



Teng Li

Justifying the State, Individual Uptake, and Territorial Annexation

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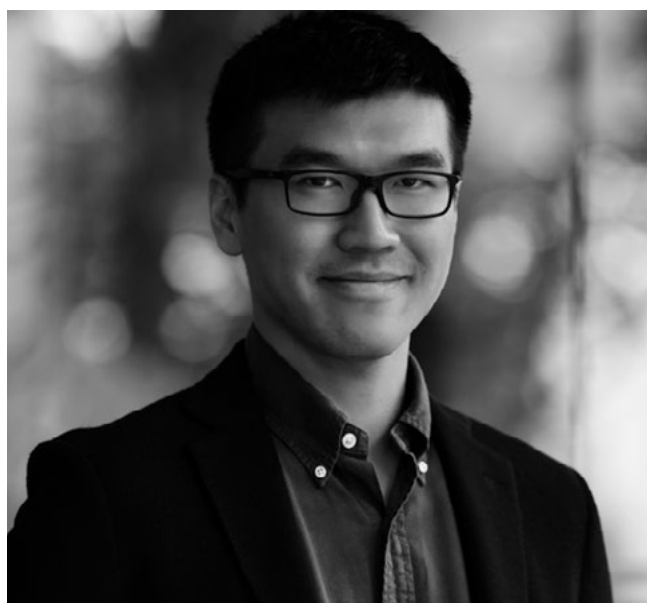
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ABSTRACT

Philosophical accounts of what justifies the state normally focus on certain qualities or functions of the state to explain why centralised coercion is prudentially or morally permissible. Whereas the acceptability of a state is commonly considered to bear on the question of justification, actual acceptance by individuals is not. This article challenges this common view. It inquires into the nature of political justification and argues that disregarding actual acceptance as a justification ground yields an impoverished account of what it means for a state to be justified. This inadequacy arises, I suggest, due to the common view's inability to prevent a problematic implication whereby a state is allowed to whitewash its unjust territorial gain in virtue of delivering functional benefits to the annexed population.

1 INTRODUCTION

In the political philosophy literature, the justification of the state is regarded as a normative standard distinct from, and less demanding than, the legitimacy of the state. For any state to be justified for its coercive dominance over a territory, its competent performance of certain essential tasks will normally do. Such a justified state need not be legitimate in the sense that its directives carry the moral weight of *de jure* authority that commands respect and obedience. The distinction has useful practical implications. In the international arena, for example, we hardly consider the sheer lack of domestic legitimacy a reason to justify forceful interventions. While the use of military force by one

state against another is generally prohibited except for self-defence, Chapter VII of the UN Charter provides that the UN Security Council may authorise military actions to maintain international peace and security, which is commonly interpreted as the basis for humanitarian intervention. The underlying idea is that only certain egregious failures of governance, such as serious violations of human rights or disruptions of peace, would deprive a state of its justified presence completely, and any state or entity capable of putting a stop to such failures shall be justified in doing so, regardless of whether it is an interested party in the matter or has obtained consent from the victim population. This may be viewed as one aspect of a more general thesis on what justifies the imposition of a coercive order, which, in modern times, we normally associate with the role of a state understood as a structural entity consisting of various agencies operating in a coordinated fashion. The thesis holds that a state is justified if and only if its dominant presence on the whole benefits the subject population in virtue of solving certain problems. The justificatory status, in this view, is not affected by actual individual responses to the state's rule, unless those responses undermine its performance in benefiting the overall population. I call this "the common thesis" in this article, and I argue that it leads to a problematic implication that the state is allowed to whitewash its unilateral territorial acquisition. To address this problem, I suggest the common thesis be modified to include individual uptake as an additional justificatory factor. It is high time that we review the common thesis, given that we are in an

¹ I thank Professor Mattias Kumm for his comments on an earlier version of this paper.

increasingly unstable era, where the prospect of territorial changes seems, once again, not so remote due to the recent trends in geopolitics. Since the Kantian state justification has been the major sponsor of the common thesis, this inquiry also sheds light on some concerns behind treating liberalism as a universally valid political ideal worthy of global export.

I begin with a brief introduction of the idea of justifying the state in Section 2, in which I highlight (1) its evaluative focus on the coercive aspect of political power, (2) its purported generic nature, and (3) that various justificatory accounts share the common feature of *not* conditioning the successful justification of a state upon the actual individual uptake of the state's rule (hence the common thesis). Section 3 offers three explanations for the appeal of the common thesis. I argue that none of these explanations conclusively shows that the general idea of justification is inherently incompatible with treating individual uptake as having a justificatory significance. I present my positive argument in Section 4. I point out that the common thesis is, in important respects, reminiscent of certain justificatory narratives for imperialist projects in the past; it allows states to whitewash unjust territorial expansions in the name of benefiting the annexed populations. A state that relies on the common thesis to justify its presence, I argue, would give rise to a distinct wrong against the individuals of the annexed population, which creates a justificatory gap that could only be closed if it is indicated in the said individuals' responses that the wrong is rectified. I conclude in Section 5 by remarking on the relation of my thesis to the distinction between justification and legitimacy.

2 THE IDEA OF JUSTIFYING THE STATE

In the literature of political philosophy, justifying the state is commonly associated with showing

why having a state in place is prudentially or morally more desirable than a stateless (or anarchist) status. It normally involves presenting, first, a set of structural problems that inevitably arise from the co-existence among individuals and, second, how these problems can only be solved by a dominant coercive entity (namely, the state) that meets certain conditions (Simmons 2001: 123–127). In the broadly defined liberal tradition, these, which we may call “justificatory conditions,” notably include exercising coercive power in accordance with a constitution endorsable on the basis of publicly shared reasons (as Rawls claims), preserving every person's freedom as compatible with the equal freedom of others (as Kant claims), solving coordination problems that pertain to establishing order, security, and protection (as Hobbes claims), enforcing pre-existing natural rights to life, liberty, and property (as Locke claims), and preventing non-consensual harm to others or consensual harm that has the prospect of permanently surrendering one's liberty (as Mill claims). A state that meets justificatory conditions is a justified state whose dominant presence within a certain territory is considered acceptable (or permissible) from a certain prudential or moral viewpoint.

While certain fundamental interests of a person and certain empirical assumptions about human nature are necessarily presupposed when we work out the justificatory conditions, these are *generic* considerations that make no reference to how an actual person responds to the state. As a result, it is a common thesis among different justificatory accounts that the successful justification of a state depends *not* on actual individual responses but on the state's compliance with the justificatory conditions alone. In other words, a state may be justified even though a considerable percentage of the population subject to its power opposes its rule. Although it remains empirically questionable whether a state constantly dealing with social opposition could sustain a

system of rule that meets justificatory conditions, the common thesis allows for the possibility that such a state exists. It is not inconceivable, moreover, that, with a highly effective coercive apparatus, a state may manage to keep a large enough majority of its subject population in line so that sporadic social unrest, albeit not negligible, does not affect its overall compliance with the justificatory conditions.

It is instructive to compare the ideas of justification and legitimacy. Whereas for many theorists, the two are interchangeable terms that denote roughly the same normative question or normative status – a justified state is a legitimate state (Nagel 1990: 302; Dworkin 1998: 190–191; Rawls 2001: 141; Williams 2005: 4) – the more stringent use defines legitimacy in terms of a claim that states often make but the truth of which allegedly cannot be established with a justificatory argument. According to A. John Simmons, the chief exponent of this distinction, a state's legitimacy consists in the "exclusive right to impose new duties on subjects by initiating legally binding directives, to have those directives obeyed, and to coerce noncompliers" (Simmons 2001: 137). Exclusivity (or, in another term of Simmons, "particularity") is the purported key to understanding the differences: having legitimacy means that a state has the *exclusive* entitlement to rule over a population; that it and only it – a *particularised* entity – can exclude others from doing what anyone may otherwise be justified in doing. In contrast, a justified state is conceptualised in terms of having a (non-exclusive) claim to performing certain tasks that *any* entity may be prudentially or morally permitted to perform if successfully done, just as any person, for example, may step in to stop an ongoing assault without thereby wronging the assailant. What follows is the possibility that the coercive power claimed by a justified state may overlap and conflict with those claimed by other coercive entities whose presence is also justified within the territory, provided that their respective

systems of rule all meet the justificatory conditions in their respective power spheres. In short, the justificatory status is considered to entail no special (or exclusive) right to rule.

On this narrower interpretation, what the inquiry of state justification offers is purportedly a state ideal type. From the viewpoint of an individual, though the compliance with the justificatory conditions (thus realising the state ideal type) does not make the state that wields power over me legitimate (understood as possessing *de jure* authority that can impose political obligations on me), its justified presence has practical significance nevertheless. Because the state's presence is prudentially or morally permissible, it may be said, in a strong sense, that I ought to accept or support its system of rule or, in a weak sense, that I ought not to undermine it, assuming that I have a natural duty to support just institutions as a necessary means to fulfil my duties owed to others (Simmons 2001: 137–139).² Further, being justified is normally considered a pre-condition for obtaining full legitimacy. Simmons follows what he believes to be the Lockean position in arguing that the *de jure* authority that defines the legitimate state is ultimately grounded on individual consent, which can be manifested, among other things, in the individual uptake of benefits (Simmons 2001: 129, 35–38). But for the same reason that we say a contract cannot be made binding by voluntary consent if its content is grossly immoral,

2 Simmons argues that on a stricter interpretation of the practical significance of state justification, not even a duty to refrain from undermining just institutions may follow from the successful justification of a state, because it is possible for people to discharge their natural duties independent of institutional arrangements. This claim appears to be too strong, for in certain circumstances, the only acceptable way to alleviate severe material deprivation for some helpless needy is some welfare re-distribution scheme, which can only be coordinated with the mediation of institutional arrangements. For an exposition of the natural duties, see Rawls (Rawls 1971: 114–117, 333–342). This article only discusses the practical significance of being justified with regard to a state's coercive power. I will not explore the further question of how individuals ought to interact with a justified state or whether there is any duty on their part, and at no point do my arguments depend on the existence of natural duties.

it is supposed that consent alone cannot make the *de facto* authority of the state *de jure* if the justificatory conditions have not been met in the first place. Lastly, the distinction between justification and legitimacy seems to helpfully capture the differences between subjects and non-subjects in their respective relations with a legitimate state. The state may justifiably sanction subjects and non-subjects alike that are within its territorial control for crimes that are universally considered punishable, such as those concerning bodily assaults, or sabotage acts that cause general fear. However, there are exceptions. Some directives may supposedly bind subjects only, such as calls for military service, which a state cannot justifiably enforce against non-subjects. Conversely, the state can create directives which impose duties on a subject even outside its territorial control, which do not apply to unlike non-subjects.

Thus, regardless of what we think legitimacy is about, a justified state understood in the narrow sense has a normative content distinguishable from a state's possession of *de jure* authority. Since the evaluative focus of state justification is on the generic qualities of a state as the dominant coercive entity within a region, and since the coercive power in question is generally not considered to be the correlate of, or constituted by, any action or inaction on the part of ordinary individuals under such power (Ladenson 1990: 34–38), a successful justification presupposes non-cooperation as one of the problems the institution of the state is there to solve. Therefore, it need not entail any implication about how a person should behave toward the justified state, other than, perhaps, the duty to not undermine it, which we derive independently from the assumed premise of natural duty to support just institutions. This stance, as I explain next, seems to be the main reason why, under the common thesis, individual uptake is considered irrelevant or redundant.

3 ARGUMENTS AGAINST THE INCLUSION OF INDIVIDUAL UPTAKE

There are three explanations which may account for the absence of individual uptake in common justifications of the state. The first one rests on a purportedly standard model of justification as a type of practical reasoning. The second proposes that the practical import of a justified state is not significant enough to demand the grounding of individual uptake. And the third holds that necessity alone suffices to justify the state. These explanations are not mutually exclusive and could be held simultaneously to reinforce each other. I argue that none of them can conclusively show the irrelevance or redundancy of individual uptake in state justification.

3.1 DEFINITION

It may be said that *what it means* to justify a state of affairs P is simply to demonstrate that realising P brings about some improvement or avoids some evil, despite some background objections to it.³ For example, in legal practices, as in moral thoughts, self-defence against an ongoing assault is a principle usually justified against a background prohibition of the use of violence on another person. The justification consists precisely in the comparative advantage of having the lesser evil of permitting the use of necessary force to stop the attack rather than the greater evil of living in a world where victims are defenceless to ongoing assaults. Take what Joseph Raz calls the

3 Simmons's introduction of the justification of the state starts with a description of what he considers to be the *general* concept of justification, which he believes holds for practical justification as well as for epistemic justification (Simmons 2001: 123–124). Here, he seems to *derive* the justification of the state *from* a general idea of justification that purports to be prior to, independent of, and *not* tailor-made for the political domain. In that, his idea of state justification shares similar conceptual features with the more general idea, the most important one in question being the non-recognition of actual individual responses as a justificatory ground. However, as I point out in Section 3.2, Simmons later seems to offer a substantive rather than conceptual argument for the aforesaid feature in state justification.

normal justification of authority as another example. Against the background assumption that a person should always be responsible for their own autonomy and never surrender the burden of decision-making to others (Wolff 1998: 3–20), Raz argues that a person is justified in treating the directives of someone else as authoritative – thus replacing their own judgments with the judgments of the one issuing the directives – if, by following such directives, the person is *more likely* to conform to the reasons independently applying to them than they would by trying to figure out for themselves what those reasons require (Raz 1986: 53–57). As in the self-defence example, here the comparative advantage of improved reason-conformity is the justification for a person's submission to the authority; they ought to do so even though in fact they may think their own judgment is the best and defy the directives. In that regard, a person's subjective attitudes or responses are irrelevant because they cannot change the objective reasons that constitute the justification. Therefore, it may be considered typical of justifying something that the appeal to certain comparative advantages, which can be independently evaluated irrespective of a person's subjective responses, exhausts all that needs to be said about the moral worth of the thing to be justified. Call this the standard model of justification.

The problem with this explanation is that not all justifications of state coercion necessarily fall under the standard model. Rawls, for one, is read by his commentators as offering three types of justification for his principles of justice and legitimacy that govern the use of state coercion (Scanlon 2002: 139–167; Freeman 2007: 11–21). Among his ideas of reflective equilibrium, original position, and public reason, only the original position is conceived in a justificatory framework that resembles the standard model in that choosing governing principles that best advance the interests of the contractees behind the veil of ignorance simulates the thought process of searching for

comparative advantages of the appropriate kind. By contrast, the justificatory force of a principle formulated through reflective equilibrium consists in the internal coherence between the principle and the considered judgments for which it accounts; public-reason justification appears to derive its force from public reasons being actually endorsed by the citizens who hold what Rawls calls reasonable comprehensive doctrines (Rawls 2005: 58–66, 134–144). In neither of the latter two types, therefore, could we say the realisation of certain comparative advantages plays a central justificatory role as it does in the standard model of justification. Another outlier may be Nozick's emergent justification of a minimal state. His conception of justification deals exclusively with the question of whether a state necessarily violates any pre-existing individual rights during its emergence. Since in a Nozickian state, justified coercion originates either from the individual rights that were directly transferred to the state, or from the rights that were derivative of the transferred rights (Nozick 2013: 54–120), it turns out that some, albeit not everyone's, actual uptake is required for a state to be justified in his account.

True, a mere reference to other conceptions of justification, without judging their merits against the standard model, is insufficient to answer whether individual uptake should be a justificatory component or not. However, it reminds us that justifying the state is a substantive inquiry. As such, it cannot be adequately pursued by simply applying a preconceived, general justificatory framework to the issue at hand, despite the prevalence of such a framework in other practical domains. To the extent that such a consideration matters, prevalence may give us a reason to *begin* the inquiry with the standard model. But we cannot foreclose the consideration of individual uptake *because of* it. To say that justifying the state is *just the sort of inquiry* where individual uptake does not matter is to throw a conceptual solution to a substantive problem. Whether individual

uptake pertains to state justification should be decided on substantive grounds, which requires a probe into the practical import of what justifying the state means. This is the approach that the next two explanations adopt.

3.2 RECIPROCITY

In Simmons's view, the mere justification of a state does not entail a normative relationship between the justified state and the person under its power that is sufficiently *reciprocal* to require individual uptake for the relationship's grounding. This appears to be the crucial point underpinning his distinction between justification and legitimacy:

The general quality or virtues of a state (i.e. those features of it appealed to in its justification) are one thing; the nature of its rights over any particular subject (i.e. that in which its legitimacy with respect to that subject consists) are quite another thing. The legitimacy of a state with respect to you and the state's other moral qualities are simply independent variables, in the same way that the right of some business to provide services to you and to bill you for them is independent of that business's efficiency or generosity or usefulness. It can be on balance a good thing that such a business was created and continues to exist, and its relationship with willing clients can be morally exemplary, without the business thereby coming to have a right to have *you* as a client. The fact that a state or a business has virtues that can be appealed to in order to justify its existence cannot by itself argue for its having special rights over particular individuals. Only interacting with you – and in a way that we normally suppose gives one party a moral right to expect something of another – will seem to “legitimate” its imposition and/or enforcement of duties on you. (Simmons 2001: 136)

In drawing this analogy, Simmons reiterates the point that however the normative relationship between a justified state and the person under its power is characterised, it is not reciprocal as one constituted by contractual rights and duties or by

correlative *de jure* authority and political obligation. Also, he seems to imply that only the latter type of relationship, precisely due to its nature of reciprocity, requires a certain level of individual uptake for its grounding. For if a person's relation to a justified state were indeed comparable to a non-client's relationship with a morally exemplary business, then either the person would have the option of *not* interacting with the justified state at all, or, more plausibly, they could keep such interactions to a minimum lest it turns into meaningful uptake. The last point is in line with Simmons's suggestion that, even if we grant the existence of the natural duty to support or not undermine just institutions, the fulfilment of such a duty could largely be achieved through inaction, independently of institutional arrangements, and thus need not commit one to a reciprocal relationship with the state (Simmons 2001: 138–139).

This explanation overlooks the burden-imposing aspect of a justified state, which may constitute a ground different from reciprocity for requiring individual uptake. For a state to meet the justificatory conditions, it must be the dominant coercive entity within a region in the first place enabling it to solve coordination problems, provide protection, offer assurance, and other functions. Besides these benefits, however, the state conceivably limits the options available to people under its power to lead their lives as a result of enforcing a system of rule it deems most appropriate. Such an imposition presumably not only disadvantages those who fail to *fit in* the system but also prevents local competitors from performing similar functions with a different system where others may fare better. As, under the common thesis, the justificatory status is predicated on the factual status of coercive domination, whatever measures necessary for maintaining such domination, including sanctioning those who undermine it and not transgressing the bounds set by the justificatory conditions, would not be considered wrong. The upshot is that a state may gradually achieve

the *de facto* monopoly of coercion, even though it never acquires an *exclusive* claim to such monopoly during this process (Nozick 2013: 108–110). Therefore, regardless of whether we have a natural duty to support just institutions, the justified state imposes considerable burdens on individuals under its power. Even though such burdens do not take the form of political obligation in a relationship of reciprocity, they are onerous nevertheless.

Thus, it appears far less conclusive to say that simply because the justification of the state does not consist in nor entail a reciprocal normative relationship between the state and the people under its power, there is no place for the latter's individual uptake. The imposition of burdens often, albeit not always, needs the burden-bearer's consent for it to be considered morally proper, as, for example, in a boxing match where the contenders are required to sign waivers that indicate their acceptance of the risks of injury inherent in the sport. On this point, Simmons's insistence on confining the requirement of individual uptake to the authority-obligation relationship may be due to his reluctance to treat the burdens resulting from the monopoly of coercion as a similar, substantive ground for invoking individual uptake. This point is raised suggestively because surely not any burden can be such a ground. One can imagine, for instance, that my being adjacent to you imposes on you a burden in the sense that you now have to be mindful of my presence lest you may accidentally impede or harm me. But as long as my presence is under reasonable circumstances, normally, I do not need to seek your permission to decide what I can do with my position that imposes the aforesaid burden on you. In the same vein, a more plausible version of Simmons's argument would draw a parallel between the burden that justifies the establishment of a state and the kind of reasonable burden that no one can reject. This brings us to the third explanation.

3.3 NECESSITY

What I consider the strongest defence for the common thesis can be summarised into a two-part argument. First, we may say the consideration that no society can endure for long without some means of social control keeping it together – a service of which the state is perhaps the most sophisticated provider – *exhausts* the reason why a (certain type of) state ought to be allowed to exist. But for this argument to succeed in justifying a state, we need a second, supplementary argument that the state's coercive power, in contrast with its authority, is its *necessary* means of social control. Call this the necessity justification. It essentially casts the coercive presence of a state as a necessary burden that no right-minded person can deny and thereby renders any further need for individual uptake redundant.

G. M. E. Anscombe notably states the main part of a necessity justification of the state as follows:

Men in multitudes need governments, need laws backed by force and people exercising the powers of government. Therefore it is possible that there should be people exercising these powers as of right. But the performance of the task of government is not possible [...] unless there is also force at the command of those exercising its power, which force they have a right to command. (Anscombe 1990: 151)

This argument, she explains, rests on the general percept that “necessity implies possibility” (or what is commonly called “ought implies can”): “If something is [...] a necessary task in human life,” then “a right arises in those whose task it is, to have what belongs to the performance of the task” (Anscombe 1990: 159–60). While Anscombe follows the Hobbesian line in arguing that securing protection and peace is the necessary task that grounds the moral propriety of a state's coercive presence, we observe a similar pattern in Kant's justificatory account, which foregrounds his

notion of necessity, viz. realising equal freedom and dispensing justice among individuals whose interests and resource use are likely to conflict due to their natural proximity to one another (Kant 1996: 86; Waldron 1993: 14–15). In fact, it is arguably more explicit in Kant than in Anscombe or Hobbes that, since a person is duty-bound to submit to a coercive entity, whether they actually submit or not adds nothing to determining a state's justifiability.

The strength of the necessity justification also hinges on the modesty of the justificatory goal. Presumably, it works only if the aspect of the state to be justified is genuinely *indispensable* to keep a society from falling apart; otherwise – if the state's presence is supererogatory but dispensable in relation to the aforesaid undertaking – it is not a necessity, but a luxury instead, so to speak. Anscombe rightly notes that necessity is one of the “most commonly abused” grounds of justification (Anscombe 1990: 160). She cautioned against the danger of claiming too much by stretching the meaning of necessity too thin.

On this point, the distinction between coercion and authority – a state's two principal means of social control – seems particularly pertinent. A state, we say, achieves social control by influencing individual behaviour, and it does so by changing people's reasons for actions through coercion or authority. These two modes of reason-giving may mutually reinforce but are conceptually distinct from each other. Normally, for a person who regards the state as authoritative, being told to act a certain way is itself sufficient to motivate them to act as directed (Hart 1982: 254–255). If the state is not so regarded by that person, then the possibility of coercive sanctions for non-compliance with said directives could serve as a separate motivation to act the same way. Though it is empirically difficult to tell which of these two means of social control has a greater influence over the behaviour of a society, the coercive

aspect of political power is conceivably more essential *in comparison with* the authoritative aspect, for it is unrealistic to expect everyone to simply take a state's directives as inherently authoritative without regard to the prospect of sanction. So widely known is this fact that even if wide recognition of the state's authority renders the need for coercive enforcement almost obsolete, credible threats of sanctions for non-compliance must be maintained nevertheless, if only to *reassure* the obedient majority that risks of free-riding or undermining the system by a few individuals are low. As it is more improbable for a state to perform the necessary tasks without exercising coercion than without authority,⁴ it would be reasonable to expect everyone to accept the burden of living under a state that limits their life options through coercive, if not authoritative, means.

Bearing the necessity justification in mind, we see why the burden resulting from the coercive presence of the state seems to be universally non-rejectable, especially when contrasted with the burden of a political obligation imposed by the state claiming *de jure* authority. Since the claim of authority raises a *higher* demand that people should obey out of a sense of duty rather than merely for fear of sanctions, the possession of *de facto* authority enables the state to exert a more advanced degree of social control than base coercive threats allow. Correspondingly, it may be argued that a state claiming *de jure* authority strives to impose an *extra* burden on its people in addition to the (necessary and non-rejectable)

⁴ Again, I am here bracketing the authoritative relations within the official bodies and positing them as a unified whole (as a state) directly against ordinary subjects (see note 11). Only if we concern ourselves solely with the state-subject relations may it be said the state's capacity to compel compliance ultimately rests on its coercive power. By contrast, a state that compels compliance via exercising its authority, without any coercive means as support, is inconceivable or only conceivable if we attribute angel-like qualities to every ordinary subject. For example, Frederick Schauer draws on empirical evidence to show that what Hart calls “the puzzled man,” who obeys the law regardless of its coerciveness, is hardly the suitable paradigm for describing why ordinary subjects obey the laws (Schauer 2015: 48–56).

burdens it already imposes by monopolising coercion. Being an extra burden as such, so the argument goes, political obligation needs additional individual undertaking for its grounding; by contrast, we apparently lack a similar basis for treating individual uptake the same with regard to the burden associated with state coercion.

Intuitively compelling as this explanation may be, it is vulnerable to two types of pushback. The first type is internal to the explanation: one may argue that the coercive presence of a state very often *does*, in fact, impose extra burdens. Modern states likely claim much more power than even a liberal interpretation of necessity can justify. For the scope of power that exceeds the justifiable limit, its imposition reduces a person's control over their life to an extent that is unaccounted for in terms of universal non-rejectability. The extra burden thus could be a basis for requiring individual uptake to justify a state. The success of this pushback depends on, first, that the justifiable scope of coercive power under the auspices of necessity is indeed limited – one good example is Nozick's minimal state – *and*, second, the fact that a state does wield and claim power beyond that limit. It is less persuasive, for example, against a justificatory account like Hobbes's, which holds that it is necessary for the state to possess power "without stint", even for the modest goal of securing order and peace. Therefore, this type of pushback is contingent because it too relies on the distinction between necessary and extra burdens to make its point.

The second type of pushback is external and raises a deeper challenge. To start, the paired dichotomy between extra burden and the requirement of individual uptake, on the one hand, and necessary burden and the redundancy of individual uptake, on the other, seems to rest on a *non sequitur*. From the (granted) proposition that the rightful imposition of extra burdens depends on a certain individual response, *it does not follow*

that a similar response is redundant when the imposition in question concerns only necessary burdens. Here is why: implicit in the purported incompatibility between adding individual uptake as an additional justificatory factor and preserving the necessity justification is the assumption that a person's rejection of a necessary beneficial system of rule equates to their refusal to be burdened by what is universally non-rejectable. But there is no interpretive inevitability that warrants such an assumption. The necessity justification assumes that a rejection on any ground other than a deficiency in performing the necessary tasks amounts to a denial of necessity and reflects the unreasonableness of the rejection itself. Yet this cannot be assumed since whether such another ground exists is precisely the point in dispute. Suppose, for the sake of argument, there is another ground for justifying the state that involves the assessment of individual responses. In that case, the aforementioned refusal need not represent a person's denial of necessity; it can be interpreted merely as their opposition to the imposition of necessary burdens by *this or that* particular state. So, it boils down to whether there is any practical concern that even the consideration of necessity cannot exhaustively address and which can only be answered by individual responses. Before that question is answered, we do not know if it is inherent in the necessity justification that individual uptake is redundant. Unlike the internal pushback just mentioned, the plausibility of the external pushback is not contingent on the scope of coercive power justifiable by necessity or wielded by a state, as a matter of fact. This critique is certainly more promising and can illuminate the path forward.

4 A PROBLEMATIC IMPLICATION OF THE COMMON THESIS

Our main goal so far has been to show that the major explanations for the common thesis are inconclusive. We now turn to the positive argument challenging the thesis.

4.1 WHITEWASHING UNILATERALISM

The common thesis predicates state justification on the generic quality of the state alone. It seems to allow, by implication, a state to extend its claim of justified status to a population it unilaterally annexes, provided, of course, it has the capacity to comply with the justificatory conditions at a larger scale, covering its rule over the newly annexed population. This problematic implication seems to persist even if we take such annexations to be wrong in the first place.

This problem is *not* about whether a state is justified in expanding its territorial control, but about the ambivalent moral status that comes *after* unilateral territorial expansion: as long as the perpetrator state manages to cope with the difficulties of annexing a new population, there is nothing in principle that can stop it from purportedly *rectifying* the injustice of its unilateral aggression by imposing a beneficial system of rule. We can trace the moral ambivalence to two conflicting intuitions. On the one hand, the justificatory status is chiefly concerned with the beneficial results brought about by a dominant coercive entity towards a population and confers no exclusive claim to the holder. Since the status is open to any capable entity that could hold it, it seems that the *origin* of a state's territorial control – whether its historical record is just or not – should not matter. On the other hand, as the perpetrator state would not have been *in the position* to impose the beneficial system of rule that later allowed it to justify its presence had it not committed the initial act of aggression, there seem to be misgivings about its

gaining such an advantage in a wrongful manner. The latter intuition draws a parallel with a situation in which one is permitted to profit from one's own wrong. The perpetrator state profits from the initial aggression because once it achieves coercive domination, other competitors would be severely disadvantaged in challenging its position.

I call this worrisome implication of the common thesis, *whitewashing unilateral territorial expansions*, for lack of a better term. It is reminiscent of the justificatory narratives which we saw in various expansionist enterprises in the past, whereby the subjugation of foreign populations was often carried out in the name of spreading correct religious doctrines, promoting trade and commerce, advancing superior knowledge, bringing about economic prosperity, and so on. It is a mistake to regard such history as phenomenon exclusive to Western societies or the colonial era. Until the late nineteenth century, for instance, the Manchu ruler of imperial China still clung to the worldview according to which the emperor, believed to be heavenly mandated to defend civilised moral virtues, had the right to govern (potentially) every person on earth regardless of geographic distance, ethnicity, or cultural differences. Jurisdictional borders, in this view, were considered a product of administrative expediency that reflected the temporary limit of the Chinese empire to civilise its periphery (Carrai 2019: 18–46, 82–108). In Europe, although the Westphalian system and the rise of nationalism brought about the demise of imperial ideals that were sponsored by universalist religious doctrines, imperialist hegemony continued to thrive in the forms of chartered private venture, treaty protectorate, sovereign annexation, and international mandate throughout the nineteenth and early twentieth centuries, forcefully projecting Eurocentric visions of political, legal, and social order onto populations which, in the eyes of the imperial powers, were not politically mature enough to govern themselves (Koskeniemi 2004: 98–178).

The reference to the history of imperial expansions may give rise to a complaint. It may be said that the real objection in those examples was that none of the colonial empires ever put in place a system of rule that met the true justificatory conditions for the annexed peoples, as evidenced by ceaseless local struggles for decolonisation in every historical account. While admittedly, most colonial regimes were oppressive and discriminatory to varying degrees and objectionable for that reason, some undeniably did contribute to raising the standard of living for locals by introducing civilian infrastructure projects, eliminating cruel or degrading practices, improving public safety, and so on. That said, critiques of colonialism involve complex historical facts and should not be one-dimensional, as though indigenous grievances are only justifiable if a colonial project brought about more injustices than benefits for the annexed population overall. Not all complaints need to be centred on the failure to meet justificatory conditions of the right sort. A critique, I think, is more profound when it recognises beneficial colonial legacies yet maintains that it is *especially not* the coloniser's place to vindicate colonial rule by invoking them. Such legacies would not have existed to the coloniser's credit without the initial aggression that permanently displaced previous systems of rule or ways of life.

Thus, if a unilateral territorial gain is ever to become rectifiable for its resultant good, it seems only fair that the final say in rectification be left to the annexed population whom the unsolicited change purports to benefit rather than to the perpetrator state. This is because, as a matter of principle, it seems to aggravate an existing wrong to allow a perpetrator to have their wrongdoing superseded by a justificatory process over which they have sole control. In addition, there is the consideration of moral hazard: a state would be incentivised to seize a land first, knowing that it always retains the option to justify its presence later by virtue of implementing a beneficial

system, even when it lacks the immediate capacity to do so.

Considering that unilateral territorial expansion is by no means a historical phenomenon unique to the colonial era, and that states rarely ascend to power without tainted records of committing grave injustices, the critique of the common thesis that we extrapolated from its implication of whitewashing should be allowed a more general bearing on state justification. In that case, contrary to the common thesis, the necessity of having various crucial benefits provided by a coercive entity does not exhaust everything we have to say about the moral propriety of a state's coercive presence. More specifically, the critique sheds light on a flaw in the thesis that an adequate solution must address by divesting the state of unilateral control over the justificatory process. This appears to favour a solution that makes individual uptake a separate justificatory ground. But before going further in that direction, let us consider a few alternatives that may preserve the common thesis while responding to the whitewashing critique.

4.2 PROHIBITIVE PROVISIO AND SUPERSESSION

A direct response to the whitewashing problem is to incorporate a proviso into the justification of the state that proscribes unilateral territorial expansions. According to such a proviso, any territorial gain that violates another state's territorial integrity deprives the perpetrator state *ab initio* of any prospect of being justified in monopolising coercion in the said territory, no matter how competent it is to implement a beneficial system. As a result, a state would not gain comparative advantages by pre-emptively seizing another state's territory because acts of unprovoked aggression would jeopardise rather than facilitate subsequent claims of justifiability. In this way, the

problem seems to be resolved while leaving the common thesis intact.

The obvious drawback of this solution is its rigidity. An unqualified proscription of unilateral territorial gain is bound to lend itself to conflicting claims about much of the territorial status quo that is now widely considered settled, not to mention the amount of record backtracking regarding territorial changes that needs to be done in order to give effect to the proviso. The passage of time alone would render a great deal of historical data no longer available or unverifiable. As the obstacles to applying the proviso seem insurmountable, a second-best option is to take a compensatory approach to redressing the injustice of unilateral territorial annexation. Nozick, for one, argues that a dominant coercive entity, authorised by its clients to use coercion to provide the protection service, is justified in prohibiting any non-client individual or entity from applying risky procedures for self-protection or dispensing justice to its clients (Nozick 2013: 101–108). While this effectively allows the coercive entity to disarm non-clients without their consent, Nozick notes that those so disarmed should be compensated for being forbidden from using procedures they deem safe. The least expensive compensatory option, he argues, is to offer them, free of charge, a protection service similar to that offered to the dominant entity's clients (Nozick 2013: 110–111). Though perhaps offering a compensatory scheme makes the perpetrator state less reprehensible than one that has never done so, it seems that adding such a requirement to the justificatory conditions does not adequately address the concern of whitewashing. This is because the compensatory scheme is still imposed, dependent on, and under the sole control of the state. If it is problematic to allow a state to rectify its unilateral annexation merely on account of beneficial consequences, adding compensation, which is a form of benefit, does not seem to make much difference to the justificatory conditions.

The perpetrator still is allowed to profit from its own wrongdoing, albeit paying a higher price. Compensation alone is not enough to rectify the state's tainted standing relative to the subjugated *unless* the compensation is accepted, just as a wrongdoer's apology cannot function as a reconciliation unless the person wronged accepts it. However, in that case, individual uptake is not a substitute for compensation, but a prerequisite for effecting its normative force.

Consider a more attractive line of counterargument under the compensatory approach: It may be said that my argument for the import of individual uptake depends on the *persistence* of injustice resulting from unilateral territorial gain. But that is not true of all historical injustices; some may be superseded due to changes in circumstances. Should such changes occur, a superseded injustice either no longer needs to be addressed or could be adequately addressed through compensation. Thus, despite the problematic nature of whitewashing unilateral territorial expansions, its relevance to state justification may be undermined by this supersession thesis.

Expounded by Jeremy Waldron, the thesis proposes that "certain things that were unjust when they occurred may be overtaken by events in a way that means their injustice has been superseded" (Waldron 2004: 240). He has in mind the incursion and displacement of indigenous peoples by European settlers in New Zealand, Australia, and North America. In his view, since these places have seen drastic changes in demographic composition as well as socio-economic conditions, and since there is no prospect of the descendants of European settlers returning to their countries of origin or resettling elsewhere, it is not unreasonable to think that these descendants are now *entitled* to remain and share resources with the descendants of the indigenous peoples. Waldron's core argument is that what justice requires is *sensitive* to circumstantial changes;

therefore, it is conceivable, in principle, that some circumstantial changes lead to a change in justice's demands, which may *happen to coincide* with a situation previously considered unjust under a different set of circumstances. Importantly, the supersession thesis embodies the Kantian theme (which we saw in the necessity justification) that "people who are thrown [...] unavoidably side-by-side have no choice but to share the resources that surround them justly among themselves [...] even if the presence of some of them in that situation is a result of injustice" (Waldron 2004: 246).

To reply: I believe the supersession thesis does not apply to the kind of historical injustices featured in the implication of whitewashing. Waldron's main concern is the moral status of the "intruders" (and their descendants) who participate in colonial projects. Granted that, after certain drastic circumstantial changes, the injustices of these intruder's wrongful presence and resource use are superseded, and they acquire a right to stay and an entitlement to resource use (Waldron 1992: 25), the supersession, I think, is silent about the further and separate injustice concerning which coercive entity is in a position to impose a coercive system of rule. In other words, the circumstantial changes required by the supersession thesis may not supersede injustices *all the way down*; specifically, they cannot remove the indignation of the subjugated at being deprived of any say in the rectification of the unilaterally imposed system of rule, as though the past wrongs that resulted in their annexation were of no consequence and their victimhood could simply be set aside. Such indignation has a foundation distinct from the injustice of being forced to share resources with others to one's detriment. To think that the subjugated's lack of a say is also superseded would mean that once the intruders acquire the right to co-exist with the indigenous population, whichever dominant coercive entity happens to be in place performing necessary

tasks is justified in doing so. We are then circled back to the necessity justification.

In what way is the aforesaid indignation persistent? Suppose *I*, an indigenous descendant, am born a decade after the forceful annexation of my parent's native land by a state *C*. Given that I shall live my life under the system of rule imposed by *C* and granted *C* is largely competent in performing all necessary tasks, what is there for *me* to be indignant about? To answer this, we must imagine that the indigenous population's uptake is not taken into account *at all* when *C* imposes its preferred system of rule. This will render the scenario less plausible – many colonial regimes did, to some extent, adjust their systems to local traditions if only to soften local resistance – but it allows us to heighten the specific grievance in question. Now, *C* has carried out a fully-fledged "civilising mission" since the annexation. All aspects of its system reflect bits of a comprehensive vision of life and moral outlook that is alien to the indigenous beliefs and customs: public services are offered in a language *my people* do not speak; justice is dispensed according to procedures and substantive values that my people find puzzling, and so on. They thus retreat from public life to their own community almost entirely: should they have quarrels with neighbours, they seek help and advice from communal leaders instead of going to the police or the courtroom; they do not line up to collect social benefits and, in fact, avoid any interaction with public authorities unless necessary... And here comes me, bearing witness to these two worlds and torn by the anguish of a split self. The everyday operation of the system is, for me, a reminder of the sights and memories of the displacement of my people, and my indignation only grows more acute when I see my people being punished for violating *their* laws. To me, there is no escape from this painful awareness unless perhaps I whole-heartedly embrace the new identity by assimilating myself into *C*'s system and leaving behind the indigenous way of life for good.

The imaginary example above is perhaps not unrealistic. Historically, it was common for colonial regimes to systematically enforce integration programmes that sought to *transform* the subjugated into colonial subjects in the hope that this would bring about more individual support from future generations to solidify the regimes' presence. But it is one thing to *expect* that greater integration would generate more buy-in from the descendants of the subjugated if the imposed system endures sufficiently long; it is another thing that this actually happens. So long as there are individuals of the subjugated refusing to partake in the imposed system, it is reasonable to say that the injustice and indignation associated with the subjugation persist *for them*. Moreover, even if an entire generation of the subjugated were to submit, it is not implausible that the said injustice and indignation can renew when some individuals from a later generation, after a re-discovery of their ancestral grievance, revive all forms of non-conformity. To invoke an essentially Lockean idea, it is not clear that one generation's uptake can bind future generations. For that reason, it may be said that any state with a tainted record of unilateral territorial gain is perpetually "haunted," so to speak, by its past injustices because they either persist or could renew at the present time when the subjugated or their descendants consciously withhold their uptake of the incumbent system of rule. This possibility, in other words, saddles the state with a standing responsibility to procure individual uptake from the population over which it claims justified power.

4.3 RAWLSIAN SOLUTION: PUBLICITY

The last example may prompt another reaction. Some may say the *real* objection to benign colonialism lies in C's disregard for indigenous traditions and its cultural genocide, in its enforcement of a comprehensive vision of life and moral outlook that is alien, and thus seems unacceptable, to the indigenous people. If the imposed system

were not of this nature, we may be less inclined to find the unrelenting nonparticipation of the subjugated a justified way to renew the injustice of C's unilateral annexation; rather, we would see it as a peculiar or unreasonable disposition on their part. This reaction, too, casts doubt on the persistence of the injustice of unilateral annexation, against a background assumption that whatever system imposed should be made to accommodate local circumstances to optimise acceptability. It suggests a relativised approach to state justification, according to which there would be no one-size-fits-all answer to what are the justificatory conditions; instead, the appropriate set of conditions may vary from one community to another, depending on the morally relevant features of each community's demographic constitution.

Rawls could be read as presenting a justificatory account along these lines⁵ in *Political Liberalism* and *The Law of Peoples*. His liberal principle of legitimacy, according to which a state's coercive power is justified only if the way it is exercised can be supported by reasons all citizens can reasonably be expected to endorse from their respective comprehensive worldviews (Rawls 2005: 134–137, 216–217), is tailored to address the particular concerns of the members of what he calls a well-ordered democratic society or, in short, the "liberal people" (Rawls 2001: 33–36). Given that value pluralism and persistent disagreement are two permanent features of democratic society, Rawls argues that liberal people would be particularly worried that state coercion may be used "non-publicly" to enforce a worldview held only by some groups but not the rest of society (Rawls 2001: 90–91; 2005: 136). The Rawlsian state,

5 While Rawls concedes that political liberalism does not offer a justificatory account that is universally applicable, I should note that it is only my reading that this concession of his could lend support to the common thesis by addressing the problem of white-washing. As far as I know, his argument for public-reason justification is not motivated by any consideration for superseding historical injustices. Thus, my discussion to follow may deviate from orthodox interpretations of Rawls.

therefore, achieves the justificatory status by virtue of a system of rule that guarantees official neutrality among values, morals, and worldviews not shared by everyone in a society. This requirement of neutrality, though oriented towards procuring public support, is still consistent with the common thesis, as it only applies to the functional feature of the state (that its actions must be public-reason based).

To the extent one finds Rawls's solution attractive, I suggest it is because an element of individual uptake is already embedded in his account. True, though, it is theoretically possible for a Rawlsian state to be justified even if there is a lack of actual endorsement from most of the citizen population for many of its actions. The use of public reasons itself does not yield unique, determinate answers as to how political power should be exercised in each situation or guarantee the actual popular endorsement, as citizens may reasonably disagree with the state regarding how to balance public reasons. That said, a plausible case can be made that the usage of public reasons is a form of individual uptake. As Rawls writes, such usage allows the state to "generate[] its own *support* in a suitable way by addressing *each citizen's reason*" (Rawls 2001: 186). The fact that these reasons belong to each citizen imparts an actual, individual-based recognition of what constitutes an appropriate exercise of political power in a democratic society, which sets the idea apart from a counterfactual idea like hypothetical consent. Moreover, the practical importance of individual uptake is reflected in Rawls's concession that public-reason justification is by no means universally applicable beyond well-ordered democratic societies. He thinks that if social members do not see one another as free and equal citizens, and their prevailing conception of the common good is deeply embedded in a certain comprehensive worldview, it would not be inappropriate for the state to directly appeal to a non-liberal worldview to justify state coercion (Rawls 1999: 64–66).

Despite that a (relatively weak) sense of actual individual uptake can be said to be an inbuilt element in public-reason justification, Rawls remains ambiguous on whether it is a necessary condition. Suppose C, in our previous example, imposes a system of rule that is sufficiently attuned to indigenous customs and beliefs, yet the bulk of the subjugated population continues to withhold participation as they did before. Is C justified in coercing the nonparticipants who, for instance, forcefully resist its tax collection on the ground that C is the only entity justified in employing coercive force in the land? Regarding this scenario, I suppose Rawls would join other proponents of the common thesis in saying that the state has done its part, and now, the nonparticipants are acting unreasonably. In doing so, I think, Rawls implicitly shares the same projection that, over time, even the most indignant subjugated individuals will come around naturally, drawn by prudential or moral considerations, to recognise, accept, and support a state that consistently performs well in serving the public, no matter how despicable the way it gained control was. The position I defended in this article, however, rejects such an optimistic take on humans as political actors. Instead, I suggest that, from the principled consideration that a wrongdoer should not be allowed to profit from their own wrongdoing, there arises a neither improbable nor improper prospect that the annexed population of unilateral territorial annexations may hold onto their grudge against the perpetrator state, which seeks to whitewash its past injustice by delivering good. Such is the *direct* moral underpinning of the justificatory function of individual uptake that seems to be missing in Rawls's account. His principal goal in introducing the idea of public reason is to ensure the long-term stability of a system of rule, which he considers only achievable if the justificatory conditions are such that compliance with them allows the state to gain wide support from the population it governs. Thus, ostensibly, the relevance of individual uptake in Rawls's justificatory account is

mediated by a pragmatic rather than moral concern for stability. This may explain why Rawls never explicitly acknowledges that individual uptake has an independent justificatory function.

5 CONCLUDING REMARKS

The individual uptake thesis builds on rather than erodes the important distinction between justification and legitimacy that Simmons popularises, even though it holds that individual uptake pertains to justifying a state as much as it does to legitimising a state. It affirms the distinction in two respects. First, the thesis operates on the recognition that the normative contents respectively encapsulated in the two ideas are sufficiently distinct to warrant two separate evaluative inquiries about the state: one focused on the propriety of the state as the dominant coercive entity, another on the propriety of it as the supreme authority capable of creating political obligations. On that basis, secondly, the article further develops a theme that, in my view, is latent in the distinction but not fully articulated by Simmons. That is, justification refers to a more fundamental quality of a state compared to legitimacy. Modern states owe a large part of their competence in solving the incessant problems that beset every human society to the *perceived* finality of their decisions, which depends to a great extent on their capacity to maintain credible coercive threats. In fact, coercive capacity is often used as an important indicator for distinguishing failed states from functioning ones. Thus, while there are different standards – basic and advanced – for judging a state’s moral quality, a political theory about state justification should reflect the fundamental import of the state’s coercive function in the standard it sets for evaluating it.

That said, the original contribution of this article lies in showing that even for an evaluative target as fundamental as state coercion, the necessity

of realising certain comparative advantages alone is not sufficient to justify it when the state’s coercive presence is the result of unilateral territorial expansion. This is because the historical injustices implicated in such territorial gain cannot be rectified simply by the resultant beneficial consequences, without the acknowledgment of reconciliation from the victims of said injustices. This thesis holds, I argue, if our conception of state justification is to have an evaluative grip on reality so that its standard can *inform* us of the moral standing of a particular state’s coercive presence within a territory. While some may view state justification as essentially a generic evaluation on regime-types that does not deal with the justifiability of particular states, this article shows that a generic evaluation as such cannot be conducted without first understanding the practical implication of the justified state for individual subjects. Because of that, contra Simmons, I contend that particularisation is inevitable in the conception of state justification. Lastly, in resting the justificatory bearing of individual uptake on the indignation associated with unilateral territorial acquisition, my account casts light on the inadequacy of the dominant liberal understandings of state justification, which are founded on the ideas of rationality or reasonableness. The moral sentiment of indignation has increasingly gained prominence in our politics today. If its moral bearing continues to be neglected or dismissed in our construction of political theories, we do so at our own peril.

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