most.

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The focus of this thesis is political authority in the ideal society, as expressed in abstract political theory, but though these two examples are of flaws in actually-existing political and economic structures, the information contained within will be useful going forward, and there are two things in particular that I wish to draw out.

First, I have said a few times that political authority really does have a significant impact on people far beyond the borders of the state which wields that authority, and these are direct examples to support that claim[72]. That is to say, there are many people for whom the Lockean proviso would (or at least could) be satisfied, if not for the authority of political institutions which do not include them within the bounds of the social contract that putatively legitimizes the authority of those institutions. Therefore, the consent of those impacted people is necessary to legitimize that authority, even if they are not citizens. Almost everyone around the world has had, and continues to have, their own political institutions violently moulded into the shape of the European nation-state, and the authority to do such a thing cannot be legitimate if a reasonable and well-informed person would not consent to the harms they have suffered, and still suffer today, which evidently makes many people around the world worse off than they would otherwise be.

Second, beliefs about human well-being in history are unreliable, and often false. Since those beliefs overlap with or influence many of our beliefs about the benefits of political authority and what

[72] The examples provided are of the political authority to sustain and impose particular economic relations (which are themselves authoritative), but the point is not restricted to economic relations.

life must be like, or must have been like, outside of that authority, these beliefs are likewise unreliable, and often false.

It is this second point that I will explore going forward. The next section will draw information from fields such as anthropology and psychology into a discussion of the state of nature, and will briefly gesture towards a more constructive account of plausible alternatives to actually-existing liberal democracies which do a better job of instantiating liberal principles and ideals.

3.3 The State of (Human) Nature

The standard story of human nature (at least as it pertains to politics) includes some version of the following beliefs:

1) Human beings have natural inclinations towards competition, self-interest at the expense of others, and violence – not always, but too often. Without authoritative control, society would unravel into an undesirable state of affairs marked by high degrees of violence and harm.

2) Effective and efficient distribution and usage of resources cannot be achieved by the unorganized public, a problem sometimes known as *the tragedy of the commons*.

3) High levels of inequality are a natural result of freedom, especially free economic exchange.

4) Solving these problems in large-scale complex society, especially modern industrial society, requires centralized coordination, and a coercive power imbalance between the citizen and some higher political institution vested with the authority to enforce rules by which we can overcome these problems.

Not every political philosopher fully believes every one of the above stories, but some combination tends to flow through political thought. These stories are hard to see in the theories themselves, since they are abstracted away. But you see them everywhere in the ***application*** of theory, often stated explicitly by citizens, politicians, pundits, political scientists, and (when you can pin them on something concrete) by liberal philosophers themselves. This was the whole point of the various *state of nature* thought experiments of Hobbes, Locke, and Rousseau.

Hobbes' state of nature is famously pessimistic – "solitary, poor, nasty, brutish, and short" (Hobbes & Missner, 2008). Society arises out of initial conditions of total freedom, but that total freedom results in a miserable society of constant violent competition. Human beings are rational creatures, and we realize that we can give up some of our freedom in return for better lives. But we

need something to ensure that this deal is enforced, so we create an authoritative political organization to act as arbiter of this deal, legitimizing the authority that makes such a life possible[73].

This is what Daniel Dennett calls a *boom crutch*, a thought experiment that, should we lean on it too hard, explodes right out from under us – a metaphor for how they can lead us astray by pumping our intuitions in useless or harmful directions, casting darkness rather than shedding light (Dennett, 2013, p. 13). In this case, the crutch's fuse is lit when we investigate the actual facts of the matter. Hobbes is making a variety of claims regarding human behaviour which, when investigated, show us that his starting premises are false, so the conclusions that are meant to follow from those premises are likely false, or at least on shaky ground[74].

Far from being solitary, nasty, and brutish, life for pre-state humans could be remarkably cooperative. Human beings default to cooperation more often than otherwise, even among total strangers, even when cooperation promises no benefit over non-cooperation (Bowles & Gintis, 2011, pp. 21–23). Before the rise of the earliest states, war as we understand it (as organized group-on-group violence) was nearly unheard of. The frequency of violent intergroup conflict was not exceptionally high, and when it did occur it rarely resulted in mass death (Fry & Söderberg, 2013; Malešević, 2016).

This makes sense. It is difficult, psychologically, to stand your ground and fight to the death if you don't need to, and killing is psychologically difficult. If you have the option to just ***leave***, well that sucks but it's better than both dying or killing – and pre-state people, even sedentary ones, almost always had the option to leave[75]. And, as Siniša Malešević points out, human beings are ill equipped to do violence in the first place.

> Humans have neither teeth able to hold and kill prey, nor jaws able to inflict lethal bites, nor claws, nor horns, nor venom. Our species, moreover, lacks a strong sense of smell, exceptionally sharp eyesight, and an ability to fly or run at the speed of rapacious animals. Early humans [were anatomically unequipped for fighting, and]

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[73] Robert Nozick argues for his minimal state in a similar way. Nozick's minimal state is necessary for the protection of individual rights, and according to him any social group of sufficient size will recognize this necessity and inevitably form *at least* the minimal state. Thus the minimal state must serve its three functions of contract enforcement, internal security (in the form of private protection agencies), and protection against external invasion (in the form of a military), all of which require a monopoly, or close to a monopoly, on the legitimate use violence in a territory (Nozick, 1974).

[74] Hobbes did not claim that his state of nature actually existed, merely that it would exist without authoritative institutions, because of the way human beings are. It is not a claim ***about*** history, but it is a claim which can be supported or undercut by investigating history.

[75] An option people are prevented from taking today.

> engaging in violence is so difficult and emotionally demanding for human beings that such acts, as a rule, generate tension, fear, and feelings of insecurity. (Malešević, 2016, p. 84)

Why would we assume an essentially violent psychobiology, against our best understanding of the psychology of violence and in absence of violence-facilitating anatomy? This is not to say that human beings are not violent. We often are, and shockingly so. Yet we are also surprisingly ***non***-violent, even in cases where violence is justified. The question is ***why.*** Why this variability? Answers that rely on claims about human nature are not satisfying.

Throughout human history, both before and since the rise of the earliest states, we see incredible variation in the level of general violence from one place to another, or across time in the same location – and importantly, in the same ethnic and cultural group (Fry & Söderberg, 2013; Malešević, 2016; Scott, 2017). If human beings in their natural state are biologically predisposed to violence, we should not expect to see such variation, especially not when looking at humans living in the state of nature.

> No one can deny that there are pronounced differences [between various groups] in terms of their tendency towards violence in everyday life. The origins of this difference, however, are mostly structural, rather than cultural or, for that matter, biological. (Malešević, 2016, p. 94)

One issue Malešević identifies is the "spurious and sociologically meaningless" way the question of human nature is usually framed: are human beings naturally violent, or naturally peaceful? The answer is yes. Human beings respond to their environment, and social structures are among the most prominent and ubiquitous features of the human environment. Human beings respond to incentives, and social structures have vast influence over what kinds of behaviours are incentivized, and which are disincentivized. It is this *social-structural* explanation that best accounts for human violence, and we will return to it shortly.

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Another piece of the standard story is the claim that political and judicial institutions arose out of a need to organize the rapidly ballooning populations brought about by the adoption of agriculture roughly 8000-12,000 years ago. Such large-scale societies were simply too inefficient, with no means

of conflict resolution, nor any means of organizing economic activity at scale, leading to chaos. Thus, the rise of political organization in the form of the state[76].

But this isn't true either. The first appearance of semi-agricultural communities with large, primarily sedentary populations predate the first evidence of permanent state hierarchies by nearly ***three thousand years*** (Scott, 2017), during which time these minimally-hierarchical sedentary societies were fairly stable. Their biggest problems were not violence and resource scarcity, but disease owing to tightly packed populations that had not yet developed an immune system capable of quickly responding to the sudden explosion of microscopic organisms brought about by the sudden proximity of so many humans and their domesticated animals.

In comparison, the first few millennia of state building and political organization were relatively ***un***stable, and frequently abandoned. Agriculture ***sucked***. Most non-state agriculturalists were farmers only part-time. Hunting and gathering remained the primary source of calories. Agriculture was difficult and labour intensive compared to hunter-gatherer lifestyles, and far from allowing leisure time to pursue art, science, and other interests, as agriculture is so often framed, it forced larger portions of the population to work for larger portions of their time. Not only were humans not desperate for an escape from the Hobbesian state of nature, evidence suggests we actively resisted anything like the kinds of political organization he proposes as necessary (Graeber, 2021; Scott, 2017).

But states eventually won out. They must have offered ***something***, right?

Slavery. (Almost) every early state around the world shows evidence of widespread slavery. By violently expropriating labour for the benefit of others, those others are made better off than they would otherwise be – a good reason for them to stay. With the rise of political organization we see an increase in the frequency of war as know it (Fry & Söderberg, 2013; Malešević, 2016), with war captives being the main source of enslavement, and the need for a constant influx of slave labour was a major reason for war (Scott, 2017). In order to sustain themselves, states were incentivized to build armies, so they could capture people to enslave and build institutions of exploitation to entice free people to stay and accept the impositions of the state which, through taxation, sustained the slave-taking armies.

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[76] This coordinating and organizing function may have its roots in other social structures, such as religious figures attaining social power through their claim to unique access to the divine or supernatural, or through male domination of the family.

Far from offering stability and justice, early states were the ***cause***, not cure, of many ills we associate with the state of nature. By erroneously framing the early political state as alleviating the harms of the non-political state of nature, rather than ***causing*** the kinds of harms we want to avoid, political theorists falsely position state authority as a necessity for peace and coordination from the start of human civilization. So whenever life in a modern liberal democracy is better than life in the state of nature, it is not because of the more general idea that living under political authority is necessary to overcome some kind of violent or uncooperative human nature.

I do not want to press solely on Hobbes. You can see Hobbes-like thinking whenever civil war breaks out, when liberals in their millions point and say "*look how barbaric people are without the state!*", as if human behaviour in the shadow of a collapsing state gives us insight into human behaviour sans the state. And a wide array of influential liberal writers, such as prize-winning international best sellers Steven Pinker and Lawrence Keeley[77], believe something close to the Hobbesian state of nature actually did exist (Keeley, 1997; Pinker, 2011).

A favourite example used to justify this belief is the high rates of violence among modern tribal societies. And it is true, up to 60%(!) of all Jivaro males die in battle, compared to roughly 1% of males in Europe and the United States (Keeley, 1997). But modern tribes are separated from pre-state humanity by upwards of twelve ***thousand*** years, and for most of them, the last thousand (more or less, depending on the group) have been spent in direct conflict with states encroaching on their lands and lives, uprooting them and forcing them onto more and more marginal, unproductive land. It's not that they cannot live peacefully and support themselves through forage or supplementary agriculture, it's that ***they are not allowed to***. Groups with the biggest army violently sieze the best land, which ratchets up the desperation, and desperate people are more violent. After centuries of this, warfare is deeply engrained in many, maybe even most, modern tribal societies. What does the high rate of warfare under such conditions tell us about what political forms a reasonable person would consent to? Very little[78].

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[77] Who are not philosophers, but their books have been influential and contribute heavily to the standard story. Since philosophers rarely even acknowledge that their claims rest on empirical evidence at all, it is difficult to draw out what they think the evidence actually shows, so I have to make the point indirectly in this way. Pinker's and Keeley's claims have strong philosophical implications, and seem to be shared by a number of political philosophers – for examples, I again suggest *Prehistoric Myths in Modern Political Philosophy*.

[78] It's also important to note that this high rate of violence among the Jivaro seems to have been temporary, in that there is no evidence that such a state of affairs has been sustained for very long, and violence in the region has sharply declined since the time of Keeley's ethnography.

Likewise with their investigation of violence among North American First Nations – taking scalps as trophies, slavery in the Salish Sea, and the brutality of the Mohawk and Comanche. As pointed out in "How Old is Human Brutality" (Malešević, 2016), the most violent pre-Columbian Indigenous societies had a common set of authoritative, hierarchical social structures, while societies that built weaker authoritative structures, such as the Haudenosaunee (also known as the Iroquois) Confederacy, were less aggressive[79], and many such societies went through significant social changes in response to European invasion. That said, the Confederacy retained a well-earned reputation as skilled and terrifying fighters. The establishment of the Great Law of Peace in the mid-1400s greatly reduced violence internally, among member nations within the Confederacy. They almost never fought one another after that, and fought outsiders less than before – though this does not mean they did not fight aggressive wars at all.

Internally, the Great Law of Peace functioned as a constitutional guarantee of near-total liberty. It might seem odd to frame it this way, as the usual depiction of Indigenous societies emphasizes their egalitarianism, not their liberty. But political authority within the Confederacy was nearly non-existent. As quoted by Charles C. Mann in *1491: A New Revelation of the Americas Before Columbus* (2005), a British officer said that the Haudenosaunee had

> such absolute Notions of Liberty that they allow no Kind of Superiority of one over another, and banish all Servitude from their Territories. (Mann, 2005, p. 334)

In fact, a serious look at specific First Nations and their social structures is an excellent antidote to the boom crutch that is the Hobbesian hypothesis deployed by Hobbes, Pinker, and Keeley – to say nothing of those philosophers surveyed in the previous chapter, such as Harold Laski, John Horton, Elizabeth Anscombe, John Rawls, and Jeremy Waldron, who all lean very heavily on that boom crutch.

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[79] A similar point was made in *They Recognize No Superior Chief* (Angelbeck, 2009) – slavery and hierarchy went hand-in-hand in the Salish Sea area, accompanied by long periods of frequent warfare. Eventually, these social structures were dismantled (seemingly on purpose – they did not collapse, they were overthrown from within), social hierarchy reduced, and slavery all but disappeared, returning again (alongside the centralization of power) many centuries later, shortly before European contact.

The following three quotes are primary accounts of various Europeans regarding Wendat society, as found in *The Dawn of Everything*[80] (Graeber, 2021, pp. 41–44) (all emphasis mine):

> They imagine that they ought by right of birth, to enjoy the liberty of wild ass colts, rendering no homage to any one whomsoever, except when they like. They have reproached me a hundred times because ***we fear our Captains***[81], while they laugh at and make sport of theirs.
>
> I do not believe there is any people on earth freer than they, and less able to allow the subjection of their wills to any power whatever – so much so that Fathers here have no control over their children, or Captains over their subjects, ***or the Laws of the country over any of them***, except insofar as each is pleased to submit to them. ***There is no punishment which is inflicted on the guilty***, and no criminal who is not sure that his life and property are in no danger.
>
> From the beginning of the world to the coming of the French, the Savages have never known what it was to forbid anything to their people, under any penalty[…] They are free people, each of whom considers himself of as much consequence as the others, and they submit to their chiefs ***only insofar as it pleases them***.

This is less authority than Nozick's minimal state. Hell, this is less authority than his ***ultra***minimal state! And yet, despite this less-than-minimal level of authority[82], the Wendat and Haudenosaunee (among many other examples not covered here) nonetheless achieved every benefit of the minimal state. The harms of the minimal state are clearly not necessary. The greater harms of greater political authority are even less necessary.

Graeber and Wengrow follow up with:

> Equality here is a direct extension of freedom. [It has almost nothing to do with] the Eurasian notion of 'equality before the law', which is equality in common subjugation. Americans, by contrast, were [equally] free to obey or disobey orders as they saw fit. (Graeber, 2021, p. 45)

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[80] While *The Dawn of Everything* occasionally stretches its history to reach a conclusion, these are direct quotes from firsthand primary accounts. The arguments put forth in *The Dawn of Everything* are certainly more historically grounded than anything Pinker or Keeley have put out, and likewise better grounded than many of the "common sense" beliefs that make the Hobbesian hypothesis appear so trivially true.
[81] *Captain*, in this case, refers not to the military rank, but to anyone with authority over a group of people.
[82] That is to say, less than the minimum level of authority needed to count as a state.

Equality, it seems, was a downstream effect of autonomy, and societies with high levels of equality have less anti-social behaviour. Inequality rapidly degrades social trust, which is vital to social cohesion, and low social trust is a strong predictor for anti-sociality and violence (De Courson & Nettle, 2021). So, we can confidently expect that an increase in inequality will cause an increase in anti-social and violent behaviour. Any institution, political or economic, that causes or sustains inequality causes harm that would not otherwise occur.

The Haudenosaunee Great Law of Peace established something that, to us, looks like a pie-in-the-sky leftist utopia, a pure fantasyland. But Haudenosaunee society was stable for centuries, not despite, but ***because of***, the minimal presence of authority within their society.

Compared to such a society, equality in modern liberal democracy begins to look seriously deleterious to our liberty, so I can understand why someone like Bilgrami would find the conceptual conflict between the two so worrying (Bilgrami, 2021). As liberals, we justify this imbalance by reference to its ***necessity***, for without it we would suffer even greater harms; and by its ***benefits***, for through the stability and security gained through political authority we secure other, greater kinds of liberty and equality.

But the Wendat and Haudenosaunee got to have their cake and eat it too, achieving generally peaceful, stable coordination of high-population, complex societies over large geographic areas for long periods of time, without recourse to anything like the authoritative systems of law and their attendant coercive institutions present in European societies of the time, or liberal societies today. They achieved that greater autonomy without the compromise we seem to think is necessary, and in fact, the liberty they experienced supported their equality, while their equality likewise supported their liberty[83].

This is not to say that the problems we think we need the state to solve did not ***exist*** in these societies, simply that the Wendat and Haudenosaunee solved[84] them without relying on anything even

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[83] This potentially dissolves the conflict between liberty and equality which Bilgrami finds so mysterious (Bilgrami, 2021), without any need to find a deeper value from outside liberalism, though more would need to be done to motivate this claim.

[84] It is probably impossible to ***fully*** solve these problems of violence, coordination, and anti-sociality. But the evidence I present suggests that there are ways to deal with these problems that are at least as good as, if not frequently better than, those implemented in liberal democracies, without relying on authoritative political institutions of any kind. If this is so, we are likely very wrong about what kind of ideal institutions actually would solve, as best we can, these problems.

close to the level of political authority necessary for the minimal state[85]. If this is so, then the level of political authority present in even the minimal state simply ***is not necessary*** to prevent harm, even if the overall average effect of politically authoritative institutions is positive. The minimal state is equivalent to Wealthy, causing harm to provide pure benefit. There are no greater harms to be prevented by increasing the level of political authority even to that of the minimal state. Those harms are already prevented by societies which do not meet the minimal threshold to count as a state, and which therefore do not risk causing unnecessary harm by relying on authoritative political institutions to solve their problems.

Since the minimal state does not, and cannot, get the actual proactive consent of each individual, we cannot absolve the state of blame on that account. If it ***does*** try, and it genuinely respects the autonomy of all reasonable people who do not consent, and hypothetically ***should*** not consent, it again falls back into an issue I have mentioned before – this is less authority than even Nozick's ***ultra***minimal state, so I don't see how it qualifies as a ***state*** at all.

Nozick is simply wrong when he says the minimal state is necessary for the protection of individual rights, nor is it necessary to provide the benefits we so often (and erroneously) associate with political authority. We have plenty of historical and anthropological evidence of societies doing precisely that without anything like a minimal state. He is likewise wrong when he says the minimal state is a historical necessity. Clearly, whatever benefits the minimal state provides (which might be plenty!), and whatever greater harms the minimal state prevents, almost nothing about the minimal state is necessary to perform those tasks, to say nothing of modern liberal democracies which go far, ***far*** beyond the minimal state.

If the minimal state is not necessary to prevent the greater harms we (mistakenly) associate with stateless society, then the harms it causes in the prevention of those greater harms likewise cannot be necessary.

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[85] As did the Catalonian anarchists in the Spanish Civil War, who represent a modest example of this same idea in an industrial society; and the indigenous Zapatistas in Chiapas, Mexico today; and the Kurds of Rojava in northeastern Syria; and so on… There are thousands of real-world examples I could pick from. See *Anarchy Works* (Gelderloos, 2010)and *Governing the Commons* (Ostrom, 1990). *Homebrew Industrial Revolution* (Carson, 2010) lays out a strong case for how modern society could viably function along similar lines.

In "In the Form of a Longhouse", Sam Grey makes the argument that Haudenosaunee political philosophy represents a social contract theory that reveals

> a distinctly Haudenosaunee (and perhaps fuller) understanding of human nature and potential, [and] constitutes not only a unique and under-examined approach to, but also a living critique of, social contract theory. (Grey, 2008, p. 5)

The oral history of the Haudenosaunee suggests something like a Hobbesian state of nature really did exist prior to the formation of the Confederacy. But this violent setting was populated by authoritative social structures, city-states, and wars waged for the purpose of gathering slaves, just like the earliest states of Mesopotamia mentioned before. The Haudenosaunee social contract was an intentional and self-conscious dismantling of the social structures that we seem to think are necessary for civil society and human flourishing (Graeber, 2021; Grey, 2008)[86], and this dismantling caused a significant decrease in violence.

This is why Malešević emphasized the ***structural*** foundations of violence. The aforementioned variability of violence across different groups in the same region, or even within the same group over time, is a puzzle for any account of humans as essentially violent ***and*** as essentially peaceful.

> What comes across with greatest clarity from the various anthropological, archaeological, paleontological, and other studies of early humans is that no proof exists that they were particularly violent creatures, and none that they were peace loving and harmless. […] neither the Hobbes nor the Rousseau paradigm can adequately explain the dynamics of violent action. […] Violence proliferates under particular structural conditions [and] ***should be regarded as a property of social organizations*** (Malešević, 2016, pp. 96–97) (emphasis mine).

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I have written enough about the state of nature. Alone, this is hardly sufficient to make my point, but I hope to have shown that anyone who believes something like the Hobbesian hypothesis is making an error[87]. If you take nothing else from this thesis, let it be this: that any political philosopher

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[86] This "intentional and self-conscious" aspect of this dismantling is not uncontroversial. These structures were dismantled, and Haudenosaunee oral history suggests this process was intentional, but Graeber and Wengrow are regularly criticized for claiming too much self-conscious intentionality in this process. I think Grey's article takes a more even-handed approach.

[87] For the sake of space it barely received any coverage here, but one could posit a mirror-image of the Hobbesian hypothesis. Call it the Rousseauian hypothesis. Equally false, and an equally faulty epistemic pillar of any political theory that relies on it. But I don't think I have ever seen anyone trying to legitimize any actually existing state by such an avenue, so there hasn't been much reason to talk about it.

that relies on anything like the Hobbesian hypothesis – explicitly or otherwise – is likely wrong about what kinds of authoritative political institution a reasonable person would consent to; wrong about what it takes to realize the principles of liberty and equality; and vastly overestimating what kinds of political authority are legitimate.

Let me present a piece of evidence with more general applicability before I bring this back to the topic of hypothetical consent.

The recent findings in "Paths to the Light and Dark Side of Human Nature" (Donald et al., 2021) suggest that the strongest correlate for prosocial behaviour is autonomy[88]. At the same time, the strongest correlate for ***anti***-social behaviour is control (both being controlled, and having control over others). In other words, experiences of autonomous self-determination and prosocial, other-regarding behaviour tend to ride together, while having control over others tends to generate harmful, selfish, potentially violent behaviour in both the controlled, and the controller[89].

This is fairly well established in the psychological literature. People who feel they lack autonomy in their lives experience high stress and poor general mental health, and will often lash out as a means of seizing control, using violence to eke out a smidgeon of autonomy where they can. This often manifests as abuse – physical, psychological, or sexual – directed towards those whom they can control, which means those with less power, which usually means racialized people, women, children, and animals. Such targets often lack the physical power to resist, but this is compounded by sociopolitical structures which strip them of any ***social*** power they might otherwise wield.

Political authority is, by its very nature, controlling. Note how this ties into the sociopolitical structures of the Wendat and Haudenosaunee above[90], and note especially the contrast between different conceptions of justice. Compare "there is no punishment which is inflicted on the guilty, and

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[88] "Autonomy" as they use it refers specifically to what I have been calling *psychological* autonomy, not philosophical, i.e. the feeling of being able to make meaningful decisions about the course of one's own life.

[89] In this way, pro- and anti-sociality can come apart, such that you can have someone who experiences a relatively high degree of psychological autonomy, but also has a high degree of control over others. Police in the United States and Canada, for example, are both more pro-social, ***and*** more anti-social, than the average citizen of their respective countries.

[90] Among literally hundreds of other examples – again see *Anarchy Works* (Gelderloos, 2010), *Governing the Commons* (Ostrom, 1990), and so many others. There are many valid ways to conceive of authority that might apply to these societies, but if we stick to the politically-relevant meaning established earlier – a state of affairs in which some people claim the right to be obeyed, and the attendant claim that they are justified in enforcing that right via coercion – then any authority among these examples is so vanishingly small next to the everyday intrusions of modern liberal-democratic states as to functionally disappear in the comparison, and fall well below the level of authority present in the minimal state.

no criminal who is not sure that his life and property are in no danger", above, to the judicial system of any liberal democracy. The gap is vast[91]. Our judicial system restricts the autonomy of almost every one of us. As we have seen, this cannot be construed as necessary for reducing harm or coordinating human behaviour.

The point here is not that problems of anti-social behaviour did not exist in any of the societies described above, pre-state or Indigenous (they did), or that such problems are unique to liberal democracies (they aren't). The point is threefold:

1) That some societies have solved these problems without relying on authoritative institutions and their attendant harms, and without sacrificing liberty or equality.

2) That authoritative institutions are likely to make these problems worse, and claims to such authority can only be legitimate if a) the effect is overall positive for every individual who is subject to or impacted by that authority, wherever they might be in the world, and b) these institutions are necessary to realize this overall improvement in the human condition. It is not clear that the effect ***is*** overall positive compared to a number of theoretically viable alternatives, but it is very clear that many are made worse off than they would otherwise be by these institutions, and the harms they cause are not necessary for achieving the benefits we usually associate with them.

3) That there are many ways to solve these problems that do not rely on anything like the state, and the study of societies that successfully do so would help us refine our ideals and principles, i.e. would improve our ability to theorize about our principles and ideals, even if the theory itself does not need to change. What our theories ***mean*** would change.

As political philosophers, we have to incorporate these points into our theories if we want to do our jobs well. Why do we assume a well-informed reasonable person would choose authoritative political structures which we ***know*** exacerbate, for example, problems of interpersonal violence, when we have a wide array of anthropological and psychological data that show the plausible viability of alternative, and likely superior, structures?

Our justice system is meant to alleviate problems of anti-social behaviour. In pursuit of this goal, we have built authoritative institutions which, through deep intrusion into our lives via surveillance, judicial punishment, legal restriction, and transforming our behaviour into a shape more legible to the state, are strongly deleterious to our autonomy, and to interpersonal bonds of social trust. This makes

[91] One might even say *leviathan* in size...

problems of anti-social behaviour worse than they might otherwise be, while also reducing the occurrence of pro-social behaviour. We have done so because we focus almost exclusively on political theories which abstract away from reality, leaving vast spaces for us to slot our political intuitions into, and those intuitions are often based on a faulty understanding of human psychology and human history, leading to a faulty set of ideals.

There is a phrase in data science for when you feed an algorithm bad data, which I think is appropriate here. It doesn't matter how otherwise well-formed the algorithm is; garbage in, garbage out. Liberal theories of justice might be right, and I happen to think we're doing a pretty good job on that front. But when we feed garbage empirical data into the abstract spaces of liberal theory, it spits garbage philosophy out.

What would a reasonable, well-informed person consent to, knowing, for example, that an institution of legal justice which imposes no serious punishment ***at all*** is not only viable for long-term stability in large complex societies, but is also more likely to produce pro-social outcomes and less likely to induce anti-social ones[92].

Throughout this thesis, I have provided evidence that:

A) The institutions of the minimal state – contract enforcement (for economic coordination), internal security (for the prevention or reduction of anti-social behaviour), and a military (for defence against invasion) – are far more intrusive than are often supposed, and,

B) Even minimal political authority is not necessary to achieve the benefits associated with these minimal state institutions.

Can we actually imagine a reasonable person would even ***hypothetically*** consent to authoritative economic and political institutions, even those as weak as Robert Nozick's minimal state, knowing that human beings have built societies which present workable solutions to problems of economic coordination and anti-sociality, without losing out on either equality or liberty, and that reliance on such institutions often, if not almost always, makes these problems worse?

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[92] This is not to say that no response to harmful or anti-social behaviour is needed, simply that punishment by politically authoritative impersonal institutions is unnecessary to pursue a good response, and may even be detrimental.

Let's reach all the way back to Chapter One, and bring Shiffrin back in, because even if one were to accept everything I have said so far, there does appear to be at least one easy out for ideal liberal institutions. Remember, Shiffrin's conclusion is actually quite restrained. Parents simply owe compensation for the harms they have brought about, which otherwise would not have occurred had they not had a child. Can the ideal state not simply compensate its citizens for the harm it causes? I have two responses.

First, as I have repeatedly emphasized, the effects of political authority do not end at the border. Not only would a given state need the consent of everyone over whom its authority extends, it would likewise have to ***compensate*** everyone it harms, not only its own citizens. It is not clear how any state, real or ideal, could hope to do so in practice.

Right-libertarians like the slogan *taxation is theft!*, but it doesn't have to be theft to be a harm. The vast majority of taxpayers are undeniably harmed by having their wealth reduced, regardless of what those taxes are good for, and regardless of whether or not they are overall better off paying taxes than not[93]. Even the rescuer causes (lesser) harm, and is in fact morally obligated to do so. Shiffrin is not restrictive in what counts as compensation, however. She does not require that it be monetary compensation, though in the context of her discussion regarding wrongful life lawsuits, monetary compensation is most relevant.

This brings me to my second, more impactful response. What actions can the state perform to compensate for the harms it causes, that are not the same sort of actions that caused those harms in the first place?

We've spent a lot of time looking at how the politically authoritative institutions are similar to Shiffrin's Wealthy case, and by extension to parents. But here, we have a situation where they are actually very different, to the detriment of political authority. In the parent case, the harm they are responsible for is not of the same kind as the compensation for that harm. The harms are caused by the creation of that life, but compensation cannot be paid by procreating that same life ***more***. There is no way for an additional act of procreation to compensate the original act. That would mean the creation of a different child, not compensation to the original child. Compensation for the harms

[93] And given the evidence provided, it is not clear that all taxpayers actually ***are*** made better off, at least in actually-existing liberal democracies. This leaves open the question of the benefits of taxation in some ideal society, though the evidence provided should also make us rethink what, exactly, an ideal tax scheme might look like.

visited upon the original child must be acts of a fundamentally different kind from the cause of those harms.

This is a mirror to the "mixed currency" concept from Chapter One. Here, when comparing procreation and state action, the ***acts themselves***, rather than the benefits and harms, are of different kinds. Compensation for the harms of procreation is required to make procreation permissible, and such compensation is possible because compensation does not take the same form as the original harm. Compensatory acts by the parents can (potentially, ideally) retroactively atone for those harms without repeating the same morally risky act that got us here in the first place.

Politically authoritative institutions, however, are in a different position. Authoritative action is the cause of the original harm, ***and*** the only means by which the institutions in question can provide compensation. There is no form of politically authoritative action that does not run the moral risks Shiffrin is concerned about. There is no single non-repeatable event which an impersonal political authority has to make up for, but a repeating process of morally (and unnecessarily) risky state action. Authoritative political institutions must continuously take unnecessary moral risks which almost always cause unnecessary harm in order to make up for the harms that have come about by the actualization of previous moral risks.

There is, in other words, a strong symmetry between the minimal state, and the Wealthy case – but a strong ***a***symmetry between the minimal state and the parent case, because the compensation for the harm is inseparable from the harm itself in the case of the minimal state. Thus, the escape Shiffrin provides to parents is not available to even the ideal minimal state, nor to any ideal political institution that rests on greater-than-minimal political authority.

Conclusion

Relying on hypothetical consent to justify inflicting harm is morally fraught even if the harm is necessary to provide an overall benefit. There are undeniable harms imposed by even the minimal state in its attempts to provide its benefits, and the minimal state cannot even try to get actual consent for its actions in any meaningful sense – it is simply impractical to do so. Most, if not all, of these harms are entirely unnecessary. The harms and benefits are of a different currency altogether. The harmful and beneficial aspects of state action are inseparable. The state cannot meaningfully compensate all the people harmed by its actions without performing more of those same actions.

There are various artificial restrictions placed on us by authoritative institutions, such that we ***must*** take morally problematic risks if we wish to perform morally praiseworthy actions. So in addition to causing its own harms the state is at least partly responsible when individuals cause harm as a result of its imposed constraints.

The main thrust of my thesis is this: any theory that attempts to legitimize any form of political authority without incorporating all the relevant psychological and historical facts I have presented is guaranteed to lead our principles astray.

While we often position the state and any harms that might come with it as necessary to prevent civilization from falling into the greater harm of a non-political state of nature, I have argued that a combination of misunderstandings (if not outright ignorance) regarding human psychology and the historical viability of non- or less-authoritative social structures have, when "plugged into" liberal theory, given us an inaccurate view of what an ideal political structure might look like, both in theory and in practice, erroneously inflating the level of benefit we believe the state can or does provide, while simultaneously giving theoretical cover for a wide array of unnecessary harms the state imposes in the course of provisioning those benefits.

The best examples of societies which whole-heartedly commit to the demands of hypothetical consent, societies that ***actually live*** the principles of liberty and equality, have been built by people who self-consciously place themselves outside the liberal tradition.

Maybe real liberalism looks more like that.

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