



The LIMITS of
GOVERNMENT

*An Essay on the
Public Goods Argument*

David Schmitz

Westview Press

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Preface

In what follows, I discuss what public goods are, why exercising the power of government might be a precondition of public goods production at adequate levels, and when so exercising the power of government might be worth the cost. The most important arguments in the book, in my view, are as follows. Chapter 1 asks what it means to justify the state and finds that there are two incommensurable answers. Chapter 2 then justifies (in one sense) the institution of property. Chapter 3 explains how states can acquire the right to punish those who violate property rights. Presuming the framework of enforceable rights developed in Chapters 2 and 3, Chapter 4 explores a noncoercive solution to the Prisoner's Dilemma and thus to any public goods problems that can be modeled as Prisoner's Dilemmas. Chapter 5 extends the argument of Chapter 4, exploring the moral and strategic complexities of public goods problems that are not Prisoner's Dilemmas.

Chapter 6 concerns, and offers itself as proof of, the possibility of applying the experimental method to moral philosophy. It surveys results of laboratory experiments conducted by several researchers, including me, on the willingness of human subjects to contribute voluntarily to public goods projects. Chapter 7 develops a theory of morality and applies it to questions about public goods. Specifically, when (if ever) are you morally obligated to help produce public goods? When (if ever) are others permitted to force you to help? I conclude that the same considerations that theoretically ground property rights also ground their theoretical limits.

Except where otherwise noted, this book equates individually “rational” action with action that is, strictly speaking, in the agent’s self-interest. Let me stress that my intent is merely to conform to standard usage rather than to plump for any substantive theory about what rationality is. In particular, it does not follow from my using the term ‘rational’ in this way that those who act against self-interest are irrational, but only that if they are rational, then they are rational in some other sense of the term.

I should also stress that the public goods argument is not the sole possible justification of the state. Hence, even if the public goods argument can justify only a minimal state, this does not entail that only a minimal state can be justified. Instead of arguing that the state is justified as a vehicle for promoting public goods production, one might argue that it is justified as a vehicle for promoting, say, equality. Such arguments are not pursued in this book, although I try in passing to note places where alternative arguments might profitably be posed.

Finally, the discussion does not presume any particularly sophisticated conception of the state. I use ‘the state’ to refer, roughly, to the final civil authority (or claimant thereof) in a given geographical domain. Perhaps, to qualify a claimant as a state, its claim to final civil authority would also need to have been more or less unrivaled in its domain for a number of years. I leave such questions open, for we have nothing to gain by seeking necessary and sufficient conditions for statehood. Indeed, I doubt that what we mean when we use the term is precise enough to admit of such conditions. But for a discussion of the functional and historical properties that might suffice to *justify* a state, please turn to Chapter 1.

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I thank the following journals for permission to use previously published material. A forerunner of Chapter 4 appeared in the *Harvard Journal of Law and Public Policy* (1987a). A paper appearing in *Philosophical Papers* (1988) inspires the first section of Chapter 5. Chapter 3's section on peace as a public good uses material from *Philosophia* (1989). The sections in Chapter 1 on justification and hypothetical consent draw on material from *Ethics* (1990, copyright by The University of Chicago. 0014-1701/91/0101-0001).

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1

The Public Goods Argument

Society runs itself. As long as a system of property rights protects and gives meaning to people's right to be left in peace, individual initiative will produce the essential elements of human flourishing. The trouble is, this liberal insight presupposes the efficacy of markets, and markets can fail. In particular, the fabric of social harmony, woven by markets from threads of self-interested action, may prove too delicate when it comes to producing public goods.

Therein lies a role for government. According to Mancur Olson, "A state is first of all an organization that provides public goods for its members, the citizens" (1965, p. 15). A public good, roughly speaking, is a good that can be produced only by collective action, but its production benefits people regardless of whether they join in the collective effort. Such collective action as is necessary to provide public goods is collectively rational in a straightforward sense. Even so, it is often not *individually* rational for people voluntarily to do their part to secure a collectively rational outcome. (After all, why not enjoy the benefits of other people's efforts for free?) Assuming people typically do what is individually rational, the moral justification for coercive provision of public goods is also relatively straightforward. We need only argue (or so it might seem) for a particularly benign kind of paternalism.

To wit, we all want public goods, but we know perfectly well that many of us will not voluntarily contribute to their production.

Thus, compelling us to contribute is paternalistic insofar as it does something for each of us that is good for us but that we cannot do for ourselves because we lack the collective will. (More precisely, each of us could will ourselves to act individually, but what we really want is to act collectively, and sometimes there is no will among us that can move us to act collectively.) Narrowly described acts of taking *your* money are not done for your good, but more broadly described acts of taking your money and everyone else's too are done for your good and for everyone else's too. This paternalism is benign in the sense that the end it helps us attain is not only good for us but is also an end we actually desire. We all *want* the government to force each of us to contribute and thereby make us better off. Even if no one desires that the government take his or her own money, it might nevertheless be true that everyone desires that the government takes everyone's money. Michael Taylor sums it up: "The most persuasive justification of the state is founded on the argument that, without it, people would not successfully cooperate in realizing their common interests and in particular would not provide themselves with certain public goods" (1987, p. 1). This, in essence, is the public goods argument.

The public goods argument has more familiarity and wider acceptance among economists and political scientists than it has among philosophers, at least in its modern and rather technical incarnation.¹ Nevertheless, the argument has had a major influence on political philosophy since the time it was implicitly put forth by Thomas Hobbes.² Hobbes argued that *peace* is, in effect, a universally desired public good, because securing it is a prerequisite of self-preservation; even so, individual rationality counsels people to seek the advantages of war, unless they are able to establish by covenant an overarching power to keep the peace by holding the multitude in awe. (See Hobbes, chaps. 13 and 17.)

Two Kinds of Justification

We return in Chapter 2 and especially Chapter 3 to the problem of how to produce the public good of peace. Here, we must pause to consider a more general issue. What does the public goods

argument have to do with justifying the state? What sort of work is the public goods argument supposed to do? It turns out that there is more than one possibility. Hobbes is usually classified as a contractarian—someone who argues that a state is justified either by obtaining the consent of its citizens or by being the kind of state to which rational people would consent under the right conditions. (These two versions of contractarianism may be labeled *actual consent* and *hypothetical consent* arguments, respectively.) Because the public goods argument has its philosophical roots in Hobbes, it would be natural to assume that the public goods argument is a contractarian argument.

We should, however, resist this temptation. To see why, we must distinguish what I see as two different methods of justification in political theory. I call the two methods *teleological* and *emergent justification*. The teleological approach seeks to justify institutions in terms of what they accomplish. The emergent approach regards justification as a property that emerges from the process by which institutions arise.³

Teleological justification posits *goals* and compares the practicably attainable forms of government in terms of how they do or will serve those goals. In contrast, emergent justification posits *constraints* of a particular kind—namely constraints on the process by which the state comes to be. Emergent justification turns on a state's pedigree. It is not essentially comparative, although comparing states in terms of their relative success in meeting a standard of emergent justification is by no means ruled out.

Consider some examples. Following Hobbes, one might argue that instituting a Leviathan is teleologically justified if a war of all against all would otherwise be inevitable. In contrast, a Hobbesian might argue that a Leviathan will be emergently justified if it emerges from the state of nature by consent. (For the moment, think of the appeal as being to actual or tacit consent. I discuss hypothetical consent arguments in the next section.) This emergent approach has both invisible-hand and contractarian versions. In the former, the Leviathan's emergence is an unintended result of people individually binding themselves to a prince. In the latter, people bind themselves by collective agreement. To show that a state

actually emerged by consent would be a very strong form of emergent justification. At the same time, showing that it did not satisfy this stringent standard would be correspondingly weak as a basis for condemnation. In contrast, to show that a state emerged without violating rights would be a relatively weak emergent justification, but by the same token, showing that a state's emergence did not satisfy even this minimal standard would be the basis for a relatively strong condemnation.

Particular institutions within the state can also be justified by either teleological or emergent methods. For example, one could try to teleologically justify creating a standing army by arguing that the army will provide the paradigmatic public good of national defense. Or one could try to emergently justify creating a standing army by showing that its creation was duly approved by the appropriate legislative bodies. To have emergent justificatory significance, the legislative process must not violate moral borders. (I use the phrase 'moral borders' to refer to rights in particular and also to anything else that separates what can permissibly be done to a person from what cannot.) This leaves open the question of whether the process's significance derives from the property of not violating moral borders or from some other property, but in either case, if the process violates moral borders, this will undermine such emergent justificatory significance as it would otherwise have had.

Neither teleological nor emergent models are normatively self-contained. The teleological approach presupposes the legitimacy of certain goals. The emergent approach presupposes certain constraints applying to processes by which states arise. One might suppose that the teleological approach essentially ignores moral borders, but this is not so. Both approaches presume some sort of position on the nature of moral borders around persons—in the one case because the state can be judged according to whether its emergence leaves such borders intact, in the other case because the state can be judged according to how well it serves the goal of protecting them. (Among the positions that a utilitarian version of the teleological approach may take, of course, is the position that rights in particular and perhaps even moral borders in general are "nonsense on stilts.")